

**State of California
Office of Administrative Law**

In re:
Physical Therapy Board of California

Regulatory Action:

Title 16, California Code of Regulations

Adopt section: 1398.26.3

Amend section: 1398.25

Repeal section:

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL Matter Number: 2016-0616-01

OAL Matter Type: Regular (S)

SUMMARY OF REGULATORY ACTION

This rulemaking action by the Physical Therapy Board of California (Board) proposes to adopt section 1398.26.3 and amend section 1398.25 in title 16 of the California Code of Regulations (CCR) to set a minimum passing score on the Test of English as a Foreign Language (TOEFL) for applicants who have graduated from a physical therapist education program that is not approved by the Board and is not located in the United States. This action also seeks to require the passing score to be achieved within a single administration of the TOEFL, seeks to establish exemption criteria, and seeks to provide clarification regarding reporting requirements.

On June 16, 2016, the Board submitted the above-referenced rulemaking action to the Office of Administrative Law (OAL) for review. On July 29, 2016, OAL notified the Board that OAL disapproved the proposed regulations. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

OAL disapproved the above-referenced rulemaking action for the following reasons:

1. The proposed regulations failed to comply with the consistency standard of Government Code section 11349.1, subdivision (a)(4);
2. The proposed regulations failed to comply with the clarity standard of Government Code section 11349.1, subdivision (a)(3);
3. The proposed regulations failed to comply with the necessity standard of Government Code section 11349.1, subdivision (a)(1); and

4. The Board did not meet the required Administrative Procedure Act (APA) procedural requirements due to its failure to:
 - a. obtain Board approval of a substantive revision to the final version of the regulatory text, pursuant to Government Code section 11346.8, subdivision (c);
 - b. include complete copies of the public comments submitted in connection with this rulemaking action in the rulemaking record, pursuant to Government Code section 11347.3, subdivision (b)(6);
 - c. provide supporting information to justify the Board's reasonable alternatives determination, pursuant to Government Code section 11346.9, subdivision (a)(4); and,
 - d. include the required information in the updated informative digest, pursuant to Government Code section 11346.9, subdivision (b).

All APA issues must be resolved prior to OAL's approval of any resubmission:

DISCUSSION

The Board's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

1. Consistency Standard

Government Code section 11349.1, subdivision (a)(4), requires that OAL review all regulations for compliance with the consistency standard. Government Code section 11349, subdivision (d), defines "consistency" to mean "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." As discussed below, the

English proficiency exemption criteria established in the proposed regulatory text are inconsistent with Business and Professions Code section 2653. Business and Professions Code section 2653 provides in part as follows:

An applicant for a license as a physical therapist who has graduated from a physical therapist education program that is not approved by the board and is not located in the United States shall do all of the following:

(a) ...

(b) Demonstrate proficiency in English by achieving a score specified by the board on the Test of English as a Foreign Language administered by the Educational Testing Services or such other examination as may be specified by the board by regulation.

(c) ...

Proposed section 1398.26.3, subdivision (b), seeks to establish a procedure for specific foreign applicants to be exempted from the English proficiency requirement described in section 1398.26.3, subdivision (a). Business and Professions Code section 2653 does not contain any language that permits the Board to exempt specific applicants from demonstrating English proficiency. Rather than rely upon the statutory language found in the Business and Professions Code, the Board opted to model its exemption criteria after the exemption criteria found in section 212.15 of title 8 of the Code of Federal Regulations (CFR). However, the rulemaking file is devoid of any specific citation within the CFR that requires the Board to establish criteria for exemption from the English proficiency requirement for foreign applicants applying for physical therapy licensure in California. Rather, section 212.15 of title 8 of the CFR addresses general documentary requirements for foreign healthcare workers seeking admission to the United States “as ... immigrant[s] or ... nonimmigrant[s] for the primary purpose of performing labor in a health care occupation.”

Based on the language of section 212.15 of title 8 of the CFR, the Department of Homeland Security may allow for the exemption of specific individuals from the English proficiency requirement upon entering the United States. However, Business and Professions Code section 2653 contains no similar exemption for foreign applicants seeking licensure from the Board. Based on the express language of Business and Professions Code section 2653, demonstration of proficiency in English by achieving a specific score of the TOEFL or such other examination specified by the Board is one of the requirements for applicants from foreign schools seeking licensure as a physical therapist. The Board must revise the regulation text to be consistent with Business and Professions Code section 2653.

