



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest code of the following:

ELSINORE VALLEY MUNICIPAL
WATER DISTRICT
WESTERN MUNICIPAL WATER DISTRICT
CSAC EXCESS INSURANCE AUTHORITY

A written comment period has been established commencing on **July 27, 2007** and closing on **September 10, 2007**. Written comments should be directed to the Fair Political Practices Commission, Attention Tara Stock, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code will be submitted to the Commission's Executive Director for his review; unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code, proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the pro-

posed conflict of interest code. Any written comments must be received no later than **September 10, 2007**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING COSTS
AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Tara Stock, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED CONFLICT
OF INTEREST CODES**

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Tara Stock, Fair Political Practices

Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 11. DEPARTMENT OF JUSTICE/DIVISION OF GAMBLING CONTROL

NOTICE OF PROPOSED RULEMAKING

“Separation From Employment: Designation of Division Employees”

The Division of Gambling Control (Division) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Division proposes to adopt California Code of Regulations (CCR), title 11, section 2021 concerning the designation of Division employees who are restricted from acting in certain capacities on behalf of a licensee or applicant upon separation from employment.

PUBLIC HEARING

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be scheduled.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Division at any time during the 45-day public comment period. To be considered for summary and response, all written comments must be received no later than 5:00 p.m., September 14, 2007.

Written comments for the Division’s consideration should be directed to:

Lee C. Adamson, Division Regulations Coordinator
California Division of Gambling Control
1425 River Park Drive, Ste. 400
Sacramento, CA 95815
Telephone: (916) 263-3392
E-mail: lee.adamson@doj.ca.gov
FAX: (916) 263-0928

AUTHORITY AND REFERENCE

Authority for the proposed regulations is provided by various provisions of the Gambling Control Act, Business and Professions Code sections 19800 et seq. In particular, Business and Professions Code sections 19810, 19826, subdivision (f), and 19981, subdivision (a).

The proposed regulations implement, interpret, or make specific following reference citations: Business and Professions Code sections 19981, subdivision (a).

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Designation of Division Employees — Section 2021

Pursuant to Business and Professions Code section 19981, subdivision (a), the Division shall designate employees who upon separation from employment cannot act in certain capacities on behalf of a licensee or applicant for a period of 3 years. Section 2021 will designate the Division employees subject to the provisions of Business and Professions Code Section 19981, subdivision (a).

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: These regulations do not impose a mandate on local agencies or school districts.

Cost or savings to any state agency: No costs or savings to state agencies will result as a consequence of the proposed regulation.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: No costs to local agencies or schools are required to be reimbursed in accordance with Government Code Section 17561.

Other non-discretionary cost or savings imposed upon local agencies: The proposed regulation does not impose non-discretionary costs or savings imposed on local agencies or school districts.

Cost or savings in federal funding to the state: The proposed regulation will not result in costs or savings in federal funding to the state.

Cost impact on representative private person or business: The Division of Gambling Control is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on Business: The Division of Gambling Control has made a determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: The Division of Gambling Control has made an initial determination that the proposed regulation will not have a significant effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: The Division of Gambling Control has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Effect on small business: The Division of Gambling Control has made an initial determination that the proposed regulation will have no adverse impact on small business because it does not impose any new requirements on employers nor does it amend any existing requirements impacting small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Division must determine that no reasonable alternative considered by the Division or that has otherwise been identified and brought to the attention of the Division would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Division invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The Division has made an assessment and determined that the adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSON

Inquiries concerning the substance of the proposed action should be directed to:

Lee C. Adamson, Division Regulations Coordinator
 California Division of Gambling Control
 1425 River Park Drive, Ste. 400
 Sacramento, CA 95815
 Telephone: (916) 263-3392
 E-mail: lee.adamson@doj.ca.gov
 FAX: (916) 263-0928

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Division Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting the Division Regulations Coordinator at the address or telephone number listed above or by accessing the Division's website at <http://caag.state.ca.us/gambling/index.htm>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Division Regulations Coordinator or viewed on the website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following receipt of public comment, the Division may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the Division adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of the Division Regulations Coordinator at the address indicated above. The Division will accept written comments on the modified regulation for 15 days after the date on which it is made available.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 5510, 8550, 8552.1, 8553 and 8555 of the Fish and Game Code and to imple-

ment, interpret or make specific sections 713, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, of said Code, proposes to amend sections 163 and 164, Title 14, California Code of Regulations, relating to the Commercial Herring Fishery.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permit qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulations would establish fishing quotas, establish season dates and times that fishing operations are allowed, grant authority to the Director of Fish and Game (Director) for the 2008–09 season and beyond to choose the quota within a range of 0–15% of the most current biomass estimate for San Francisco Bay, grant the authority to the Director for the 2008–09 season and beyond to choose season dates with input from the Director’s Herring Advisory Committee (DHAC) for the San Francisco and Tomales Bay fisheries, allow herring permittees in San Francisco Bay to be up to three nautical miles from their nets, require the \$50 fee for boat transfers and substitution requests be submitted with the written request for transfer or substitution, modify a section to correspond with Section 163.5 regarding penalties for late applications, provide clarifying language regarding boat registration, and correct the Herring Eggs on Kelp Permit Application number to correspond with the 2007–08 season application.

The following is a summary of the proposed changes in Sections 163, and 164, Title 14, CCR:

- The proposed regulations would establish fishing quotas by area for the 2007–08 herring fishing season, based on the most recent biomass assessments of spawning populations of herring. The Department is recommending the San Francisco Bay quota be set at 1,094 tons, which represents 10 percent of the 2006–07 spawning biomass estimate. If the Commission were to adopt San Francisco Bay this quota, a 1,094 ton quota this would result in a 1.9 ton individual quota for a “CH” gillnet permittee and a 0.9 ton individual quota for a non-“CH” gillnet permittee participating in the HEOK fishery.

- For the 2008–09 season and beyond, the proposed regulations would grant authority to Director of Fish and Game to choose the quota within a range of 0–15% of the most current biomass estimate for San Francisco Bay. The Director would establish the annual quota based on the determination of the Department as to the status of the stock utilizing the best science available, including but not limited to information from recent fishery–independent field surveys, commercial catches, age composition and environmental data. The Director shall provide the Executive Director of the Fish and Game Commission and permitted herring fishermen with a memo stating the annual quota by May 15 of each year for the upcoming herring season.
- There are no quota changes proposed for Humboldt Bay/Crescent City Harbor or Tomales Bay for the 2007–08 herring season.
- Proposed regulations would allow fishing in San Francisco Bay from 5:00 p.m. on Sunday, December 2, 2007 until noon on Friday, December 21, 2007 (“DH” gill net platoon only). Recommended dates for the odd and even platoons are from 5:00 p.m. on Wednesday, January 2, 2008, until noon on Friday, March 21, 2008.
- The proposed regulations would set the dates of the roe herring fisheries in Tomales Bay from noon on Wednesday, December 26, 2007, until noon on Friday, February 29, 2008.
- For the 2008–09 season and beyond, the proposed regulations would grant the authority to the Director of Fish and Game to choose season dates, with input from the DHAC, for the San Francisco and Tomales Bay fisheries. The Director shall provide the Executive Director of the Fish and Game Commission and permitted herring fishermen with a memo stating the season dates by May 15 of each year for the upcoming herring season.
- A proposed amendment to the regulations would allow herring permittees in San Francisco Bay to be within 3 nautical miles of their nets while fishing instead of the existing 1 nautical mile regulation starting with the 2007–08 season.
- The proposed regulations would amend a section to require that the fee of \$50 for boat transfers and permittee substitution requests must be submitted along with the written request for transfer for substitution.

Following are minor changes proposed to clarify and simplify the regulations.

- The proposed regulations would amend a section to correspond with Section 163.5 regarding penalties for late applications.
- The proposed regulations would correct the herring Eggs on Kelp permit application number in subsection 164(h)(1) to coincide with the 2007–08 season application.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the County Administration Building, Board of Supervisors Hearing Room, 105 East Anapamu Street, 4th Floor, Santa Barbara, California on Friday, August 10, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Crowne Plaza Cedar Room, 45 John Glenn Drive, Concord, California on Friday, October 12, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 5, 2007, at the address given below, or by fax at (916) 653–5040, or by e–mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e–mailed to the Commission office, must be received before 5:00 p.m. on October 9, 2007. All comments must be received no later than October 12, 2007, at the hearing in Concord, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout–underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **John Mello, Marine Region, phone (707) 441–5755, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed,

they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15–day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed 2007–08 regulations would affect California’s commercial herring fishermen and herring processing plants, all of which are small businesses as defined under Government Code Section 11342.610, but should not affect the ability of California businesses to compete with businesses in other states. Depending on the decision of the Fish and Game Commission (Commission), harvest quotas for San Francisco Bay herring fishermen could decrease from the 2006–07 quota of 4,502 tons to 1,094 tons for 2007–08. In light of the recommended 1,094 ton quota for 2007–08, the maximum potential adverse economic impacts for 2007–08 are given in the table below. Note, variability in environmental and ocean conditions, and volatility in future herring biomass estimates, prevent realistic forecasts of future economic impacts to the herring industry, beyond the 2007–08 season.

Maximum potential economic impacts from proposed 2007–08 herring fishery quota regulations, relative to year 2006–07 allowable quotas.			
Season(s)	Business Economic Output	Jobs	Wages and Earnings
2007–08	\$(4,965,841)	–61	\$(2,525,179)
After 2007–08	Unknown	Unknown	Unknown

**All dollar amounts are in year 2006 prices (2006\$). Negative values are incremental losses in output, jobs, or wages relative to last year, and denoted with parentheses or minus sign.*

These maximum potential economic impacts are based on changes in the allowable harvest quota relative to the 2006–07 season. Thus the projected maximum potential economic impacts assume the entire 2006–07 harvest quota was utilized to generate business revenue, jobs, and wages. Similarly, the above maximum potential economic impact projections, assume the entire 2007–08 allowable quotas will be utilized. Differences in the harvest potential between the fishing seasons are then used to estimate incremental impacts to revenue, output, jobs, and earnings, arising from the proposed regulations. However, the probable impacts are ex-

pected to be much less since the San Francisco Bay herring fishery only harvested 6.5% of the allowable 4,502 ton quota in the 2006–07 San Francisco Bay herring season. Using actual 2006–07 landings history as the initial point of comparison to the proposed regulations, may offer economic projections more indicative of reality.

Relative to actual landings observed in the 2006–07 San Francisco Bay herring fishery, the potential economic impacts projections would be as shown in the table below.

Potential economic impacts from proposed 2007–08 herring fishery quota regulations, relative to year 2006–07 landings history.			
Season(s)	Business Economic Output*	Jobs	Wages and Earnings*
2007–08	\$1,168,969	14	\$594,432
After 2007–08	Unknown	Unknown	Unknown

**All dollar amounts are in year 2006 prices (2006\$). Negative values are incremental losses output, jobs, or wages relative to last year, and denoted with parentheses or minus sign.*

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None

- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or

would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 17. CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

NOTICE OF PROPOSED REGULATION ADOPTION

**California Code of Regulations
Title 17. — Public Health
Division 4 — California Institute For
Regenerative Medicine
Chapter 7**

Date: July 27, 2007

Deadline for Submission of Written Comment: September 10, 2007 — 5:00 p.m.

Hearing Date: None scheduled.

Subject Matter of Proposed Regulations: Grant Administration Policy for Facilities and Equipment Grants

Sections Affected:

The proposed regulation adopts section 100700 of Title 17 of the California Code of Regulations.

Authority: Article XXXV of the California Constitution and Health and Safety Code section 125290.40, subdivision (j).

Reference: Sections 125290.30, 125290.40, 125290.65, 125290.70, 125292.10, Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Institute for Regenerative Medicine (“Institute” or “CIRM”) was established in early 2005 with the passage of Proposition 71 (the “Act”), the California Stem Cell Research and Cures Initiative. The statewide ballot measure, which provides \$3 billion in funding for stem cell research and dedicated facilities at California universities and research institutions, was approved by California voters on November 2, 2004, called for the establishment of a new state agency to make grants and provide loans for stem cell research, research facilities and other vital research opportunities.

The Independent Citizens’ Oversight Committee (“ICOC”) is the 29–member governing board for the Institute. The ICOC members are public officials, appointed on the basis of their experience earned in California’s leading public universities, non–profit aca-

demical and research institutions, patient advocacy groups and the biotechnology industry.

The Act charges the ICOC with developing standards and criteria to make grant awards and to develop standards and criteria for proper oversight of awards. (§ 125290.50.) To that end, the Scientific and Medical Facilities Working Group has developed a document titled “CIRM Grant Administration Policy for Facilities and Equipment Grants.” This policy serves to guide grant recipients on their responsibilities as CIRM grantees. Principal investigators, program directors, and organizational officials with grants management responsibilities may refer to pertinent sections for answers to questions that arise concerning the administration of the grants. By accepting a CIRM grant award, the grantee is agreeing to comply with the provisions set forth in the policy for the entire project period of the grant, in addition to provisions of the CIRM grants administration policy already adopted by the ICOC and codified in Title 2, California Code of Regulations section 100500.

The policy incorporated by the regulation sets forth the rules governing the eligibility for facilities grants, describes the priorities for applications for grants, and sets forth a preference for California suppliers mandated by Proposition 71. The policy also describes issues pertinent to the construction and procurement process, such as the prevailing rate of wages that must be paid and the cost standards that will be allowed.

The policy also describes the formula for matching funds that grantees must satisfy to qualify for a grant and indicates how the equity match will be calculated and documented.

Oversight and payment procedures and the benchmarks for payment of grant funds during project development are described. In addition, rules governing the reimbursement of applicants for the cost of equipment, rules for transfer of equipment, the requirement and inclusion of progress reports, and post–audit procedures are described.

Technical, Theoretical or Empirical Studies, Reports or Documents:

A. Documents or Laws:

- Title 2, California Code of Regulations, section 100500 — Grants Administration Policy for Non–Profit and Academic Institutions (http://www.cirm.ca.gov/reg/pdf/reg100500_policy.pdf)

B. Public Input:

Discussion and public input received at five public meetings conducted by the ICOC and Scientific and Medical Facilities Working Group, on May 2–3, 2007, May 31, 2007 and June 4–5, 2007.

Copies of the documents referenced above are available at the internet link indicated or at the offices of CIRM located at 210 King Street, San Francisco,

California, 94107. Transcripts and meeting minutes of the meetings referenced in Section “B” are available on CIRM’s website, www.cirm.ca.gov under the “Meetings Transcripts” and “Meetings Minutes” links.

Submittal of Comments:

Any interested party may present comments in writing about the proposed action to the agency contact person named in this notice. Written comments must be received no later than 5:00 p.m. on September 10, 2007. Comments regarding this proposed action may also be transmitted via e-mail to fgapcomments@cirm.ca.gov or by facsimile transmission to (415) 396-9141.

At this time, no public hearing has been scheduled concerning the proposed regulations. If any interested person or the person’s representative requests a public hearing, he or she must do so in writing no later than August 27, 2007.