2. Clarity Standard

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, sec. 11340, subd. (b).) Government Code section 11349.1, subdivision (a)(3), requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c), defines “clarity” to mean: “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

The clarity standard is further defined in section 16 of title 1 of the CCR, OAL's regulation on “clarity,” which provides the following:

In examining a regulation for compliance with the “clarity” requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

- (a) A regulation shall be presumed not to comply with the “clarity” standard if any of the following conditions exists:
- (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or
 - (2) the language of the regulation conflicts with the agency’s description of the effect of the regulation; or
 - (3) the regulation uses terms which do not have meanings generally familiar to those “directly affected” by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or
 - (4) the regulation uses language incorrectly. This includes, but is not limited to, incorrect spelling, grammar or punctuation; or
 - (5) the regulation presents information in a format that is not readily understandable by persons “directly affected;” or
 - (6) the regulation does not use citation styles which clearly identify published material cited in the regulation.
- (b) Persons shall be presumed to be “directly affected” if they:
- (1) are legally required to comply with the regulation; or
 - (2) are legally required to enforce the regulation; or
 - (3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or

- (4) incur from the enforcement of the regulation a detriment that is not common to the public in general.

In this rulemaking action, proposed section 1398.26.3 fails to comply with the clarity standard of the APA. Proposed section 1398.26.3, subdivision (b), reads as follows:

(b) A foreign applicant who meets the following criteria is exempt from the requirement in subsection (a) above:

- (1) One who graduated from a college, university or professional training school in Australia, Canada, [*sic*] (except Quebec), Ireland, New Zealand, the United Kingdom, or the United States;
- (2) One who is or would be exempt from TOEFL requirements pursuant to Title 8, Code of Federal Regulations, section 212.15, subsection (i)(3) as it currently exists or is hereafter amended.

Proposed section 1398.26.3, subdivision (b), is unclear for two reasons. First, subdivision (b) is unclear as a whole because the language of subdivision (b) conflicts with the Board's description of the effect of the regulation. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(2).) As written, proposed subdivision (b) identifies two criteria that must be met in order for a foreign applicant to be deemed exempt from the English proficiency requirement described in subdivision (a) of proposed section 1398.26.3.

Regarding the proposed exemption criteria, the initial statement of reasons (ISOR) provides:

Although, consistent with federal regulation the board proposes to define in regulation those considered to be exempt from the TOEFL requirement for having studied in countries where English is not a foreign language.

...

Code of Federal Regulations (CFR), Title 8, § 212.15, subdivision (g)(2)(ii), states, "The following aliens are exempt from the English language requirements: Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, or the United States."

Additionally, CFR, Title 8, § 212.15, subdivision (h)(4)(i)(3), states: "Physical therapists. An alien physical therapist who has graduated from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA) is exempt from the educational comparability review and English language proficiency testing." [The correct citation should be to subdivision (i)(3), not subdivision (h)(4)(i)(3).]

Therefore, the Board proposes to cross reference the CFR, so individuals who studied in a country where English was not a foreign language, are exempt from the TOEFL requirement.

In this rulemaking action, the Board is seeking to cross-reference the CFR so that individuals who studied in a country where English is not a foreign language are exempt from the English proficiency requirement. In comparing the Board's ISOR to the text of subdivision (b) of section 1398.26.3, it is clear that proposed subdivision (b)(1) is modeled after the language of subdivision (g)(2)(ii) of section 212.15 of title 8 of the CFR, while proposed subdivision (b)(2) cites directly to subdivision (i)(3) of the same section. Both of these subdivisions address individuals who studied in a country where English was not a foreign language. Based on the language of the ISOR, it is unclear whether the Board intends to require foreign applicants to satisfy both subdivisions (b)(1) *and* (b)(2) in order to be deemed exempt from the English proficiency requirement, or whether satisfaction of subdivision (b)(1) *or* (b)(2) is sufficient. However, the text of subdivision (b) specifies that the foreign applicant is to "meet the following criteria," indicating both subdivisions (b)(1) *and* (b)(2) must be satisfied in order to be deemed exempt from the English proficiency requirement.

This clarity problem is further perpetuated by the Board's response to Dr. Krishna Suthar's public comment included in the final statement of reasons (FSOR). Dr. Suthar submitted a comment to the Board in connection with this rulemaking action suggesting that the Board consider exempting foreign applicants who obtained their Master's degree in the United States from the English language proficiency requirement described in subdivision (a) of proposed section 1398.26.3. The Board summarized Dr. Suthar's comment and responded as follows:

Section 1398.26.3(a)(1) exempts applicants who have graduated from a college, university or professional school in the United States; therefore, Dr. Suthar's proposed recommendation is rejected as the request is already incorporated into the proposed regulation. [The correct citation should be to subdivision (b)(1), not subdivision (a)(1).]