Effect on Small Business:

CIRM has determined that the proposed regulatory action has no impact on small businesses. The regulation implements conditions on awarding grants for stem cell research. This research is conducted almost exclusively by large public and private non-profit institutions, as well as large for-profit institutions. As such, the regulation is not expected to adversely impact small business as defined in Government Code section 11342.610.

Impact on Local Agencies or School Districts:

CIRM has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution. CIRM has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

Costs or Savings to State Agencies:

CIRM has determined that no savings or increased costs to any agency will result from the proposed regulatory action.

Effect on Federal Funding to the State:

CIRM has determined that no costs or savings in federal funding to the state will result from the proposed regulatory action.

Effect on Housing Costs:

CIRM has made an initial determination that the proposed action will have no effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses:

CIRM has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California Businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses:

CIRM has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The CIRM is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on the Creation, Elimination, or Expansion of Jobs:

CIRM has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Consideration of Alternatives:

CIRM must determine that no reasonable alternatives considered by the agency, or that have otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the regulatory action.

Availability of Statement of Reasons and Text of Proposed Regulations:

CIRM has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which CIRM relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

Availability of Changed or Modified Text:

After the close of the comment period, CIRM may make the regulation permanent if it remains substantially the same as described in the Policy Statement Overview. If CIRM does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. CIRM will accept written comments on any changes for 15 days after the modified text is made available.

Agency Contact:

Written comments about the proposed regulatory action; requests for a copy of the Initial Statements of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

C. Scott Tocher, Interim Counsel
 California Institute for Regenerative Medicine
 210 King Street
 San Francisco, CA 94107
 (415) 396-9136

Questions on the substance of the proposed regulatory action may be directed to:

Rick Keller, Senior Officer for Scientific and
 Medical Research Facilities
 California Institute for Regenerative Medicine
 (415) 396-9130

The Notice of Proposed Regulatory Adoption, the Initial Statement of Reasons and any attachments, and the proposed text of the regulations are also available on CIRM’s website, www.cirm.ca.gov.

Availability of Final Statement of Reasons:

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9, subdivision (a), may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on CIRM’s webpage and accessed at www.cirm.ca.gov.

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action by the State Board of Equalization to Repeal the Rules of Practice and Adopt the Proposed Rules for Tax Appeals

NOTICE IS HEREBY GIVEN TO INTERESTED PARTIES THAT

The State Board of Equalization (Board), pursuant to its authority under California Constitution, article XIII, section 11, Government Code sections 15606, 15640, Public Resources Code sections 42475, 42881, and Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, proposes to:

- Repeal articles 1 through 8 (§§ 5010–5087) of chapter 9 of division 2 of title 18 of the California Code of Regulations (the Rules of Practice);

- Renumber existing divisions 2.1–2.3 of title 18 of the California Code of Regulations as divisions 2.2–2.4, respectively;
- Promulgate all five chapters of the new Board of Equalization Rules for Tax Appeals (proposed Rules) as sections 5000–5576 of a new division 2.1;
- Renumber article 9, *Taxpayer Bill of Rights Reimbursement Claims* (§§ 5090–5095) of the current Rules of Practice, as chapter 6, sections 5600–5605 of the new division 2.1; and
- Revise the cross references in chapter 6 of new division 2.1 so that they refer to the appropriate sections of chapter 5 of new division 2.1, instead of article 8 of the current Rules of Practice.

A public hearing on the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, CA at 1:30 p.m., or as soon thereafter as the matter may be heard, on September 11, 2007. Any interested person may present statements or arguments relevant to the proposed regulatory action either orally or in writing at the hearing. The Board will consider written statements and arguments if received by the time of the public hearing.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is responsible for administering 25 revenue-generating tax and fee programs, including the sales and use tax, fuel, alcohol, tobacco, and other taxes, and also collects fees that fund specific state programs. (BOE Publication 156, *Revenue-Generating Tax and Fee Programs*.) In addition, the Board oversees the assessment practices of California’s 58 county assessors, hears petitions appealing assessments of extraterritorial publicly owned land and improvements, and assesses the property of regulated railroads and specified public utilities. (BOE *Annual Report for Fiscal Year 2005–2006*.) The Board also serves as the administrative appellate body that hears appeals from actions of the Franchise Tax Board (FTB). The Board currently performs its administrative review functions and appellate duties (collectively “appeals processes”) pursuant to the Rules of Practice (Cal. Code Regs., tit. 18, § 5010 et seq.).

In 2005, the Board began a thorough review of the Rules of Practice and invited all the interested parties involved in all of its tax and fee programs to participate. As a result of this review process, the Board concluded that taxpayers, Board staff, other participants in Board hearings, and members of the public would benefit from comprehensive revisions to the rules prescribing the Board’s appeals processes. The purpose of the revisions is to codify important procedures not currently

contained in the Rules of Practice, reorganize the rules for the Board’s appeals processes in a more logical manner, and generally explain the Board’s appeals processes as plainly and comprehensively as possible. (Detailed information regarding the review process is available on the Board’s Web site at: <http://www.boe.ca.gov/regst/timelineCAtax.htm>.)

During the revision process, the Board determined that the current Rules of Practice were not suitable for piecemeal amendment and, in addition, given their subject matter, probably were located in an inappropriate division of title 18 of the California Code of Regulations. Consequently, the Board determined that the new, proposed Rules for Tax Appeals should be promulgated in a more appropriate part of title 18. Therefore, the Board is currently proposing the following actions to effectuate the necessary revisions:

- Repeal articles 1 through 8 (§§ 5010–5087) of the current Rules of Practice;
- Renumber existing divisions 2.1–2.3 of title 18 of the California Code of Regulations as divisions 2.2–2.4, respectively;
- Promulgate all five chapters of the Rules for Tax Appeals as sections 5000–5576 of a new division 2.1;
- Renumber article 9, *Taxpayer Bill of Rights Reimbursement Claims* (§§ 5090–5095) of the current Rules of Practice, as chapter 6, sections 5600–5605 of the new division 2.1; and
- Revise the cross references in chapter 6 of new division 2.1 so that they refer to the appropriate sections of chapter 5 of new division 2.1, instead of article 8 of the current Rules of Practice.

The Rules for Tax Appeals are divided into five chapters. Chapters 1 and 5 address general issues and procedures pertaining to all the Board’s tax and fee programs. The three remaining chapters contain procedures pertinent to specific tax and fee programs. The five chapters are:

- Chapter 1, *Title*
- Chapter 2, *Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees*
- Chapter 3, *Property Taxes*
- Chapter 4, *Appeals from Actions of the Franchise Tax Board*
- Chapter 5, *General Board Hearing Procedures*

The chapters and the sections within the chapters are further explained below:

Chapter 1: Title of Division

5000 Statement of Intent: Title for Division

This regulation names the proposed Rules the “Board of Equalization Rules for Tax Appeals,” creates the acronym “RTA,” and states the purpose of the proposed

rules, which is to improve the relationship between taxpayers and the Board.

Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

Chapter 2 generally incorporates the Board’s existing appeals process procedures for business taxes and fees, including the sales and use tax, the special taxes and fees, and the Timber Yield Tax. The proposed Rules in chapter 2 do not contain substantial changes to current procedures. The proposed Rules in chapter 2 codify all of the Board’s procedures for business taxes and fees appeals in one well–organized chapter and give taxpayers and Board staff additional time to file their opening briefs. The proposed regulations in chapter 2 incorporate and codify the following important rights and policies that were not included in the Rules of Practice:

- The right to request an appeals conference with the Appeals Division of the Board’s Legal Department, and the right to request reconsideration of Decisions and Recommendations issued by the Appeals Division;
- The right to request an oral Board hearing; and
- The Board’s longstanding policy of accepting untimely petitions as late protests.

Article 1: Application of Chapter 2 and Definitions

5200 Application of Chapter 2 and Definitions.

This section specifies the types of petitions, protests, applications, claims, and requests for relief and the tax and fee programs to which chapter 2 applies. This section also specifies that the general definitions contained in chapter 5 (section 5511) apply to chapter 2 unless there is a conflict with other provisions in chapter 2.

5201 Application of the International Fuel Tax Agreement.

This section specifies that the provisions in the International Fuel Tax Agreement (IFTA) control in cases where they conflict with the provisions of chapter 2.

5202 Notice Requirements.

This section provides that any notice given under chapter 2 must be served personally or by mail according to the statutory requirements for notice of a deficiency determination.

Article 2A: Petitioning Notices of Determination and Notices of Deficiency Assessment

5210 Persons Who May File Petitions for Redetermination.

This section provides that a person against whom a notice of determination or notice of deficiency assessment is issued may file a petition for redetermination and that a person directly interested in a notice of determination also may file a petition for redetermination.

This section also defines the statutory phrase “person directly interested in a notice of determination.”

5210.5 Successor’s Petition for Reconsideration.

This section provides that a petition for reconsideration of a notice of successor liability may be filed in the same manner as a petition for redetermination concerning the same tax or fee law under which the notice of successor liability was issued.

5211 Limitation Period for Filing Petitions and Stay of Collection Activities.

This section sets forth the time in which all petitions (other than petitions for redetermination of jeopardy determinations) must be filed in order to be considered timely under chapter 2 and to prevent the petitioned Board action from becoming final and collectable. This section also codifies the Board’s Legal Department’s opinion that “premature” petitions are not timely, and provides notice of the fact that a timely filed petition will stay collection activities related to the amount being petitioned until the Board has acted on the petition and the Board’s action has become final.

5212 Contents of Petitions for Redetermination, and Supporting Arguments and Evidence.

This section describes the required contents of a petition for determination. It also gives taxpayers the options of using a Board–provided form in preparing their petitions and of filing supporting written arguments and documentary evidence together with their petitions. This section also clarifies that petitioners may request an appeals conference and/or an oral Board hearing in their petitions.

5212.5 Amendments to Petitions for Redetermination.

This section provides notice that a petition for redetermination may be amended and provides the time period during which a petition may be amended.

5213 Accrual of Interest.

This section notifies taxpayers that the filing of a petition for redetermination does not stop the accrual of interest on any taxes or fees that are eventually determined to be due and payable.

5214 Additional Copy of Petitions for Redetermination Filed Pursuant to the Tax on Insurers Law.

This section requires that a copy of a petition for redetermination filed pursuant to the Tax on Insurers Law (part 7 of division 2 of the Rev. & Tax. Code) be filed simultaneously with the Commissioner of Insurance in care of the Premium Tax Audit Bureau as suggested by the Department of Insurance.

5215 Scope of Petitions for Redetermination Filed Pursuant to Hazardous Substances Tax Law.

This section provides notice of statutory provisions applicable to petitions filed under the Hazardous Substances Tax Law (part 22 of divisions 2 of the Rev. & Tax. Code) and codifies the Board’s policies and procedures regarding the Department of Toxic Substances Control’s and State Department of Health Services’ roles in the Board’s appeals process.

5215.4 Scope of Petitions for Redetermination Filed Pursuant to Covered Electronic Waste Recycling Fee.

This section provides notice of provisions in Public Resources Code section 42464.6 applicable to petitions filed with regard to the Covered Electronic Waste Recycling Fee and codifies the Board’s policies and procedures regarding the Department of Toxic Substances Control’s role in the Board’s appeals process.

5215.6 Scope of Petition for Redetermination Filed Pursuant to Water Rights Fee Law.

This section provides notice of provisions in Water Code section 1537 applicable to petitions filed with regard to the Water Rights Fee and codifies the Board’s policies and procedures regarding the State Water Resources Board’s role in the Board’s appeals process.

5216 Filing Petitions for Redetermination.

This section explains how to file a petition and provides specific addresses for mailed petitions. This section also codifies the Board’s policy of encouraging the electronic filing of petitions and related documents, and directs persons seeking more information on electronic filing requirements to the Board’s Web site (www.boe.ca.gov), which will contain directions that can be updated periodically. Finally, this section provides that the Chief of Board Proceedings may reject any petition or related document that is not filed in accordance with the provisions of this section.

5217 Assignment and Acknowledgment of Petitions for Redetermination.

This section notifies taxpayers of the Board’s section or group to which their petition will be assigned. This section also requires Board staff to promptly acknowledge the receipt of petitions and notifies taxpayers that a request for additional documentary evidence may be included in the acknowledgement.

5218 Review of the Petition by the Assigned Section.

This section describes the assigned Board staff’s initial review of petitions, including staff’s ability to refer petitions to other staff for further investigation and comment. This section provides specific criteria applicable to the Board staff’s review of petitions. This section also requires Board staff to present their initial find-

ings to taxpayers and explains how taxpayers can appeal Board staff's initial findings.

5219 Mailing the Summary Analysis and Scheduling the Appeals Conference.

This section describes the process by which Board staff completes the initial review of a petition in situations where taxpayers disagree with all or a portion of Board staff's initial findings. It requires Board staff to mail a copy of its summary analysis to taxpayers and notifies taxpayers that an appeals conference will be scheduled after the summary analysis is received.

Article 2B: Treatment of Premature or Untimely Petition as an Administrative Protest

5220 Premature or Untimely Petition May Be Treated as an Administrative Protest.

This section explains that the Board has discretion to review premature or untimely petitions as administrative protests and codifies the Board's policy of liberally granting such review. This section also suggests that taxpayers file a claim for refund for each payment made on an administrative protest so that the Board is not statutorily barred from refunding any overpayments.

5220.4 Accrual of Interest.

This section notifies taxpayers that the treatment of a petition as an administrative protest does not stop the accrual of interest on any taxes or fees that are eventually determined to be owed.

5220.6 No Stay of Collection Activities.

This section notifies taxpayers that, unlike timely petitions for redetermination, the treatment of a premature or untimely petition as an administrative protest does not stay collection activities.

Article 2C: Contesting a Jeopardy Determination

5221 Notice of Jeopardy Determination.

This section describes the conditions under which a notice of jeopardy determination may be issued, and the contents of such a notice. This section also provides additional notice that the amounts stated in a notice of jeopardy determination are immediately due and payable, unlike amounts included in notices of determination.

5222 Persons Who May File a Petition for Redetermination of a Jeopardy Determination.

This section describes the persons who may file a petition for redetermination of a jeopardy determination and provides procedures for filing. The procedures include provisions for mail and hand delivery, as well as for electronic filing. This section also allows the Chief of Board Proceedings to reject any petition that does not comply with the filing requirements.

5222.4 Contents and of Petition for Redetermination of Jeopardy Determination.

This section carries over the Board's policy from the existing Rules of Practice of requiring that petitions for redetermination of jeopardy determinations satisfy the same requirements as other petitions for redetermination.

5222.6 Limitation Period for Petition for Redetermination of Jeopardy Determination.

This section carries over from the existing Rules of Practice the time limits within which a petition for redetermination of a jeopardy determination must be filed and adds a clarifying provision explaining that the time limits provided for filing other petitions for redetermination are inapplicable to petitions for redetermination of jeopardy determinations.

5223 Security Requirement for Petition.

This section carries over from the existing Rules of Practice the statutory requirement that taxpayers deposit the amounts shown on their respective notices of jeopardy determination before the Board can accept their petitions for redetermination for filing.

5224 Review of Petition for Redetermination of Jeopardy Determination.

This section explains that a petition for redetermination of a jeopardy determination may be based upon any grounds, including the inappropriateness of issuing a jeopardy determination. This section explains that the Board's review of such a petition will follow the same procedures as for other petitions for redetermination, but that such review will be carried out "promptly" due to the nature of jeopardy determinations. This section also explains that the limitations on the Board's review contained in sections 5215 and 5215.4 apply to the Board's review of a petition for redetermination of a jeopardy determination.

5225 Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition.

This section explains that a person against whom a jeopardy determination is made has a right to file an application for an administrative hearing and explains the grounds upon which such an application may be based. This section encourages electronic filing of such applications and also contains provisions for mail and hand delivery. This section explains that if both a petition for redetermination and an application for administrative hearing are filed, then there will be a single hearing for both. This section also incorporates the co-filing requirement for petitions filed under the Tax on Insurer's Law, and directs taxpayers to the State Water Resources Board to resolve specified issues regarding the Water Rights Fee.

5226 Limitation Period for Filing Application for Administrative Hearing.

This section carries over the 30-day time limit for filing an application for an administrative hearing and the Board's discretion to grant an exception to the time limit based upon a showing of reasonable cause from section 5032, subdivisions (a) and (e), of the existing Rules of Practice.

5227 Contents of Application for Administrative Hearing.

This section carries over the requirement that applications for administrative hearings be in writing and the specific factual and legal grounds upon which such applications may be founded from section 5032, subdivision (c), of the existing Rules of Practice. This section also adds a signature requirement.

5228 Option to Post Security with Application for Administrative Hearing.

This section carries over the rights to obtain an administrative hearing without posting security and to have seized property protected from sale during the Board's review of a timely filed application for an administrative hearing from section 5032, subdivisions (d) and (e), and section 5033 of the existing Rules of Practice. This section carries over the requirement that taxpayers are liable for the expense of storing their property, but explains that the Board has discretion to waive, credit, or refund such expenses. This section also provides notice to taxpayers that other collection actions will only be stayed if sufficient security is deposited with the Board.

5229 Assignment of Application for Administrative Hearing to Appeals Division for Appeals Conference.

This section carries over and amplifies the provisions of sections 5034 and 5035 of the existing Rules of Practice regarding both the conduct of administrative hearings and the findings that may be made following an administrative hearing. In addition, this section provides both for a prompt administrative hearing in the form of an appeals conference and the prompt issuance of a Decision and Recommendation after such administrative hearing. This section also codifies the right to request an oral Board hearing if the taxpayer disagrees with the Decision and Recommendation.

Article 3: Claims for Refund

5230 Persons Who May File a Claim for Refund: Limitations on Certain Claims.

This section identifies the persons who may file a claim for refund under the tax and fee programs governed by the procedures in chapter 2. This section also identifies Motor Vehicle Fuel Tax, Hazardous Sub-

stances Tax Law, Covered Electronic Waste Recycling Fee, and Water Rights Fee claims for refund that must be filed with other agencies.

5231 Limitation Period for Claim for Refund.

This section organizes and sets forth all of the statutes of limitation or limitations periods applicable to claims for refund filed under the various tax and fee programs governed by the procedures addressed in chapter 2.

5231.5 Failure to File Timely Claim for Refund.

This section provides additional notice to taxpayers regarding the statutory effect of failing to file a claim for refund within the applicable limitations period by providing that the "failure to file a claim within the applicable time period, as provided for in section 5231, is a waiver of any demand against the State on account of the overpayment."

5232 General Contents of Claims for Refund.

This section describes the requirements for a valid claim for refund. This section gives taxpayers the ability to use a Board-provided form to file their claims, to provide a breakdown of their sales and use tax claims for refund into state, local, and district taxes to expedite processing, to include more than one reporting period in each claim, and to submit their documentary evidence together with their claims for refund. This section also provides notice of existing law that prohibits taxpayers from claiming a refund by deducting past overpayments from future tax and fee liabilities.

5232.4 Contents of Claims for Refund Under Diesel Fuel Tax Law.

This section brings together all of the particular requirements for a valid claim for refund under the Diesel Fuel Tax Law found in California Code of Regulations, title 18, sections 1430-1435.

5232.6 Requirements for Claims for Refund Regarding Lost, Unmarketable or Condemned Alcoholic Beverages.

This section provides a cross reference to the specific requirements applicable to claims for refund of Alcoholic Beverage Tax included in the sales price of lost, unmarketable or condemned alcoholic beverages contained in California Code of Regulations, title 18, section 2553.

5232.8 Additional Requirements for Claims for Refund Filed under the Cigarette and Tobacco Products Tax Law.

This section provides a cross reference to the additional requirements for claims for refund of Cigarette and Tobacco Products Tax paid on the purchase of unused stamps and meter register settings found in California Code of Regulations, title 18, sections 4061-4065.

5233 Filing Claims for Refund.

This section explains how to file a claim for refund and provides specific addresses for mailed claims. This section also codifies the Board’s policy of encouraging the electronic filing of claims and related documents, and directs persons seeking more information on electronic filing requirements to the Board’s Web site, which will contain directions that can be updated periodically. Finally, this section provides that the Chief of Board Proceedings may reject any claim or related document that is not filed according to the provisions of this section.

5234 Assignment and Acknowledgment of Claim for Refund.

This section notifies taxpayers of the Board’s section or group to which their claim for refund will be assigned. This section also requires Board staff to promptly acknowledge the receipt of claims for refund.

5234.5 Review Process for Claims for Refund and Requests for Additional Information.

This section notifies taxpayers of the Board’s policy regarding the order in which claims for refund are processed. The section also explains that Board staff may request additional information in order to process a claim and describes the potential consequences of failing to provide the requested information.

5235 Action on the Claim for Refund.

This section describes the recommendations that Board staff can make following the initial review of claims for refund and the process that Board staff will follow once Board staff makes a recommendation to grant a claim for refund. This section also requires Board staff to explain the reasons for recommending that a claim for refund be denied and describes how taxpayers can appeal Board staff’s initial recommendations when they disagree.

5236 Discretion to Grant or Deny Appeals Conferences and Oral Hearings on Claims for Refund.

This section describes the Board’s policy of liberally granting requests for appeals conferences and oral Board hearings on claims for refund.

5237 Board Approval Required for Refunds Over \$50,000.

This section codifies the Board’s policies regarding the reservation or delegation of authority to approve determinations on claims for refund. This section explains that the authority to approve determinations on claims for refund in excess of \$50,000 is reserved to the Board Members. This section also provides delegations of authority to approve claims for refund regarding duplicate or erroneous electronic funds transfers

and certain claims for refund filed under the Diesel Fuel Tax Law.

5238 Credits and Offsets May Reduce Refunds.

This section explains the Board’s statutory authority to reduce the amount of an overpayment that is actually refunded to a taxpayer by other amounts the taxpayer owes to the Board. This section also provides notice of unique provisions in the Diesel Fuel Tax Law permitting taxpayers to claim certain overpayments as credits on their returns, and explains that these credits are not subject to being reduced by other amounts the taxpayers owe to the Board.

5239 Combined Claims for Refund on Behalf of Class of Taxpayers.

This section describes the Board’s policies for processing combined claims for refund filed on behalf of a class of taxpayers under the Sales and Use Tax Law and State-administered local sales, transactions, and use taxes as borrowed from section 5024 of the existing Rules of Practice without substantive alteration.

Article 4A: Requests for Innocent Spouse Relief Under the Sales and Use Tax Law

This article describes and amplifies the Board’s procedural processes for claiming innocent spouse and other equitable relief under the Sales and Use Tax Law contained in California Code of Regulations, title 18, section 1705.1, subdivisions (d) and (h).

5240 Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief (Sales and Use Tax, including State-administered local sales, transactions, and use taxes).

This section describes the persons who may file a request for innocent spouse relief under the Sales and Use Tax Law and provides a cross reference to the substantive requirements for relief, including the period in which a timely request must be filed. This section prescribes the contents of a complete request for innocent spouse relief and provides for the use of a Board-provided form. This section also encourages taxpayers to electronically file their requests for innocent spouse relief, but also provides procedures for filing by mail or hand delivery to the Board’s headquarters.

5241 Acknowledgement and Review of Requests for Innocent Spouse Relief.

This section explains the initial assignment and review of requests for innocent spouse relief. This section notifies taxpayers that Board staff will contact their spouses and permit their spouses to submit information regarding their requests for innocent spouse relief. This section describes the process by which Board staff initially grants or denies requests for innocent spouse relief. This section also describes the manner in which taxpayers may request other equitable relief and the

Board's initial process for reviewing requests for other equitable relief.

5242 Requests for Reconsideration by the Board.

This section notifies taxpayers of their right to request an oral Board hearing for the Board to reconsider Board staff's denials of their requests for other equitable relief, identifies the procedures for requesting an oral Board hearing, and codifies the Board's policy of liberally granting such oral hearings. This section also informs taxpayers that they may be required to attend an appeals conference if an oral Board hearing is granted.

Article 4B: Successor's Request for Relief of Penalty Under the Sales and Use Tax Law

5243 Successor's Request for Relief.

This section provides additional notice regarding the requirements for a complete request for relief of penalties filed under California Code of Regulations, title 18, section 1702, subdivision (d)(2). This section also explains that all such requests must be filed in the same manner as petitions for redetermination and permits requests for relief to be included petitions for redetermination.

Article 4C: Other Requests for Relief of Penalties and Interest

This article describes the procedures for requesting relief of penalties and interest.

5244 No Independent Right to Oral Board Hearing on a Request for Relief; Applicable Procedures for Requests Included in Petitions or Claims; and Association with Related Petitions or Claims.

This section notifies taxpayers that there is no independent statutory right to an oral Board hearing on a request for relief, and that the Board has discretion to grant or deny an oral Board hearing on a request for relief. This section also notifies taxpayers that request for relief may be included in petitions for redetermination and claims for refund, that requests for relief included in petitions for redetermination and claims for refund must satisfy all the requirements for a complete request for relief, and requests for relief included in petitions for redetermination or claims for refund will be reviewed under the procedures applicable to such petitions for redetermination or claims for refund. This section also notifies taxpayers that the Board can associate requests for relief with related petitions for redetermination or claims for refund.

5245 Authority to Grant Relief for Reasonable Cause and Contents of Requests for Relief for Reasonable Cause.

The Revenue and Taxation Code grants the Board authority to relieve certain penalties in most of its tax and

fee programs due to reasonable cause and circumstances beyond the taxpayer's control. The section lists all of the penalties that can be relieved for reasonable cause and organizes them by the particular tax or fee to which they relate for quick cross referencing. This section also prescribes the requirements for a complete request for relief for reasonable cause, and gives taxpayers the option to use a Board provided form.

5246 Authority to Grant Relief Due to Unreasonable Error or Delay and Contents of Requests for Relief Due to Unreasonable Error or Delay.

The Revenue and Taxation Code grants the Board authority to relieve interest under certain circumstances, however, the authority does not extend to all of the Board's tax and fee programs. This section lists all of the tax and fee programs in which the Board has statutory authority to relieve interest, prescribes the requirements for a complete request for relief of interest, and also gives taxpayers the option to use a Board-provided form.

5247 Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice.

The Revenue and Taxation Code grants the Board authority to relieve taxes, fees, penalties, and interest due to reasonable reliance on written advice, however, the authority does not extend to all of the Board's tax and fee programs. This section lists all of the tax and fee programs in which the Board has statutory authority to relieve taxes, fees, penalties, and interest due to reasonable reliance on written advice, and describes the requirements for a complete request for relief under this section.

5248 Authority to Grant Relief Due to Disaster and Contents of Requests for Relief Due to Disaster.

The Revenue and Taxation Code grants the Board authority to relieve interest due to disaster, however, the authority does not extend to all forms of interest imposed under all of the Board's tax and fee programs. This section lists all of the types of interest the Board can relieve due to a disaster in each of the Board's tax and fee programs, describes the requirements for a complete request for relief under this section, and also gives taxpayers the option to use a Board-provided form.

5249 Filing Requests for Relief.

This section provides that requests for relief of unpaid or paid amounts may be filed under the same procedures as apply to a petition for redetermination or a claim for refund, respectively.

5249.4 Assignment and Acknowledgement of Requests for Relief.

This section describes the assignment and acknowledgment of requests for relief and requires the assigned staff to provide their contact information to taxpayers in their acknowledgement letters. This section informs taxpayers that the assigned staff may request additional information in their acknowledgement letters. This section also informs taxpayers that requests for relief that are included in a petition for redetermination or claim for refund will be reviewed in accordance with the procedures applicable to such petitions or claims, and not the procedures in section 5249.6 of the proposed Rules.

5249.6 Reviewing Requests for Relief.

This section describes the Board's review process for requests for relief, explains that taxpayers may request review of Board staff's initial determination from the appropriate Deputy Director, and explains that taxpayers may also request an oral Board hearing if they disagree with the Deputy Director's determination. The section also provides notice of the Board's discretion to deny a request for an oral Board hearing and require taxpayers to attend appeals conferences prior to their oral Board hearings.

Article 5: Claims (Inquiries) of Incorrect or Non-Distribution of Local and District Taxes

5250 Filing and Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes.

This section provides a cross reference to the provisions of California Code of Regulations, title 18, sections 1807 and 1828 regarding the Board's review of claims (inquiries) regarding the incorrect or non-distribution of local and district taxes, and provides procedures for filing such claims (inquiries), which encourage electronic filing.

Article 6: Appeals Conferences

The Appeals Division is part of the Board's Legal Department. Appeals Division staff is responsible for conducting appeals conferences and providing the Board Members with their independent and objective analysis of matters assigned to the Appeals Division for review. This article describes the procedures for Appeals Division review.

5260 Referral to Appeals Division for Appeals Conference; Preferred Location for Appeals Conference.

This section requires Board staff to contact taxpayers at the beginning of the Appeals Division review process to update the taxpayers' contract information and determine whether the taxpayers prefer to have their appeals conferences conducted at specific locations. This sec-

tion also provides notice to taxpayers regarding the location where their appeals conferences will be held, unless taxpayers express another preference.

5261 Notice of Appeals Conference: Response to Notice of Appeals Conference; Submission of Additional Arguments and Evidence; Recording Appeals Conferences.

This section requires Board Proceedings Division staff to issue each taxpayer a Notice of Appeals Conference, and prescribes the contents of the notices. This section notifies taxpayers that Response to Notice of Conference forms will be included with their Notices of Appeals Conference, and directs taxpayers to complete and return their forms to the Board Proceedings Division along with any additional arguments or evidence within 15 days after the date their Notice of Appeals Conference was mailed. This section also informs taxpayers that appeals conferences are not normally recorded, directs taxpayers to check the appropriate box on their Response to Notice of Conference form to indicate that they would like to record their appeals conferences, and requires taxpayers to provide a copy of any recording to the Appeals Division upon request.