Based on the Board's response, the Board intends to exempt foreign applicants from the English proficiency requirement for satisfying either subdivision (b)(1) or (b)(2) of proposed section 1398.26.3. However, this response does not align with the express language of section 1398.26.3, subdivision (b). The Board's use of the phrase "meets the following criteria" emphasizes the need to satisfy both subdivisions (b)(1) and (b)(2) in order to be deemed exempt from the English proficiency requirement, as opposed to satisfying either subdivision (b)(1) or (b)(2). As written, proposed section 1398.26.3, subdivision (b), does not exempt foreign applicants from the English proficiency requirement based upon satisfaction of only subdivision (b)(1).

Based on the aforementioned reasons, the language of the regulation conflicts with the Board's description of the effect of the regulation and thus, is unclear.

Second, subdivision (b)(2) is unclear because the regulation presents information in a format that is not readily understandable by persons "directly affected" and the regulation does not use citation styles which clearly identify published material cited in the regulation. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(5) and (6).) In proposed subdivision (b)(2), the Board fails to identify section 212.15 of title 8 of the CFR by a specific date of publication. Rather than include a specific publication date, the Board opted to utilize the following language, "as it currently exists or is hereafter amended."

This language, in essence, incorporates by reference the criteria currently included in section 212.15, subdivision (i)(3), as well as any new or additional criteria that may be added to section 212.15, subdivision (i)(3), in the future. This language would allow the Board to update the exemption criteria without having to comply with the APA rulemaking process or seek public input on any future revisions. Therefore, as written, the section violates the clarity standard because the meaning of the proposed regulation would not be easily understood by those persons directly affected by the regulation.

Furthermore, adoption of proposed section 1398.26.3, subdivision (b)(2), violates subdivision (c)(4) of section 20 of title 1 of the CCR, which requires the regulation text to "[state] that the document is incorporated by reference and [identify] the document by title and date of publication or issuance."

For the reasons discussed above, the Board failed to comply with the clarity standard of the APA. The Board must make proposed modifications to the text available to the public for comment for at least 15 days pursuant to Government Code section 11346.8, subdivision (c), and section 44 of title 1 of the CCR before adopting the regulations and resubmitting this regulatory action to OAL for review. Additionally, any comments made in response to the proposed modifications must be presented to the Board for consideration, and objections and recommendations must be summarized and responded to in the FSOR pursuant to Government Code section 11347.1, subdivision (d).

In addition to modifying the regulation text, the Board must also correct the description of the effect of the regulations in an addendum to the ISOR. The Board must include an explanation of why each of the revised regulatory provisions are necessary to carry out the purposes for which they are proposed. The Board will need to add the document to the rulemaking file and must make the document available to the public for comment for at least 15 days pursuant to Government Code section 11347.1.

Furthermore, because the Board falls within the Department of Consumer Affairs, Business and Professions Code section 313.1, subdivision (b), requires:

(b) The director shall be formally notified of and shall be provided a full opportunity to review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and this section, all of the following: ...

(2) Any notices of sufficiently related changes to regulations previously noticed to the public, and the text of proposed regulations showing modifications to the text.

Thus, the Board must also make all proposed modifications to the regulation text available to the director of the Department of Consumer Affairs prior to resubmitting this regulatory action to OAL for review.

3. Necessity Standard

OAL must review regulations for compliance with the necessity standard of Government Code section 11349.1, subdivision (a)(1). Government Code section 11349, subdivision (a), defines “necessity” as follows:

“Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

To further explain the meaning of “substantial evidence” in the context of the necessity standard, subdivision (b) of section 10 of title 1 of the CCR provides:

(b) In order to meet the “necessity” standard of Government Code section 11349.1, the record of the rulemaking proceeding shall include:

(1) A statement of the specific purpose of each adoption, amendment, or repeal; and

(2) information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision. Such information shall include, but is not limited to, facts, studies, or expert opinion. When the explanation is based upon policies, conclusions, speculation, or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information. An “expert” within the meaning of this section

is a person who possesses special skill or knowledge by reason of study or experience which is relevant to the regulation in question.

In order to provide the public with an opportunity to review and comment upon an agency's need for a regulation, the APA requires that the agency describe the need for the regulation in the ISOR. The ISOR is the primary document in the rulemaking record that demonstrates that the adoption, amendment, or repeal satisfies the necessity standard. Specifically, Government Code section 11346.2, subdivision (b), states:

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation ... shall include ... :

(1) A statement of the specific purpose of each adoption, amendment, or repeal, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute....