5262 Requests to Reschedule or Postpone Appeals Conferences.

This section prescribes the manner in which a request to reschedule or postpone an appeals conference may be filed, and encourages the use of electronic means. This section explains that any appeals conferences may be rescheduled once to resolve a scheduling conflict, and may only be rescheduled a second time with the approval of the Chief Counsel. This section explains that appeals conferences scheduled to be conducted at district offices may be postponed, reassigned, and then conducted at a later time at the same district office. This section also permits the Chief of Board Proceedings to grant postponements requested within 15 days of the date the Notice of Appeals Conference was mailed to the taxpayer, and allows the Chief Counsel to grant postponements requested outside of that period and second or subsequent postponements in cases of extreme hardship.

5263 Ways to Expedite an Appeals Conference.

This section informs taxpayers that the Board Proceedings Division will expedite the scheduling of their appeals conferences if they agree in writing to attend an appeals conference conducted at the Board's headquarters, by video conference, or by teleconference by the time their Response to Notice of Appeals Conference forms are due. This section also codifies the Board's policy of trying to expedite the scheduling of appeals conferences for taxpayers who agree to appear on shortened notice.

5264 Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Failure to Appear.

This section requires appeals conferences to be conducted by Appeals Division staff that has not had any prior involvement in the matters under review, and requires that Appeals Division staff take a fresh look at the law and the facts, and make their own objective recommendation. This section explains that Board staff from the appropriate Department (as defined in section 5511 of the proposed Rules) and, in some cases, staff from other state agencies that jointly administer taxes and fees with the Board will participate in appeals conferences. This section describes the non-adversarial nature of appeals conferences and authorizes the participants to submit additional written arguments and documentary evidence before, during, and after an appeals conference. This section also provides notice of the effect of failing to appear at a scheduled appeals conference and requires Appeals Division staff to deliberate on each matter before preparing the Decision and Recommendation required by section 5265 of the proposed Rules.

5265 Issuance and Contents of a Decision and Recommendation.

This section requires Appeals Staff to prepare a written report of their findings called a Decision and Recommendation (D&R) within 90 days after the submission of any additional documents under section 5264 of the proposed Rules, and gives the Chief Counsel discretion to grant written requests for extensions. This section describes the arguments and evidence upon which a D&R will be based in cases where a party fails to attend an appeals conference, and prescribes the contents of all D&Rs. This section also requires the Board to provide copies of D&Rs to all of the parties to an appeals conference, suggests that the parties contact Appeals Division staff immediately after discovering any significant factual errors in their D&Rs, and gives Appeals Division staff authority to revise inaccurate D&Rs when necessary.

5266 Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings.

This section describes the various types of recommendations the Appeals Division may make in a D&R, and also describes the options for responding to a D&R. This section allows taxpayers, the Board's Departments, and other state agencies to agree with a D&R or request reconsideration of a D&R by Appeals Staff, but only allows taxpayers and other state agencies to request an oral Board hearing. The section requires Appeals Division staff to prepare a Supplemental Decision and Recommendation (SD&R) (as defined) to address

any new information provided in a request for reconsideration, and also authorizes Appeals Division staff to issue a SD&R to clarify or correct the information, analysis, or conclusions contained in a prior D&R or SD&R. This section also explains the Board's policy of having the Board Members independently consider Appeals Division staff's recommendations to grant petitions, claims for refund, or requests for relief in amounts that exceed \$50,000.

5267 Issuance of Post Appeals Conference Notices.

Subdivision (a) of this section describes the circumstances under which taxpayers, the Board's Departments, and other state agencies' participation in the Board's appeals process will conclude following an appeals conference, and final notice of the Board's action on a petition, claim for refund, or request for relief will be issued. Subdivision (b) of this section codifies an important exception to subdivision (a) that prevents Appeals Division staff's recommendations to grant certain petitions and claims for refund from becoming final so that the matters can be consolidated with related appeals scheduled for oral Board hearing.

5268 Procedures for Conducting Board Hearings.

This section specifies that oral Board hearings will be conducted under the procedures contained in chapter 5 of the proposed Rules and thereby provides a cross reference between the two chapters.

Article 7: Optional Briefs for Board Hearings

5270 Requirements for Briefs; Briefing Schedule; Non-Party Briefs; Additional Briefing.

This section provides notice of the Board's policy permitting the parties to an oral Board hearing to file optional briefs. This section prescribes the manner of filing optional briefs; the time periods in which optional briefs may be filed; the length, content, and manner of filing optional briefs; and the contents of opening briefs, reply briefs, and responses to reply briefs. This section also provides notice of the Board's policy permitting the filing of non-party amicus briefs and allowing the parties to an oral Board hearing to respond, the Board's authority to require additional and post-hearing briefs, and the Board's policy permitting unrepresented taxpayers to submit briefs at their oral Board hearings.

5271 Extensions of Time for Filing Briefs.

This section describes the Chief Counsel's authority to grant a written request for an extension of the time period to file any brief for reasonable cause, and requires the Chief Counsel to make appropriate adjustments to the time period in which other parties must file a reply brief when an extension is granted.

Chapter 3: Property Taxes

Chapter 3 generally incorporates the existing procedures for the Board's property tax appeals processes,

except appeals under the Timber Yield Tax Law and appeals of jeopardy assessments issued under the Private Railroad Car Tax Law, which are governed by chapter 2 of the proposed Rules. Chapter 3 does not substantially change the Board's current procedures. Instead, chapter 3 puts all the procedures applicable to property tax appeals (other than those noted above) in one well-organized chapter and ensures that those procedures are comprehensive in nature.

Chapter 3 is divided into four articles. Articles 1 and 4 set forth definitions and procedures that apply to the beginning and end of all of the Board's property tax appeals processes, respectively. Article 2 describes procedures specific to petitions for reassessment of unitary and non-unitary value of state-assessed property and petitions for reassessment of private railroad car value (state-assessee appeals). Article 3 describes procedures specific to the other three types of property tax appeals, and subchapters 2 through 4 of article 3 describe procedures that are specific to each of the three types of property tax appeals.

Article 1: Application of Chapter and Definitions

5310 Application of Chapter.

This section specifies the types of property tax appeals (i.e., petitions and applications) to which chapter 3 applies. This section also specifies that the rules and procedures contained in chapter 5 (commencing with section 5511) of the proposed Rules apply property tax appeals unless there is a conflict with provisions in chapter 3.

5311 Definitions.

This section provides that the definitions in chapter 5 of the proposed Rules apply to the provisions of chapter 3 unless otherwise indicated, and contains definitions for the following 17 terms that are specific to chapter 3: Appeals Conference, Appraisal Data Report, County-Assessed Properties Division, Hearing Summary, Organizational Clearance Certificate, Party, Petition, Petitioner, Respondent, Sample Findings, Summary Decision, Supplemental Clearance Certificate, Tax and Fee Programs Division, State-Assessed Properties Division, State-Assessed Properties Division's Analysis, and Written Findings and Decision.

5312 Application of Articles 2, 3, and 4.

This section explains the organization of the remaining articles in chapter 3 and tells readers where to find procedures that apply to each type of property tax appeal covered by chapter 3.

Article 2: Petitions for Reassessment of State-Assessed Property and Private Railroad Cars

Article 2 describes procedures specific to state-assessee appeals, including appeals involving escaped or excessive assessments, and assessment factor hearings

during which the Board Members receive public testimony on issues relating to capitalization rates and other factors affecting values of state-assessed property and private railroad cars.

Subchapter 1: Application of Article

5321 Application of Article.

This section explains that the procedures in this article apply to all state-assessee appeals and assessment factor hearings.

Subchapter 2: Assessments and Assessment Factor Hearings

5322 Information Available to Assessee; Assessment Factor Hearings.

This section identifies the types of data and reports that state assessees may request regarding the valuation of their unitary and non-unitary property; notifies state assessees and private railroad car taxpayers about the Board's Assessment Factor Hearings and the procedures for making oral presentations to the Board at such hearings; and notifies states assessees and private railroad car taxpayers about their opportunity to make an oral or written presentation to the Board regarding the value of their property.

5322.5 Validity of Assessment.

This section explains that assessments and taxes levied by the Board are valid even if the state assessee or private railroad car taxpayer does not receive a required notice or the Board fails to complete a required action by a date specified in this article.

Subchapter 3: Contents of Petitions and Filing Deadlines

5323 Time for Filing of Petitions

This section describes the filing deadlines for all of the different types of state assessee and private railroad car tax petitions (state-assessee petitions) covered by article 2.

5323.2 Filing Requirements and Procedures for Contesting Private Railroad Car Jeopardy Assessments.

This section provides that appeals of private railroad car tax jeopardy assessments are governed by the procedures for appealing business taxes and fees notices of jeopardy determination and contains a cross reference to chapter 2, article 2C of the proposed Rules where the applicable procedures are located.

5323.4 Contents of the Petition.

This section describes the contents of a valid state-assessee petition under article 2. This section requires that petitions be in writing; contain certain specified information regarding value and whether the petitions constitute claims for refund; identify any supporting documentation; state whether an appeals conference, oral Board hearing, or written findings and decision are

requested; be signed under penalty of perjury; and be accompanied by a statement of authorization when required.

5323.6 Submission of Petition.

This section requires ten copies of all state–assessee petitions to be filed along with the original by mail or personal delivery to the Board’s headquarters. This section also codifies the Board’s policy of encouraging electronic filing and allows petitioners to submit a compact disc containing an electronic copy of their petitions formatted as specified by the Board Proceedings Division in lieu of the required ten copies.

5323.8 Duplicate Petitions.

Petitioners may only file one petition regarding an assessment. This section provides procedures for determining which petition was authorized by the petitioner in cases where the Board receives two or more petitions from the same petitioner for the same assessment, and creates a presumption in favor of the first petition received by the Board.

Subchapter 4: Timeliness, Acceptance, and Dismissal of Petitions

5324 Timeliness of Petition.

This section describes the circumstances under which a state–assessee petition or other submission is considered timely filed. This section cross references the provisions of chapter 5 of the proposed Rules for determining whether there was “timely performance” and ascertaining the “mailing date” of a petition or other document. This section also permits petitions to be filed electronically so long as the original hard copies are mailed or delivered to the Board the next business day.

5324.2 Extensions of Time.

This section describes the circumstances under which petitioners may request and the Board’s Chief Counsel may grant extensions of time to file petitions and supporting documents under this article. This section allows the Chief Counsel to grant only 15–day extensions for filing petitions due to the time–sensitive nature of state–assessee appeals, but gives the Chief Counsel the flexibility to grant an extension for a reasonable amount of time to file supporting documents.

5324.4 Accepting or Rejecting a Petition.

This section describes the procedures by which petitions will be reviewed to determine whether they are valid, complete, and timely. It requires the Chief of Board Proceedings to accept and acknowledge valid, complete, and timely petitions, and forward petitions that raise an issue regarding their validity, completeness, or timeliness to the Chief Counsel. If the Chief Counsel decides that a petition is valid, complete, and timely, or that a genuine issue of fact exists as to the relevant issues, the Chief of Board Proceedings is required

to acknowledge the petition, and any remaining issues regarding validity, completeness, or timeliness will be decided by the Board. If the Chief Counsel and the Chief of Board Proceedings agree that a petition is not valid, complete, or timely the Chief of Board Proceedings is required to reject the petition.

5324.6 Submission of Additional Supporting Documents by Petitioner.

This section limits the documentary evidence that petitioners can present to the Board to their petitions, the supporting documents filed with their petitions, and other documents requested by Board staff or the Board Members. However, this section does not limit the Board Members or Board staff’s authority to request that petitioners submit additional documentary evidence. This section also requires documentary evidence to be submitted along with a declaration signed under penalty of perjury attesting to its authenticity, and requires documentary evidence that is not submitted with a petition or filed pursuant to a Board request to be returned to petitioners.

5324.8 Dismissal of Petition.

This section clearly describes the circumstances under which a petition will be dismissed and requires the Chief of Board Proceedings to send each petitioner a notice of dismissal when a petition is dismissed which sets forth the reasons for the dismissal.

Subchapter 5: Prehearing Meetings and Review of Petitions

Subchapter 5 describes an optional process under which petitioners may request an informal meeting with Board staff to resolve the issues raised in their petitions.

5325 Prehearing Meeting and Exchange of Information Between State–Assessed Properties Division, Tax and Fee Programs Division, and Petitioner.

This section requires Board staff to informally meet with petitioners who request a meeting to exchange relevant information and evidence, identify issues, and resolve as many issues as possible before their scheduled hearings. This section also provides notice to petitioners that this section does not limit Board staff’s authority to request additional information from the petitioner at any time.

5325.4 Petitions Resolved Before Appeals Division Review.

This section describes the procedures by which Board staff will prepare and submit the “State–Assessed Properties Division’s Recommendation for Property Tax Petition” for petitions that petitioners and Board staff completely resolve prior to the beginning of the appeals conference or briefing processes. This section also prescribes the contents of recommendations

and provides notice that the Board Members are not required to adopt Board staff's recommendations.

5325.6 Prehearing Review of All Other Petitions.

This section requires the Appeals Division to review all state–assessee petitions that are not fully resolved by a joint recommendation as described in section 5325.4 above, and prepare either a Hearing Summary or Summary Decision for the Board Members. This section requires the Appeals Division to prepare a Revised Hearing Summary or Revised Summary Decision if any issues are partially or fully resolved between the issuance of a Hearing Summary or Summary Decision and the Board Members consideration of the petition to which the Hearing Summary or Summary Decision relates. This section also states that the Appeals Division may request additional information and analysis from the petitioner or Board staff when needed.

Subchapter 6: Briefing Schedules and Appeals Conferences

Subchapter 6 describes the briefing and appeals conference processes for state–assessee petitions. Subchapter 6 contains a briefing process for state–assessee petitions for which an appeals conference is scheduled, and another briefing process for other state–assessee petitions. This section also sets forth the procedures under which an appeals conference may be requested and granted.

5326 General Briefing Procedures For Petitions Reviewed by the Appeals Division.

This section lists the three types of briefs that can be filed during the briefing process for state–assessee appeals, and provides for the filing of a petition, Board staff's response to the petition, and the petitioner's optional reply to Board staff.

5326.2 Briefing Schedule If No Appeals Conference Is Scheduled.

This section describes the deadlines for filing Board staff's response and the petitioner's reply described in section 5326, subdivisions (b) and (c) of the proposed Rules and the Appeals Division's Summary Decision when an appeals conference is not scheduled pursuant to section 5326.4 of the proposed Rules. This section gives the Chief Counsel authority to grant extensions of time for reasonable cause. This section requires Board staff's response to be submitted 45 days before the date a petition is scheduled for Board action, the petitioner's reply to be submitted 15 days after Board staff's response is mailed to the petitioner, and the Appeals Division's Summary Decision to be submitted at least 10 days before the date the petition is scheduled for Board action.

5326.4 General Appeals Conference Procedures.

This section describes the Board's recently implemented appeals conference procedures for state–assessee appeals. This section permits petitioners, Board staff, the Assistant Chief Counsel of the Appeals Division, and the Board Members to request an appeals conference for a state–assessee appeal, and requires an appeals conference to be held upon request. This section describes the nature of state–assessee appeals conferences, and the manner in which they will be scheduled and conducted. This section explains that appeals conference will not be recorded unless petitioners make their own arrangements for recording and agree to provide a copy of any recording to the Board. This section also explains that recordings of appeals conferences will become disclosable public records when the petition being discussed on the recording becomes a disclosable public record. This section also gives the Chief Counsel the authority to modify the time periods in sections 5326.6, 5327, and 5327.4, subdivision (c), of the proposed Rules for the filing of briefs, the holding of appeals conferences, submission of the Appeals Division's Hearing Summary or Summary Decision, and the issuance of notices of an oral Board hearing.

5326.6 Scheduling of Appeals Conference: Briefing Schedule for Petitions for which an Appeals Conference is Scheduled.

This section explains that an appeals conference will generally be scheduled at least 30 days before the state–assessee appeal to be discussed is scheduled for Board action. This section sets forth the briefing schedule for filing Board staff's response to the petition and the petitioner's reply to Board staff with regard to a state–assessee appeal scheduled for an appeals conference. This section also gives the Appeals Division authority to request additional information and briefing before, during, and after an appeals conference.

Subchapter 7: Preparing Summaries, Scheduling Hearings, and Distributing Documents

5327 Appeals Division Hearing Summary or Summary Decision.

This section requires the Appeals Division to prepare a Hearing Summary or Summary Decision and submit it to the Board Proceedings Division at least 10 days prior to scheduled Board action on a state–assessee appeal. This section requires the Appeals Division to promptly submit a Revised Hearing Summary or Summary Decision to the Board Proceedings Division. This section also authorizes the Chief Counsel to grant the Appeals Division extensions of time to prepare and submit a Hearing Summary or Summary Decision when there is reasonable cause, including when an appeals

conference is scheduled within 30–days of scheduled Board action.

5327.4 Oral Hearings—Scheduling of Hearings.

This section describes the statutory time limitations within which the Board must decide state–assessee appeals. This section also requires the Chief of Board Proceedings to send a Notice of Hearing to every petitioner who requests an oral Board hearing in its petition at least 45 days before the scheduled oral Board hearing date.

5327.6 Distribution of Documents.

This section lists the documents the Chief of Board Proceedings is required to distribute prior to scheduled Board action on a state–assessee appeal and lists the persons to whom they are to be distributed. Those documents include the petition and supporting documents, Board staff’s response, the petitioner’s reply, if any, and the Appeals Divisions Hearing Summary or Summary Decision.

Subchapter 8: Consolidation and Withdrawal of Petitions

5328 Consolidation of Petitions into a Single Hearing.

This section provides that multiple state–assessee petitions may be consolidated for hearing or decision under the procedures in chapter 5 of the proposed Rules for consolidation. This section also provides that Board staff will only prepare one response to a number of consolidated petitions, and that the Appeals Division will only prepare one Hearing Summary for a number of consolidated petitions.

5328.5 Withdrawal of a Petition.

This section permits petitioners to withdraw their state–assessee petitions up to the date of their scheduled oral Board hearings and provides procedures for doing so.

Article 3: Other Property Tax Petitions

This article describes the procedures specific to property tax appeals other than state–assessee appeals. The property tax appeals covered by article 3 generally follow the same appeals process but are not subject to the same time constraints as state–assessee appeals.

Subchapter 1: Application of Article

5331 Application of Article.

This section lists the three types of property tax petitions and applications to which article 3 applies, which are: applications for review, equalization, and adjustment of the assessment of publicly–owned lands and improvements; petitions objecting to Board staff’s findings of ineligibility for the welfare and veterans’ organization exemptions; and petitions contesting Board

staff’s findings after conducting a survey of a county assessor’s assessment practices.

Subchapter 2: Appeal of Assessment of Publicly–Owned Property — Contents of Applications, Filing Deadlines, and Board–Appraised Property

This subchapter contains procedures that only apply to applications appealing the assessment of public–owned land and improvements (petitions regarding publicly–owned property).

5332 Time of Filing of Application.

This section describes the filing deadlines for petitions regarding publicly–owned property, contains a cross reference to the procedures for filing petitions contained in section 5335 of the proposed Rules, and explains that the failure to file a timely petition bars the petitioner from relief.

5332.4 Contents of Application.

This section prescribed the contents of a complete petition regarding publicly–owned property. This section requires such petitions to be in writing, be authorized by the petitioners’ governing bodies, include the documents containing such authorizations, contain the facts upon which the petitions are based, contain statements of authorities, state whether written findings and decisions are requested, and be signed by the petitioners’ authorized representatives.

5332.6 Submission of Application and Board–Appraised Property.

This section describes the filing requirements for petitions regarding publicly–owned property. This section requires such petitions to be filed with the county assessor whose assessment is questioned, and for such petitions to be mailed or personally delivered to the Board along with a proof of filing with the appropriate county assessor. This section also requires Board staff to notify the petitioner and relevant county assessor if any of the property covered by such a petition was appraised by Board staff, give each party access to the Board’s appraisal records, and permit either party to call Board staff as a witness so long as the parties provide at least 10–days advance notice to the Board.

Subchapter 3: Contents of Property Tax Welfare and Veterans’ Organization Exemption Petitions and Filing Deadlines

This subchapter contains procedures that only apply to petitions appealing Board staff’s findings of ineligibility for the welfare exemption or veterans’ organization exemption.

5333 Time for Filing of Petitions.

This section describes the filing deadlines for petitions appealing Board staff’s findings of ineligibility

for the welfare exemption or veterans' organization exemption and provides that a timely petition must be mailed to or received at the Board's headquarters before the expiration of such deadlines.

5333.4 Contents of Petition.

This section prescribes the contents of a complete petition appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption. It requires such petitions to be in writing, state the grounds upon which the petitioners qualify for the claimed exemption, be accompanied by the documents the petitioners want the Board to consider, indicate whether oral Board hearings or written findings and decisions are desired, and be signed by the petitioners or the petitioners' authorized representatives.

5333.6 Submission of Petition.

This section requires petitioners to file petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption by mail or in person at the Board headquarters as explained in section 5335 of the proposed Rules.

Subchapter 4: Contents of Property Tax Sampling Program Petitions and Filing Deadlines

This subchapter contains procedures that only apply to petitions contesting Board staff's findings after conducting a survey of a county assessor's assessment practices (property tax sampling program petitions).

5334 Time for Filing of Petitions.

This section provides notice to county assessors regarding their rights to file petitions contesting Board staff's findings after conducting surveys of their assessment practices. This section prescribes the deadlines for filing such petitions and provides that Board staff's finding become final if a petition is not filed within the prescribed deadlines. This section also prescribes the Board's standards for determining whether such a petition is timely.

5334.4 Contents of the Petition.

This section prescribes the required contents of a property tax sampling program petition and requires a petition to be in writing, identify the assessment the county assessor is contesting, state the specific issues raised and the adjustments sought, indicate whether an oral Board hearing is requested, and be signed by the county assessor or the county assessor's representative. This section also authorizes county assessors to use forms provided by the Board to prepare their petitions, and requires county assessors to submit their supporting evidence with their petitions.

5334.6 Submission of Petition.

This section requires property tax sampling program petitions to be mailed or personally delivered to the

Chief of Board Proceedings in the manner provided by section 5335 of the proposed Rules.

Subchapter 5: Filing and Distribution of Petitions, Briefs, and Other Documents

The remaining subchapters in this article describe procedures that are applicable to all property tax appeals filed under chapter 3, except state-assessee appeals, unless otherwise specified.

5335 Submission of Petitions, Briefs, and Related Documents.

This section describes the procedures for filing property tax petitions, other than state-assessee petitions, and related briefs or other documents. This section requires original documents to be mailed or personally delivered to the Chief of Board Proceedings, and permits electronic filing in accordance with instructions provided by the Chief of Board Proceedings. This section also requires the parties to petitions regarding publicly-owned property to file their petitions, briefs, and other documents with the each other and enclose a proof of filing when they submit their documents to the Board.

5335.4 Timely Performance: Mailing Date.

This section specifically incorporates the provisions of section 5571 of the proposed Rules addressing the timeliness and mailing date of documents into article 3 by reference.

5335.6 Distribution of Documents.

This section requires the Board Proceedings Division to promptly distribute property tax petitions, briefs, related documents, Hearing Summaries and Summary Decisions to the petitioner, respondent (as defined in section 5311, subd. (b)(10) of the proposed Rules), Tax and Fee Programs Division, Appeals Division, and Board Members as appropriate.

Subchapter 6: Accepting, Rejecting, and Perfecting Petitions and Applications

5336 Accepting or Rejecting a Petition.

This section describes the procedures by which petitions will be reviewed to determine whether they are valid, complete, and timely. It requires the Chief of Board Proceedings to accept and acknowledge valid, complete, and timely petitions, and forward petitions that raise an issue regarding their validity, completeness, or timeliness to the Chief Counsel. If the Chief Counsel decides that a petition is valid, complete, and timely, or that a genuine issue of fact exists as to the relevant issues, the Chief of Board Proceedings is required to acknowledge the petition, and any remaining issues regarding validity, completeness, or timeliness will be decided by the Board. If the Chief Counsel and the Chief of Board Proceedings agree that a petition is not

valid, complete, or timely the Chief of Board Proceedings is required to reject the petition.

5336.5 Perfecting a Petition.

This section allows petitioners to perfect timely but incomplete petitions. This section provides that the Board's briefing and resolution process for property tax appeals, other than state-assessee appeals, will not start until petitions are perfected. This section provides that a petition is perfected when it contains substantially all the information required by article 3, including the petitioner or petitioner's authorized representative's signature and contact information. This section also requires the Chief of Board Proceedings to notify petitioners when their petitions filed under article 3 are incomplete and explain that the petitioners have 30 days (not including extensions) to perfect their petitions before the petitions will be dismissed.

Subchapter 7: Prehearing Meetings and Briefing Schedules

Subchapter 7 describes an optional process under which petitioners may request an informal meeting with Board staff to resolve the issues raised in their petitions.

5337 Prehearing Meeting and Exchange of Information Between Respondent and Petitioner

This section requires Board staff to informally meet with petitioners who request a meeting to exchange relevant information and evidence, identify issues, and resolve as many issues as possible before their scheduled hearings. This section also provides notice to petitioners that this section does not limit Board staff's authority to request additional information from petitioners at any time. This section only applies to petitions appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption, and property tax sampling program petitions. This section does not apply to petitions regarding publicly-owned property.

5337.4 Briefing: General Requirements

This section requires all the parties to a property tax appeal, other than a state-assessee appeal, to submit their petitions, replies and responses, in the form of briefs, sets forth the requirements for all briefs, and provides a process for requesting and granting exceptions for reasonable cause. This section only requires the parties to submit one copy of their briefs and supporting documents, requires the Chief of Board Proceedings to provide written acknowledge of receipt, and requires the Chief of Board Proceedings to distribute such documents to the opposing party. This section requires written requests for extensions of time to file briefs, and grants the Chief Counsel authority to grant extensions based upon reasonable cause or the agreement of the

parties and the Appeals Division. This section provides that a failure to file a brief within the required time periods, including extensions, constitutes a waiver of the right to file such brief and generally concludes the briefing schedule. This section also authorizes the filing of non-party (amicus) briefs and prescribes the rules applicable to the filing of such briefs.

5337.6 General Briefing Schedule.

This section lists the time periods in which briefs must be filed under article 3. This section permits petitioners to file an opening brief and a reply brief. However, this section only permits respondents to file opening briefs, unless they file written requests for permission to file reply briefs and the Chief Counsel grants them written permission based upon certain factors. This section also grants petitioners the right to file supplemental briefs in response to respondents' reply briefs, and gives the Chief Counsel authority to modify the briefing schedule to accommodate both extra briefs when necessary.

Subchapter 8: Appeals Division Review, Prehearing Conferences, and Summaries

5338 Appeals Division Review.

This section requires the Appeals Division to review the petition, briefs, and supporting documentation filed with regard to a property tax appeal, other than a state-assessee appeal, at the conclusion of the general briefing process to determine whether the Board has adequate information to decide the appeal. If the information is inadequate, the Appeals Division may request additional briefing from the parties under section 5523.4 of the proposed Rules. Once the information is adequate and the Appeals Division has conducted an appeals conference under section 5338.4 of the proposed Rules, this section requires the Appeals Division to notify the Chief of Board Proceedings that the petition is ready to be scheduled for an oral Board hearing, and requires the Chief of Board Proceedings to schedule and notice the oral Board hearing under the procedures in section 5522.6 of the proposed Rules.

5338.4 Appeals Conference.

This section requires the Appeals Division to conduct appeals conferences to discuss all property tax appeals, other than state-assessee appeals. This section describes the purpose and nature of the appeals conferences, prescribes the procedures for scheduling and noticing the appeals conferences, and informs the participants that appeals conferences are not recorded unless special arrangements are made. This section also provides additional authority for the Appeals Division to request additional briefing from any party to a petition until the Appeals Division has submitted its Hear-

ing Summary or Summary Decision as required by section 5338.6 of the proposed Rules.

5338.6 Preparing and Revising Hearing Summaries.

This section requires the Appeals Division to prepare a Hearing Summary for each property tax appeal subject to article 3 within 90 days after each appeals conference or shorter period prescribed by the Chief of Board Proceedings, but in no case less than 30 days after each appeals conference. This section allows the Chief Counsel to grant extensions for reasonable cause and requires the Chief of Board Proceedings to provide a copy of each Hearing Summary to all the parties to the property tax appeal the Hearing Summary addresses. This section requires the Appeals Division to prepare a Summary Decision when property tax appeals are submitted for decision without an oral hearing, and provides procedures for the Appeals Division to revise Hearing Summaries and Summary Decisions if the parties fully or partially resolve issues after these documents are submitted to the Chief of Board Proceedings.

Article 4: General Board Hearing and Notice Procedures

This article contains Board hearing procedures that apply to all property tax appeals, unless otherwise indicated.

5340 Relation to General Board Hearing Procedures.

This section incorporates the Board hearing procedures from chapter 5 of the proposed Rules into chapter 3 by reference, makes them applicable to all property tax appeals filed under chapter 3, and provides that the procedures in chapter 3 control when they conflict with the provisions of chapter 5.

5341 Additional Briefing.

This section describes the respective authority of the Assistant Chief Counsel of the Appeals Division, individual Board Members, and the Board to request additional briefing or evidence whenever thought necessary. This section also describes the respective authority of the Appeals Division and the Board to determine the order, deadlines, and conditions under which any additional briefing or evidence must be submitted. This section requires that the Board Chair be notified of any request for additional briefing or evidence made under this section so that the Board Chair may postpone the hearing on the property tax appeal to which the request relates, if thought necessary.

5342 Notice of Hearing

This section requires the Board to send all the parties to an oral Board hearing on a property tax appeal written notice of the date and time of such hearing in accordance with the notice procedures in chapter 5 of the proposed Rules. This section also requires notices of hear-

ings on petitions regarding publicly-owned property to include a statement incorporating provisions of the California Constitution requiring the Board to determine the full cash value of property that is the subject of a hearing, and giving petitioners notice that the Board's determination may exceed the value on which the assessment being appealed is based.

5343 Submission for Decision Without Oral Hearing.

This section describes the circumstances under which a property tax appeal will be submitted to the Board for decision without an oral Board hearing, and requires the Appeals Division to prepare a Summary Decision summarizing the relevant facts and law and containing the Appeals Division's recommendation for Board action for each appeal submitted for decision without an oral Board hearing.