The ISOR must be submitted to OAL with the notice of the proposed action and be made available to the public during the public comment period, along with all of the information upon which the proposal is based. (Gov. Code, sec. 11346.2, subd. (b); Gov. Code, sec. 11346.5, subds. (a)(16) and (b).) In this way, the public is informed of why the regulation is needed and why the particular provisions contained in the regulation were chosen to fill that need. This information is essential in order for the public to comment knowledgeably. The ISOR and all data and other factual information, studies, or reports upon which the agency relies in the regulatory action must also be included in the rulemaking file. (Gov. Code, sec. 11347.3, subds. (b)(2) and (7).)

Proposed section 1398.26.3, subdivision (a), establishes a list of minimum scores foreign applicants must achieve within a single administration of the TOEFL in order to demonstrate English proficiency in accordance with Business and Professions Code section 2653, subdivision (b). The Board's statement of necessity for the adoption of the minimum TOEFL scores provides in part as follows:

The Federation of State Boards of Physical Therapy (FSBPT) is a member organization of physical therapy state licensing boards. The FSBPT owns the National Physical Therapy examinations and through a vote of its members, in 2017 will require each exam candidate to pass the TOEFL with the following passing scores:

TOEFL SECTION	MINIMUM SCORE
Reading Comprehension	21

Listening Comprehension	18	Total of 63
Writing	24	
Speaking	26	

The Board's proposed minimum TOEFL scores enumerated in subdivision (a) of proposed section 1398.26.3 align with the FSBPT's recommended minimum TOEFL scores. Although the ISOR goes on to explain why the FSBPT determined that all four sections must be passed in one sitting and that each applicant must pass each section with at least the minimum score, the ISOR is silent regarding why these minimum TOEFL scores are appropriate. Specifically, the ISOR failed to provide sufficient information to explain why the FSBPT's recommended minimum scores should be adopted, as opposed to any other entity's recommended minimum scores. As a result, the Board must prepare an addendum to the ISOR that addresses this issue. The Board will need to add the document to the rulemaking file and must make the document available for 15 days pursuant to Government Code section 11347.1.

4. Failure to Follow Required APA Procedures

a. Failure to Obtain Board Approval of a Substantive Revision to the Final Version of the Regulatory Text

The rulemaking file submitted to OAL for this action includes documentation that members of the Board voted upon and approved the originally noticed version of the regulation text at the Board's May 2015 meeting. However, subsequent to the Board's approval of the originally noticed text, Board staff opted to revise the citation to section 212.15 of title 8 of the CFR, which qualified as a substantive revision to the regulation text. The modified regulation text was made available to the public for comment during a 15 day comment period that commenced on November 25, 2015. Government Code section 11346.8 states:

(a) ... The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) ...

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any

written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9....

Additionally, Government Code section 11347.3, subdivision (b)(8), specifically requires that the rulemaking file include “[a] transcript, recording, or minutes of any public hearing connected with the adoption, amendment or repeal of the regulation.”

The rulemaking file submitted to OAL did not include documentation that the members of the Board voted upon and approved the final version of the regulation text following substantive revision. Because the Board is the governing body and the entity granted the rulemaking authority in this matter pursuant to Business and Professions Code section 2615, the rulemaking file for this action must include the transcript, recording, or minutes of the public hearing or hearings wherein the Board voted to approve the final version of the regulation text.

b. Failure to Include Complete Copies of the Public Comments Submitted in Connection with this Rulemaking Action in the Rulemaking Record

Government Code section 11347.3, subdivision (a), provides: “[e]very agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding.”

Subdivision (b) of section 11347.3 further specifies:

(b) The rulemaking file shall include: ...

(6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

The Board included copies of three public comments received in connection with this rulemaking action in the rulemaking file. These comments are clearly not the original comments submitted to the Board because all of the comments have the heading “Agenda Item #3” at the top of the page, all of the comments are typed in the same font, and all of the comments are devoid of any email or mail transmission information. Thus, it is unclear whether the comments reproduced in the file include all of the substantive comments submitted to the Board in connection with this rulemaking action. The Board must provide complete copies of all of the public comments submitted in connection with this rulemaking action.

c. Failure to Provide Supporting Information to Justify the Board's Reasonable Alternatives Determination

Government Code section 11346.9, subdivision (a)(4), requires the Board to include in the FSOR:

A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

In the FSOR submitted in connection with this action, the Board's reasonable alternatives determination fails to explain whether any reasonable alternatives were considered by the Board. Additionally, the Board failed to include any supporting information to justify the its conclusions, as required by Government Code section 11346.9, subdivision (a)(4).

d. Failure to Include the Required Information in the Updated Informative Digest

Government Code sections 11346.9, subdivision (b), and 11347.3, subdivision (b)(2), require the Board to include an updated informative digest in the rulemaking file. Specifically, Government Code section 11346.9, subdivision (b), requires the Board to submit to OAL:

[A] clear and concise summary of the immediately preceding laws and regulations, if any, relating directly to the adopted, amended, or repealed regulation and the effect of the adopted, amended, or repealed regulation.