5344 Notice of Board Decisions.

This section requires to Board to notify all the parties to a property tax petition of the Board's decision in writing in accordance with the procedures in chapter 5 of the proposed Rules. Subdivision (b) of this section specifies all of the persons and entities that will receive written notice of the Board's decision on a petition regarding publicly-owned property. Subdivision (c) of this section informs petitioners that notice of the Board's decision on a petition appealing Board staff's findings of ineligibility for the welfare exemption or veterans' organization exemption will also be sent to the county assessor for the county where the petitioner's property is located. Subdivision (d) of this section informs assessors and property owners that notice of the Board's decision on a property tax sampling program petition will also be sent to the property owners whose property values were at issue in the petition.

5345 Finality of Board Action; Written Findings and Decision.

This section provides notice to petitioners and other parties that the Board's decision on a property tax appeal is final and may only be modified to correct a clerical error. This section also describes the procedures under which a Written Findings and Decision may be requested by petitioners, and the procedures under which a Written Findings and Decision will be prepared by the Appeals Division and adopted by the Board.

Chapter 4: Appeals from Actions of the Franchise Tax Board

Chapter 4 generally carries over and clarifies the Board's current procedures for hearing appeals from actions of the FTB contained in the current Rules of Practice, and codifies Board's existing practices that are not contained in the current Rules of Practice. Chapter 4 also contains a new briefing schedule for innocent spouse appeals from the FTB that allows the non-

appealing spouse to materially participate in the appeals process as required by law, and adds new pre-hearing conference procedures to the Board process for hearing appeals from the FTB. The pre-hearing conferences are similar to the appeals conferences provided for in chapters 2 and 3 of the proposed Rules. Board staff worked closely with FTB staff in drafting chapter 4.

Article 1: Application of Chapter 4, Definitions, and Jurisdiction

5410 Application of Chapter 4.

This section provides that chapter 4 applies to appeals from the FTB and does so by providing cross references to the laws under which persons may appeal to the Board from actions of the FTB. This section also provides that chapter 5 of the proposed Rules applies to appeals from the FTB, but the procedures in chapter 4 control in cases of a conflict between the two chapters.

5411 Definitions.

This section provides that the definitions in sections 5511 and 5512 of chapter 5 of the proposed Rules apply to chapter 4, and provides specific definitions for the terms “appellant” and “respondent” as used in chapter 4, which supersede conflicting definitions in chapter 5 due to the provisions of section 5410 of the proposed Rules.

5412 Jurisdiction.

Subdivision (a) of this section describes the circumstances under which the Board has jurisdiction to hear and decide a timely filed appeal from the actions of the FTB. Subdivision (b) of this section explains that the Board’s jurisdiction to hear appeals from the actions of the FTB is limited and describes issues the Board will not consider in an appeal from the actions of the FTB. Subdivision (c) of this section provides notice that the Board’s jurisdiction to hear appeals from the actions of the FTB may be expanded or limited by changes in the law (i.e., California Constitution, Revenue and Taxation Code, etc.).

Article 2: How to file an appeal from the Franchise Tax Board

This article explains how taxpayers must file their written appeals from the actions of the FTB with the Board and describes the Board’s process for reviewing written appeals from the actions of the FTB for timeliness and completeness, and to determine whether the Board has jurisdiction to hear the appeal.

5420 Appeal Filing Requirements.

Subdivision (a) of this section describes the contents of a complete written appeal from the actions of the FTB other than an appeal described in subdivision (b), which include the appellant’s name, social security number or taxpayer identification number, and contact information, the amounts and years at issue, a statement

of the facts involved and legal authorities relief upon, disclosure of any amounts that the appellant concedes, and the appellant or appellant’s authorized representative’s signature. Subdivision (b) of this section describes the contents of written appeals from the FTB’s denial of a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law, which requires less information and does not require appellants to state the legal authorities upon which they rely.

5421 Methods for Delivery of Written Documents and Correspondence.

This section prescribes the procedures for properly filing written appeals from the actions of the FTB and allows appellants and the FTB to file documents electronically pursuant to instructions provided on the Board’s Web site. This section also explains that Board staff will mail or personally deliver notices to the parties to an appeal from the actions of the FTB, unless the parties consent to electronic delivery.

5422 Time for Filing an Appeal.

This section sets forth the statutory deadlines in which written appeals from the actions of the FTB must be filed with the Board in order to be considered timely and prevent the FTB action being appealed from becoming final and collectible, and explains which deadlines apply to each different type of FTB notice from which taxpayers may appeal to the Board. This section codifies the filing extensions provided by Code of Civil Procedure section 1013 and describes the extension that automatically applies when the last day to file a written appeal falls on a Saturday, Sunday, or holiday. This section also defines the date of filing for purposes of determining whether a written appeal from the actions of the FTB is timely filed.

5423 Accepting or Rejecting an Appeal.

This section describes the procedures by which written appeals from the actions of the FTB will be reviewed to determine whether they are timely filed and whether the Board has jurisdiction to hear the appeal. It requires the Chief of Board Proceedings to accept and acknowledge timely filed written appeals over which the Board has jurisdiction, and forward written appeals that raise an issue regarding their timeliness or the Board’s jurisdiction to the Chief Counsel. If the Chief Counsel decides that the Board has jurisdiction to hear an appeal and that it was timely filed or that a genuine issue of fact exists as to the relevant issues, the Chief of Board Proceedings is required to acknowledge the written appeal, and any remaining issues regarding timeliness or the Board’s jurisdiction will be decided by the Board. If the Chief Counsel or the Chief of Board Proceedings determines that the Board lacks jurisdiction to hear a written appeal or that the appeal is not timely the

Chief of Board Proceedings is required to reject the written appeal. This section also permits the Chief Counsel and Chief of Board Proceedings to request information from the FTB regarding the Board's jurisdiction to hear and the timeliness of any written appeal under review.

5424 Perfecting an Appeal.

This section allows appellants to perfect timely filed, but incomplete written appeals from the actions of the FTB. This section provides that the Board's briefing and resolution process for an appeal will not start until the appeal is perfected. This section provides that a written appeal is perfected when it contains substantially all the information required by section 5420 of the proposed Rules, including the appellant or appellant's authorized representative's signature and contact information. This section also requires the Chief of Board Proceedings to notify appellants when their written appeals are incomplete, and explain that the appellants have 90 days (not including extensions) to perfect their written appeals before their appeals will be dismissed.

Article 3: Briefing Schedules and Procedures

5430 General Requirements.

Subdivision (a) of this section requires all submissions with regard to appeals from the actions of the FTB to be in the form of briefs. Subdivision (b) of this section requires the Chief of Board Proceedings to acknowledge the filing of perfected written appeals and notify the parties that briefing will begin under one of three briefing schedules: the general briefing schedule, the briefing schedule for innocent spouse appeals, or the jeopardy determination briefing schedule. Subdivision (c) of this section incorporates the provisions of section 5522.8 of the proposed rules regarding the deferral or postponement of hearings and the due date of briefs, and requires requests for extensions of time to file briefs to be in writing. Subdivision (d) of this section requires parties to file one copy of their briefs and supporting exhibits, and requires the Chief of Board Proceedings to acknowledge receipt and distribute copies to the opposing parties. Subdivision (e) of this section prescribes the format of briefs, and gives parties 10 days to cure defects in their briefs. Subdivision (f) of this section provides that the failure to file a brief is a waiver of the right to file that brief and generally concludes the briefing process. Subdivision (g) of this section prescribes the procedures for the filing of non-party (amicus) briefs in appeals from the actions of the FTB.

5431 General Briefing Schedule.

This section describes the general, default briefing schedule that applies to appeals from the actions of the FTB other than innocent spouse appeals and appeals from FTB jeopardy determinations. This section pro-

vides that a perfected appeal is the appellant's opening brief, gives the FTB 90 days to file its opening brief, and gives the appellant 30 days to respond to the FTB's opening brief. This section requires the FTB to request permission to file a reply brief, provides standards for reviewing such requests, and only permits the FTB to file a reply brief if written permission is granted. If the FTB is granted permission to file a reply brief, this section will also give the appellant the right to file a supplemental brief in response so that the appellant always has the opportunity to file the last brief.

5432 Briefing Schedule for Innocent Spouse Appeals.

This section describes the briefing schedule applicable to innocent spouse appeals from the actions of the FTB and sets forth definitions and rules applicable only to innocent spouse appeals. This section provides for the consolidation of spouses' innocent spouse appeals where both spouses have requested innocent spouse relief from the FTB and are both appealing from denials of such relief. This section follows the generally applicable briefing schedule in section 5431 of the proposed Rules, but modifies the schedule to allow the non-appealing spouse to meaningfully participate in the appealing spouse's appeal. This section also requires the Board to take reasonable steps to protect an appealing spouse's contact information from being disclosed to his or her spouse, and contains provisions for the Board to conform its actions on innocent spouse appeals to the Internal Revenue Services actions on related requests for innocent spouse relief that are decided before the Board renders its decisions.

5435 Additional Briefing.

This section describes the respective authority of the Assistant Chief Counsel of the Appeals Division, individual Board Members, and the Board to request additional briefing or evidence whenever thought necessary. This section also provides provisions for the Appeals Division or the Board to determine the order, deadlines, and conditions under which any additional briefing or evidence must be submitted. This section requires that the Board Chair be notified of any request for additional briefing or evidence made under this section so that the Board Chair may postpone the hearing on the appeal from the actions of the FTB to which the request relates, if necessary.

Article 4: Requesting and Scheduling Oral Hearings

5440 Right to Request an Oral Hearing.

Subdivision (a) of this section provides notice to appellants regarding their right to an oral Board hearing upon written request and describes the procedures for requesting an oral Board hearing, which permit appellants to request an oral hearing up to 30 days after the conclusion of briefing. Subdivision (b) of this section

allows appealing spouses and non-appealing spouses who have been joined to their spouses' innocent spouse appeals to request oral Board hearings. Subdivision (b) of this section also provides that one joint oral Board hearing will generally be held for innocent spouse appeals, but provides important procedures permitting the Board to hold separate Board hearings where a court order prohibits either spouse from coming near the other spouse or the Chief of Board Proceedings determines that conducting one joint oral Board hearing would likely be unsafe, disruptive, or unjust.

5441 Submission for Decision Without Oral Hearing.

This section describes the circumstances under which an appeal from the actions of the FTB will be submitted to the Board for decision on the basis of the written record on file and without an oral Board hearing.

5442 Appeals Review; Scheduling the Oral Hearing

This section requires the Appeals Division to review the briefs and supporting documentation filed with regard to appeals from the actions of the FTB for which an oral Board hearing is granted to determine whether the Board has adequate information to decide the appeals. If the information is inadequate, the Appeals Division may request additional briefing from the parties under section 5435 of the proposed Rules, order a pre-hearing conference under section 5443 of the proposed Rules, or both. After the Appeals Division determines that adequate information has been provided with regard to a particular appeal, this section requires the Appeals Division to notify the Chief of Board Proceedings that the appeal is ready to be scheduled for an oral Board hearing and requires the Chief of Board Proceedings to schedule and notice the oral Board hearing under the procedures in section 5522.6 of the proposed Rules.

5443 Pre-hearing Conference.

This section describes new pre-hearing conference procedures, which are similar to the Board's historical appeals conference procedures, for ensuring that the Board has adequate information to decide appeals from the actions of the FTB. This section allows the Appeals Division or the Board to order a pre-hearing conference to be conducted, allows appellants and the FTB to request that pre-hearing conferences be conducted, and only allows the Board to deny a request for a pre-hearing conference if the Appeals Division and Chief Counsel agree that the requested pre-hearing conference would be unproductive. This section provides procedures for determining the time and location of pre-hearing conferences, scheduling and noticing pre-hearing conferences, and recording pre-hearing conferences. This section also requires pre-hearing conferences to be informal and non-adversarial, and provides that the holding of a pre-hearing conference does not limit the

Appeals Division's authority to request additional briefing and evidence under section 5435 of the proposed Rules.

5444 Hearing Summary.

Subdivision (a) of this section defines the term "Hearing Summary" and prescribes the contents of a complete Hearing Summary. Subdivision (b) of this section requires the Appeals Division to prepare a Hearing Summary for each appeal from the actions of the FTB scheduled for an oral Board hearing, gives the Appeals Division at least 30 days to complete each Hearing Summary and grants the Chief Counsel the authority to grant extensions of time to prepare Hearing Summaries for reasonable cause. Subdivision (b) of this section also requires the Appeals Division to submit its Hearing Summaries to the Chief of Board Proceedings and requires the Chief of Board Proceedings to distribute the Hearing Summaries to the parties. Subdivision (c) of this section provides that Hearing Summaries may not be cited as precedent in order to clarify their purpose, which is to summarize appeals to assist the Board Members in rendering a decision.

Article 5: Decisions, Opinions, and Frivolous Appeal Penalties

5450 Letter Decisions.

The Appeals Division will prepare a "Letter Decision" containing a short explanation of the reasons for the Board's decision on an appeal from the actions of the FTB whenever the Board decides an appeal without directing the preparation of a Summary Decision or Formal Opinion. Letter Decisions may not be cited as precedent.

The section defines the term "Letter Decision" and prescribes the contents of a Letter Decision. This section describes the circumstances under which a Letter Decision will be prepared. This section also prescribes the period in which a Letter Decision will be prepared and provided to the parties to an appeal, and provides that a Letter Decision may not be cited as precedent.

5451 Summary Decisions.

The Appeals Division will prepare a "Summary Decision" containing the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal from the actions of the FTB whenever an appeals is submitted for decision without an oral Board hearing under section 5441 of the proposed Rules or the Board directs the Appeals Division to prepare a Summary Decision. Summary Decisions may not be cited as precedent and do not reflect the Board's decision on an appeal until they are adopted by the Board.

The section defines the term "Summary Decision" and prescribes the contents of a Summary Decision. This section describes the circumstances under which a Summary Decision will be prepared. This section also

prescribes the period in which a Summary Decision will be prepared, requires Summary Decisions to be submitted to the Board for adoption, provides that Summary Decisions remain confidential until adopted, and provides that a Summary Decision may not be cited as precedent.

5452 Formal Opinions.

The Appeals Division will prepare a “Formal Opinion” containing the findings of fact and conclusions of law that form the basis of the Board’s decision on an appeal from the actions of the FTB, which is intended to set a precedent, whenever an appeal is submitted for decision without an oral Board hearing under section 5441 of the proposed Rules and the Appeals Division determines that a Formal Opinion might be appropriate or the Board directs the Appeals Division to prepare a Formal Opinion. Like Summary Decisions, Formal Opinions remain confidential until adopted by the Board, but, once adopted, they may be cited as precedent and reflect the Board’s decision on an appeal.

The section defines the term “Formal Opinion” and prescribes the contents of a Formal Opinion. This section describes the circumstances under which a Formal Opinion will be prepared. This section prescribes the period in which a Formal Opinion will be prepared, requires Formal Opinions to be submitted to the Board for adoption, provides that Formal Opinions remain confidential until adopted, and provides that a Formal Opinion may be cited as precedent. This section also codifies the criteria that must be considered in determining whether the preparation of a Formal Opinion would be appropriate with regard to a particular appeal, which are derived from Rule 976 of the California Rules of Court (criteria for publication of appellate opinions).