The Board's originally proposed text included a citation to subdivision (g)(2)(ii) of section 212.15 of title 8 of the CFR. In its modified text noticed to the public on November 25, 2015, the Board revised the citation to refer to subdivision (i)(3), rather than subdivision (g)(2)(ii). This substantive revision modified the criteria for exemption from the English proficiency requirement described in proposed section 1398.26.3, subdivision (a). In the updated informative digest included in the rulemaking file, the Board stated, "A 15-day Notice of Modified Text was issued adding and deleting proposed language as noted in the Final Statement of Reasons."

Although the updated informative digest included in the rulemaking file acknowledges that the Board revised the regulation text and notified the public of the revision, this statement does not describe the effect of the revision on the proposed regulations. Furthermore, the updated informative digest does not address whether there have been any changes to the laws and regulations related to the proposed regulations. The

rulemaking file must contain an updated informative digest that meets the requirements of Government Code sections 11346.9, subdivision (b), and 11347.3, subdivision (b)(2).

5. Miscellaneous

OAL also notes the following issues that must be addressed prior to any resubmission of this rulemaking action:

a. Regulation Text

- i. Proposed section 1398.25, subdivision (c)(3), is missing the words “to section” between “pursuant” and “1398.26.3(b).”
- ii. The proposed regulation text, modified regulation text, and final regulation text contain a number of underline and strikeout illustration errors.

b. Significant Adverse Economic Impact

The Board included a determination in the ISOR that the proposed rulemaking action will not have a significant adverse economic impact directly affecting business. As justification for this conclusion, the Board stated:

The initial determination is based on the fact that 1) according to the median salary of both a physical therapist and physical therapist assistant, as cited by the Employment Development Department, the increase in fees is less than 1% of the licensee’s salary; 2) the California based approved CES [credential evaluation services] was consulted and provided favorable input on the proposal along with those located nationwide.

However, the proposed rulemaking action does not result in an increase in fees. The Board must prepare a revised justification in support of the determination that the proposed rulemaking action will not have a significant adverse economic impact directly affecting business pursuant to Government Code section 11346.2, subdivision (b)(5)(A).

c. Section 44 Confirmation of Mailing Statement

The rulemaking file contains a mailing statement confirming that the Board complied with the requirements of section 44 of title 1 of the CCR, as required by Government Code section 11347.3, subdivision (b)(9). However, the Board’s mailing statement also contains an erroneous citation to Government Code section 11347.1. The Board must remove this erroneous citation prior to resubmittal of the rulemaking action.

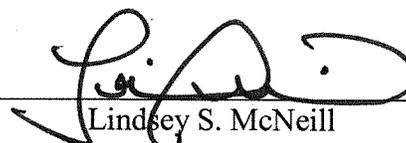
d. Corrections on the Form STD 400

- i. Section B.4 of the Form 400 must be corrected by adding the beginning and ending dates of the 15 day public comment period (November 25, 2015 – December 10, 2015). The Board will also need to include the beginning and ending dates of any future public comment periods in this section upon resubmittal of this rulemaking action.
- ii. Section B.6 of the Form 400 must be corrected by checking “Department of Finance (Form STD. 399) (SAM § 6660).”

CONCLUSION

For the foregoing reasons, OAL disapproved the above-referenced rulemaking action. Pursuant to Government Code section 11349.4, subdivision (a), the Board may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval. The Board shall make all substantive regulatory text changes, which are sufficiently related to the original text, and the addendum to the ISOR providing rationale for the modifications, available to the public for at least 15 days for public comment pursuant to Government Code sections 11346.8 and 11347.1. Any comments made in relation to these proposed modifications must be presented to the Board for consideration, any objections and recommendations must be summarized and responded to in the FSOR, and the Board must approve the final version of the regulation text. Additionally, the Board must make all proposed modifications to the regulation text available to the director of the Department of Consumer Affairs prior to resubmitting this regulatory action to OAL for review. If you have any questions, please contact me at (916) 323-6820.

Date: August 4, 2016



Lindsey S. McNeill
Attorney

For: Debra M. Cornez
Director

Original: Jason Kaiser
Copy: Brooke Arneson