5454 Fivolous Appeal Penalty.

The Board may impose a frivolous appeal penalty on appellants appealing from the actions of the FTB under Revenue and Taxation Code section 19714. This section provides additional notice of the potential penalty to appellants considering an appeal, and codifies the criteria the Board considers in deciding whether to impose a frivolous appeal penalty so that appellants can determine whether the Board is likely determine that their appeals are frivolous.

Article 6: Petitions for Rehearing and Rehearings

5460 Finality of Decision.

This section provides that the Board’s decision on an appeal from the actions of the FTB becomes final 30 days from the date of the Board’s decision, unless one or more parties to the appeal file a petition for rehearing within that time. This section provides notice that the finality of a Board decision is not dependent upon the date the Board provides notice to the parties. This sec-

tion also prohibits any party from filing more than one petition for rehearing.

5461 Petitions for Rehearing.

This section prescribes the time period in which a petition for rehearing must be filed, requires petitions for rehearing to be in writing and prescribes their required contents, which include the grounds upon which the petitions for rehearing are based, and codifies the grounds upon which the Board will grant a rehearing. This section also describes the Board procedures for determining whether a petition for rehearing is timely filed, and describes the process by which the Board will permit appellants and FTB staff to perfect incomplete, but timely filed appeals. Both sets of procedures are very similar to those provided in sections 5423 and 5424 of the proposed Rules, respectively.

5462 Briefing on Petition for Rehearing.

This section allows all the parties to an appeal from the actions of the FTB that do not file petitions for rehearing to file a Reply to Petition for Rehearing, and does not permit parties who have filed petitions for rehearing to file any other briefs. However, this section does not prohibit requests for additional briefing from either party under section 5435 of the proposed Rules. This section also makes selected provisions of section 5430 of the proposed Rules regarding extensions of time to file briefs, the submission and acknowledgment of briefs, the required format of briefs, the consequences of filing a brief, and non-party (amicus) briefs applicable to a non-filing party’s Reply to Petition for Rehearing and the petition for rehearing process.

5463 Decisions on Petitions for Rehearing.

This section requires the Appeals Division to prepare a Decision on Petition for Rehearing upon the conclusion of the petition for rehearing briefing process and to submit the decision to the Board for adoption. This section provides that a Decision on Petition for Rehearing is confidential and does not represent the Board’s decision on a petition for rehearing until it is adopted by the Board, and states that a Decision on Petition for Rehearing cannot be cited as precedent unless the Board adopts the decision as a Formal Opinion. This section also provides that the Board’s original decision will be held in abeyance if a rehearing is granted or the Board’s decision will become final 30 days after the Board Members vote to deny a rehearing.

5464 Briefing on Rehearing.

This section permits the parties to a rehearing to file additional briefs and provides two briefing schedules: a briefing schedule that applies when only one petition for rehearing is granted and another briefing schedule that applies when more than one petition for rehearing is granted. However, the Board has discretion to modify either briefing schedule. This section also makes se-

lected provisions of section 5430 of the proposed Rules regarding extensions of time to file briefs, the submission and acknowledgment of briefs, the required format of briefs, the consequences of filing a brief, and non-party (amicus) briefs applicable to the Board's rehearing briefing process.

5465 Decision on Rehearing.

This section provides that the procedures contained in chapters 4 and 5 of the proposed Rules for the Board to hear and decide appeals from the actions of the FTB after the conclusion of the general briefing process contained in chapter 4 of the proposed Rules apply to a rehearing and the Board's decisions rendered after a rehearing. This section also provides that the Board's decision rendered after a rehearing becomes final 30 days from the date of the decision and represents the Board's final decision on the appeal.

Chapter 5: General Board Hearing Procedures

Chapter 5 contains general Board hearing procedures applicable to all of the Board's appeals processes, unless otherwise indicated. Chapter 5 generally incorporates the Board's existing practices, policies, and procedures for scheduling Board meetings and conducting Board hearings, and makes some revisions to the Board's historical practices with regard to the disclosure of information relevant to an oral Board hearing.

Chapter 5 is divided into seven articles: article 1 describes the application of the chapter and provides general definitions applicable to the proposed Rules; article 2 discusses the scheduling of Board meetings and hearings; article 3 describes the Board's process for issuing its public agenda notice; article 4 describes the laws applicable to the conduct of Board meetings and prescribes the burden of proof during an oral Board hearing; article 5 describes the manner in which the Board votes to decide a matter; article 6 prescribes the general time periods in which the Board will issue its post-hearing notices and the general petition for rehearing and rehearing processes; and article 7 prescribes the manner of filing documents under chapter 5 and provides rules for determining whether such documents were timely filed, describes the public record of an oral Board hearing and the Board's policy for disclosing confidential taxpayer information that is relevant to a Board hearing, and describes the Board's authority to conduct portion of oral Board hearings during closed session.

Article 1: Application of Chapter and Definitions

5510 General Application of Chapter 5.

This section provides that chapter 5 of the proposed Rules applies to Board hearings conducted under all of the Board's appeals processes by providing cross references to all the tax and fee laws under which the appeals processes are conducted. This section states that chap-

ter 5 provides rules of general application and that where more specific rules or rules from other chapters of the proposed Rules apply they will be provided or cross referenced. This section provides a clear statement that chapter 4 of the proposed Rules supersedes the provision of chapter 5 whenever there is a conflict between the two chapters. This section also specifies that the International Fuel Tax Agreement (IFTA) supersedes the provisions of chapter 5 of the proposed Rules wherever there is a conflict between the IFTA and chapter 5.

5511 Definitions.

This section sets forth definitions for the following terms that apply to all of the proposed Rules unless otherwise provided in chapters 2, 3, or 4: Appeals Division, Board, Board Chair, Board Member, Board Proceedings Division, Board Staff, brief, Chief Counsel, Claimant, Chief of Board Proceedings, delivery service, Department, Deputy Director, Executive Director, extreme hardship, hearing, Hearing Summary, matter, party, person, reasonable cause, tax, taxpayer, and section.

5512 Construction.

This section clarifies the construction of the following common terms used in the proposed Rules in order to avoid potential confusion regarding their meaning: must, may, may not, will, should.

Article 2: Requirements for Scheduling Board Meetings and Hearings

Subchapter 1. Meeting Calendars

5521 Monthly Board Meetings.

This section describes the frequency and location of regular Board meetings. This section also provides notice of the Board's discretion to hold additional Board meetings, and the Board's authority to conduct meetings via teleconference.

5521.5 Adoption of Board Meeting Calendar.

This section describes the procedures by which the Board adopts its meeting calendars, and changes the date or location, or cancels all or a portion of a previously-scheduled meeting. This section also requires the Board to post an adopted meeting calendar on the Board's Web site within 15 days of adoption and promptly amend a posted meeting calendar to reflect any changes that are made after it is adopted.

Subchapter 2. Requesting and Scheduling an Oral Hearing

5522 Right to Request an Oral Hearing.

This section clarifies that all taxpayers have the right to file a written request for an oral hearing, and provides guidance to taxpayers regarding the requirements for making such requests for appeals filed under chapters 2, 3, and 4. This section also describes the Board's policy

of liberally granting timely requests for oral Board hearings, and provides notice that the Board may hold an oral hearing even when one is not timely requested.

5522.2 Acknowledgement of Request for Oral Hearing.

This section requires Board staff to issue an acknowledge letter in response to each written request for an oral Board hearing indicating whether an oral Board hearing has been granted, and, if so, identifying the location where the oral Board hearing will be held. This section also requires taxpayers to submit requests to change the location of their oral Board hearings upon receipt of their acknowledgement letters and requires the Chief of Board Proceedings to submit the requests to the Board Chair for decision.

5522.4 Consolidation for Hearing or Decision.

This section describes the procedures by which multiple appeals pending before the Board may be consolidated for hearing or decision. This section allows Board Members, Appeals Division staff, and the parties to appeals to file written requests for consolidation, and written objections to requests for consolidation, and prescribes their contents. This section also requires the Chief Counsel to review such requests and objections, grant requests to consolidate when consolidation would not prejudice a substantial right of any party or all the parties agree to consolidation, and sustain objections that are not frivolous, unless deconsolidation would result in the misuse of administrative resources.

5522.6 Notice of Board Hearing and Response.

This section requires the Board Proceedings Division to mail a Notice of Board Hearing to each party in advance of their scheduled hearing date, and requires the notice to provide the session, date and location of the scheduled hearing and the due date for each party's Response to Notice of Hearing included with the Notice of Board Hearing, in addition to other information. This section requires each party to return their Response to Notice of Board Hearing by the required due date and indicate whether the party withdraws its request for a hearing, would like to waive its oral hearing and have the Board decide the appeal on the basis of the written record, or will attend the scheduled oral Board hearing. This section also provides that a party's failure to return the Response to Notice of Board Hearing may result in their appeal being removed from the oral Board hearing calendar and decided by the Board on the basis of the written record on file and without an oral Board hearing.

5522.8 Dismissal, Deferral, and Postponement.

This section provides notice to taxpayers that the Board will dismiss an appeal if the taxpayer requests dismissal, the Department concedes its position, or the

parties stipulate to a dismissal. This section gives each Board Member, Appeals Division staff, and the parties the right to request that a hearing date or the due date of a brief be deferred or postponed for reasonable cause. This section grants the Chief of Board Proceedings the sole discretion to grant deferrals or postponements for 90 days or less, and requires the Chief Counsel to concur in the granting of certain specified deferrals or postponements that exceed 90 days. This section gives the Chief of Board Proceedings express authority to grant deferrals of up to nine months and additional postponements for the parties to engage in settlement negotiations, and gives the Chief Counsel express authority to grant deferrals and postponements for an indefinite period of time while litigation is pending in federal or state court. This section also requires the Chief of Board Proceedings to postpone an appeal filed under chapter 4 once the Board receives notice that the taxpayer is a debtor in a bankruptcy proceeding and to continue the postponement until the bankruptcy proceeding is concluded.

Subchapter 3. Representation, Prehearing Documents, and Preparation for Hearing

5523 Representation at Hearings.

This section describes the persons who may represent taxpayers during Board hearings and the acts representatives may perform on behalf of taxpayers. This section describes the Board's process for recognizing representatives and requires taxpayers to promptly notify the Board of the substitution or withdrawal of their representatives. This section also prohibits persons who are disbarred from representing taxpayers before the FTB from representing taxpayers in appeals from the actions of the FTB to the Board.

5523.1 Power of Attorney.

This section provides Board staff with the authority to require taxpayers to execute power of attorney forms jointly adopted by the Board and FTB authorizing their representatives to act on their behalf. This section prescribes the contents of the power of attorney forms, and requires staff to accept a substitute from containing substantially all of the required contents of the Board adopted form, including a statutory form power of attorney. This section also gives the Chief Counsel the authority to conclusively resolve any issues regarding the authority granted to a representative under a power of attorney form or other document.

5523.2 Contribution Disclosure Forms.

This section explains that the Quentin L. Kopp Conflict of Interest Act of 1990 (Act) (Gov. Code, § 15626) as interpreted by California Code of Regulations, title 18, sections 7001–7011 requires Board Members to disclose certain political contributions and disqualifies

them from participating in certain adjudicatory proceedings (as described in subdivision (h) of the Act). This section explains that Board Members are required to make the disclosures identified in California Code of Regulations, title 18, section 7009, and every party, participant and agent (as defined in California Code of Regulations, title 18, section 7004–7006) is required to make the disclosures required by California Code of Regulations, title 18, section 7011 in order to comply with the disclosure requirements of the Act. This section also explains that the Board Proceedings Division will mail every party, participant, and agent contributions disclosure forms 45 days prior to their scheduled hearings, which should be filled out and returned prior to their hearings.

5523.3 Hearing Summary.

This section requires the Appeals Division to prepare and submit an objective Hearing Summary to the Chief of Board Proceedings within 40 days of a scheduled oral Board hearing for appeals filed under chapter 2, and within the time specified in chapter 3 or 4 for appeals filed under those chapters, and promptly submit any modifications made to the Hearing Summary after it is submitted. This section also requires the Board Proceedings Division to send copies of the Hearing Summary to all the parties within 30 days of a scheduled oral Board hearing and to promptly send copies of any modifications.

5523.4 Additional Briefing.

This section gives the Board Members and the Assistant Chief Counsel for the Appeals Division authority to request additional briefing in appeals filed under chapter 2, but only between the time the Hearing Summary is issued and the date of the taxpayer’s oral Board hearing. This section requires the Chief of Board Proceedings to set a briefing schedule and notify the parties when additional briefing is requested. This section prescribes the format of and the requirements for filing additional briefs. This section also provides cross references to the provisions for requesting additional briefing in appeals filed under chapter 3 or 4.

5523.5 Preparation for Board Hearing and Subpoenas.

This section describes the facts and issues that will be discussed during an oral Board hearing and notifies the parties that the Board Members may ask questions regarding these facts and issues during their hearings. This section informs parties that the Board generally reserves 35 minutes for each oral Board hearing, the Chief of Board Proceedings will explain how much of the 35 minutes is allocated to each party at the beginning of each hearing, additional time to present complex matters may be requested in advance of a hearing, and the

Board Chair has discretion to modify the time allocated to a party during an oral hearing. This section also provides notice of the Board’s subpoena power and describes the procedures for requesting, issuing, and serving a subpoena.

5523.6 Presentation of Evidence or Exhibits.

This section describes the Board’s policy of admitting all relevant evidence, including hearsay evidence. This section encourages the parties to oral Board hearings to submit their documentary evidence in advance of their hearings, explains that the Board may not delay a hearing to consider evidence that is submitted at a hearing, and provides notice of the Board’s discretion to prohibit parties from submitting irrelevant, untrustworthy, or unduly repetitious evidence. This section explains that the Board will accept a stipulation of facts agreed to by the parties, and may require the parties to file such a stipulation. This section describes the Board’s policy of taking official notice of information that may be judicially noticed by the California courts. This section also requires Board Proceedings Division staff to distribute copies of all documentary evidence, stipulations, etc. to the Board Members, each party, and the Appeals Division.

5523.7 Witnesses.

This section permits the parties to an oral Board hearing to present testimony from any person who can provide relevant information to the Board, provides notice of the Board Chair’s authority to require witnesses to testify under oath, and provides notice of the Board’s authority to initiate contempt proceedings to compel witnesses to comply with Board issued subpoenas. This section also encourages the parties to give the Board and each other advance notice of witnesses whose testimony they intend to present at their oral Board hearings, and codifies the parties’ rights to cross examine each others’ witnesses.

5523.8 Communications with Board Members.

This section codifies and provides notice of the Board’s longstanding policy permitting constituents, taxpayers and their representatives, other agencies’ staff, and Board staff to contact the Board Members at any time.

Article 3: Public Notification of Board Meeting

5530 Public Agenda Notice.

This section describes the procedures Board Proceedings Division staff must follow to comply with the Public Agenda Notice requirements of the Bagley–Keene Open Meeting Act (Gov. Code, § 11120 et seq.), prescribes the contents of the Board’s Public Agenda Notices, and informs the public as to where and when they may obtain copies of Public Agenda Notices.

Article 4: Conduct of the Board Meeting and Burden of Proof

5540 Conduct of the Board Meeting.

This section identifies and summarizes key provisions of the Government Code that require the Board to conduct public meetings, prevent Board Members and Board staff from engaging in activities that are incompatible with their duties, require the disclosure of certain political contributions, prohibit Board Members from participating in certain adjudicatory proceedings, require Board Members and Board staff to disclose certain financial interests, and prohibit Board Members and Board employees from making decisions in which they have a financial interest. (See Gov. Code, §§ 15625, 15626, 11129–11132, and 81000 et seq.) This section also provides clear notice to the public that everyone has the right to attend those portions of Board meetings conducted during open session, subject to the Board Chair’s authority to take reasonable steps to preserve order.

5541 Burden of Proof.

This section specifies that the burden of proof is upon the taxpayer as to all issues of fact, except in proceedings involving the issue of fraud with intent to evade tax or as otherwise provided by law.

Article 5: Voting and Decisions

5550 Quorum.

This section requires a quorum (i.e., three Board Members) to be present and participating at a Board meeting for the Board to take any action, sets the minimum requirements for a quorum, and provides rules for determining whether Board Members or a deputy designated by the Controller may be counted towards satisfying the quorum requirement.

5551 Voting and Decisions.

This section describes the Board’s discretion to vote to decide an appeal at the end of an oral Board hearing, take the appeal under submission and decide it later, or continue the hearing later. This section describes the Board’s discretion to adopt Memorandum Opinions for appeals filed under chapters 2 and 3 of the proposed Rules and Summary Decisions or Formal Opinions for appeals filed under chapter 4 of the proposed Rules, or direct the Appeals Division to prepare and submit such documents to the Board for consideration. This section provides that Formal Opinions and Memorandum opinions may be cited as precedent, unless they are depublished, overruled, or superseded, and that Summary Decisions may not be cited as precedent. This section also permits the Board Members to submit their own concurring or dissenting opinions for inclusion in Board adopted Formal Opinions and Memorandum Opinions.

Article 6: Post Hearing Notices and Petitions for Rehearing

5560 Notice of Board Decision.

This section requires the Board to send written notice of its decision to all the parties to an appeal and prescribes the general time periods in which the Board will mail the notices. This section also provides that the Board’s decision on an appeal filed under chapter 2 of the proposed Rules becomes final 30 days after the Board mails notice of its decision to the taxpayer, unless a petition for rehearing is filed or the Board Chair orders the decision to be held in abeyance within that 30–day period. This section also provides cross references to the more specific finality and petition for rehearing provisions applicable to appeals filed under chapters 3 and 4 of the proposed Rules.

5561 Petition for Rehearing.

This section describes the time period in which the parties to an appeal filed under chapter 2 of the proposed Rules may file petitions for rehearing, and sets forth the four grounds which may form a basis for granting a petition for rehearing. This section provides procedures for filing petitions for rehearing that encourage electronic filing, and describes the Board’s procedures for determining whether petitions for rehearing are timely filed. This section also provides a cross reference to the more specific petition for rehearing provisions applicable to appeals from the actions of the FTB filed under chapter 4 of the proposed Rules. This section does not contain a cross reference to the petition for rehearing provisions applicable to appeals filed under chapter 3 of the proposed Rules becomes decisions on appeals filed under chapter 3 are final and cannot be the subject of a petition for rehearing.

5562 Recommendation on Petition for Rehearing.

This section requires the Appeals Division to submit a recommendation to grant or deny a petition for rehearing to the Board for consideration as a non–appearance matter, requires a copy to be provided to each of the parties, and requires the Chief of Board Proceedings to notify all the parties of the Board’s decision. This section provides that the Board’s prior decision will be held in abeyance pending the outcome of a rehearing, if granted, or will become final 30–days after the Chief of Board Proceedings mails notice of the Board’s decision to deny a rehearing. This section also provides a cross reference to the more specific provisions of chapter 4 of the proposed Rules applicable to decisions on petitions for rehearing filed with regard to appeals from the actions of the FTB.

5563 Rehearings.

This section requires the Chief of Board Proceedings to consult with the Appeals Division to determine an appropriate briefing schedule when a rehearing is granted,

and then inform the parties to the appeal in writing. This section also provides a cross reference to the more specific provisions of chapter 4 of the proposed Rules applicable to rehearings held with regard to appeals from the actions of the FTB.

Article 7: Correspondence, Public Hearing Records, and Copies

5570 Mailing Address.

This section encourages the parties to appeals to file their hearing process correspondence with the Board via electronic means and directs electronic filers to instructions to be provided on the Board's Web site. This section also provides addresses for mailing and hand delivering hearing process correspondence to the Board.

5571 Timeliness of Documents.

This section defines the circumstances under which hearing process correspondence is considered timely filed, provides rules for determining the mailing date of hearing process correspondence, and describes the extension that automatically applies to the deadlines for filing hearing process correspondence when the last day to file falls on a Saturday, Sunday, or holiday.

5572 Hearing Record.

This section provides that the Board's Public Agenda Notices, minutes and transcripts of oral hearings, documents incorporated into the record of oral hearings, and documents to which the waivers described in section 5573 of the proposed Rules apply are disclosable public records. This section also provides general information regarding the Board's preparation and retention of minutes, recordings, and transcripts of oral Board hearings, and provides directions about how to obtain commonly requested copies of hearing minutes and transcripts.

5573 Waiver of Confidentiality.

The Revenue and Taxation Code generally requires the Board and the FTB to keep taxpayer information confidential and prohibits the Board and the FTB from disclosing taxpayer information. This section provides notice to taxpayers that oral Board hearings are generally conducted during open session at public meetings, and that the filing of appeals from the actions of the FTB or requesting oral Board hearings to discuss appeals filed under chapters 2 or 3 of the proposed Rules constitute waivers of the taxpayers rights to confidentiality with regard to specific information relevant to their appeals. This section provides that the waivers apply to all of the information provided to the Board by taxpayers and the FTB as soon as taxpayers file their appeals; and that the waivers only apply to certain information relevant to appeals filed under chapters 2 and 3 of the proposed Rules when the Board issues its first Public Agenda Notice providing notice of the taxpayers' re-

quested oral Board hearings, and may be withdrawn by taxpayers who agree to waive their requests for oral Board hearings prior to the date that such a Public Agenda Notice is issued. The disclosable information relevant to appeals filed under chapter 2 of the proposed Rules, for which waivers are effective, includes: the hearing summaries prepared for taxpayers' oral Board hearings, and any other information actually disclosed on the transcripts of the taxpayers' oral Board hearings. The disclosable information relevant to appeals filed under chapter 3 of the proposed Rules, for waivers are effective, includes: (1) taxpayers' petitions and applications filed under chapter 3 and the documents filed in support thereof; (2) briefs filed in response to or support of the petitions and applications and their supporting documents; (3) the hearing summaries or summary decisions prepared for the taxpayers oral Board hearings; and (4) any other information that is actually disclosed on the transcripts of the taxpayers' oral hearings. This section also contains exceptions providing that the waivers do not apply to information that may be used for identity theft, and information that is only discussed during a closed session conducted under the procedures provided in section 5574 of the proposed Rules.

5574 Request for Portion of Oral Hearing Conducted During Closed Session.

Subdivision (a) of this section explains the Board's authority to conduct portions of oral Board hearings for appeals filed under chapters 2 and 3 of the proposed Rules during closed session, except oral Board hearings for state-assessee appeals regarding the assessment of unitary or non-unitary property, or an electric generation facility. Subdivisions (b) and (e) of this section permit taxpayers to file requests for the Board to conduct portions of their eligible oral Board hearings during a closed session to protect their trade secrets and other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment or oppression within the meaning of Code of Civil Procedure section 2031.060, and prescribe the contents of such requests. Subdivision (c) of this section requires a request to be filed by the due date of the taxpayer's Response to Notice of Board Hearing, and subdivision (d) of this section describes the Board's process for reviewing and deciding requests. Subdivision (e) of this section requires the Board to provide notice of the Board Chair's decision to grant or deny such requests to taxpayers at least 5 days before their deadlines to waive their oral Board hearings and avoid the application of the waiver provisions in section 5573 of the proposed Rules.

5575 Privilege.

This section explains that the taxpayer waivers provided for in section 5573 do not have any effect on the

Board's right to assert the privilege contained in Evidence Code section 952 with regard to communications between the Board's Legal Department or the Attorney General and the Board Members.

5576 Fees: Filing, Transcripts, and Copies.

This section provides notice to taxpayers and the public that the Board does not charge a fee for the filing of documents or the issuance of subpoenas, but does charge statutorily permitted fees to prepare transcripts and copy records.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. Further, the Board has determined that no direct or indirect cost or savings to any state agency or any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, or other non-discretionary costs or savings to any local agencies, or costs or savings in federal funding to the State of California, will result from the proposed regulatory action.

STATEMENT OF EFFECT ON BUSINESS

The Board has made the initial determination required by Government Code section 11346.5, subdivision (a)(8) that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The adoption of the proposed regulatory actions will alter some of Board's internal procedures for hearing appeals, but will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand business in the State of California, nor impact the ability of California businesses to compete with businesses in other states.

The proposed regulation may affect small business.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

SIGNIFICANT EFFECT ON HOUSING COSTS

The Board has made an initial determination that the proposed regulatory actions will not have significant effect on housing costs within the meaning of Government Code section 11346.5, subdivision (a)(12).

FEDERAL REGULATIONS

The proposed regulatory actions are not comparable to existing federal regulations or statutes.

AUTHORITY

The proposed regulatory actions are authorized by California Constitution, article XIII, section 11; Government Code sections 15606, 15640, Public Resources Code sections 42475, 42881, and Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

REFERENCE

The proposed regulatory actions will implement, interpret, or make the following laws more specific: Article XIII, sections 11 and 17 of the California Constitution; Civil Code section 1798.33; Code of Civil Procedure section 657; Evidence Code sections 952, 954; Government Code sections 7.9, 6254, 11120-11132, 15606, 15609, 15609.5, 15610, 15613, 15619, 15623, 15625, 15626, 15640, 15645, 81000-91014; Health and Safety Code section 105310; Public Resources Code sections 42464.6, 42475, 42881; Revenue and Taxation Code sections 20, 110, 214, 251, 254.5, 254.6, 270, 721, 721.5, 722, 724, 725, 731, 732, 733, 734, 741, 742, 743, 744, 746, 747, 748, 749, 758, 759, 833, 1840, 1841, 5107, 5148, 6074, 6456, 6482, 6483, 6512, 6513, 6536, 6538, 6538.5, 6561, 6561.5, 6562, 6592, 6593, 6593.5, 6596, 6814, 6832, 6901, 6902, 6902.3, 6902.4, 6904, 6905, 6906, 6981, 7051, 7056, 7081, 7208, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7674, 7661, 7698, 7700, 7700.5, 7710, 7710.5, 7711, 8101, 8101.2, 8101.6, 8101.7, 8102, 8126, 8128, 8128.1, 8129, 8191, 8251, 8255, 8777, 8778, 8802, 8803, 8826, 8828, 8828.5, 8851, 8851.5, 8852, 8877, 8878, 8878.1, 8878.5, 8879, 9024, 9151, 9152, 9152.1, 9153, 9196, 9251, 9255, 11251, 11291, 11292, 11293, 11352, 11338, 11339, 11340, 11341, 11351, 11352, 11353, 11354, 11651, 11651.5, 11655, 12426, 12428, 12429, 12632, 12636, 12637, 12951, 12977, 12978, 12979, 12980, 12981, 13170, 18533, 19006, 19043.5, 19045, 19047, 19048, 19072, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19542, 19545, 19714, 20645, 30171,

30174, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30202, 30203, 30222, 30223, 30241, 30243, 30243.5, 30261, 30261.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30362.1, 30363, 30364, 30365, 30421, 30451, 30455, 32255, 32256, 32256.5, 32257, 32271, 32291, 32301, 32301.5, 32302, 32311, 32312, 32313, 32401, 32402, 32402.1, 32403, 32404, 32407, 32440, 32451, 32455, 38412, 38413, 38422, 38423, 38431, 38433, 38434, 38435, 38441, 38442, 38443, 38452, 38453, 38454, 38455, 38564, 38601, 38602, 38602.5, 38603, 38604, 38605, 38631, 38701, 38705, 38706, 40072, 40073, 40082, 40083, 40091, 40092, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40112.1, 40113, 40114, 40115, 40121, 40171, 41071, 41072, 41081, 41082, 41085, 41086, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41101.1, 41102, 41103, 41104, 41107, 41128, 43157, 43158, 43158.5, 43159, 43201, 43301, 43302, 43303, 43350, 43351, 43352, 43451, 43452, 43452.1, 43453, 43454, 43491, 43501, 45155, 45156, 45156.5, 45157, 45201, 45301, 45302, 45303, 45351, 45352, 45353, 45651, 45652, 45652.1, 45653, 45654, 45801, 45851, 46156, 46157, 46157.5, 46158, 46201, 46252, 46253, 46301, 46302, 46303, 46351, 46352, 46353, 46454, 46501, 46502, 46503, 46504, 46505, 46551, 46601, 50112.2, 50112.3, 50112.4, 50112.5, 50113, 50114, 50115, 50116, 50120.1, 50120.2, 50120.3, 50139, 50140, 50140.1, 50141, 50142, 50151, 50152, 55001, 55044, 55045, 55046, 55046.5, 55061, 55081, 55082, 55083, 55101, 55102, 55103, 55221, 55222, 55222.1, 55223, 55224, 55281, 55301, 60209, 60210, 60211, 60212, 60302, 60314, 60330, 60332, 60333, 60350, 60351, 60352, 60474, 60501, 60502, 60505, 60505.5, 60506, 60507, 60521, 60522, 60522.1, 60523, 60581, 60601, 60609; Water Code section 1537; and California Code of Regulations, title 18, sections 1702, 1705.1, 1807, 1828.

CONTACT

Questions regarding the substance of the proposed regulatory actions should be directed to Mr. Bradley Heller, (916) 324-2657, email bradley.heller@boe.ca.gov, or by mail to: State Board of Equalization, Attn: Bradley Heller, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notices of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed regulatory action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov, or by mail to: State Board of Equalization, Attn: Diane

Olson, MIC: 80, P.O. Box 942879-0080, Sacramento, CA 94279-0080 by September 11, 2007.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by the Board, or identified and brought to the Board's attention would be more effective in carrying out the purpose for which this regulatory action is proposed, or be as effective and less burdensome to affected private persons than the proposed regulatory action. The Board considered alternative provisions for sections 5326.4, 5523.8, and 5574 of the proposed Rules as described in more detail in the Initial Statement of Reasons, and determined that none of the alternatives would be more effective in carrying out the purposes for which the sections were proposed, or be as effective and less burdensome to affected private persons than the proposed sections.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS

The Board has prepared an Initial Statement of Reasons, and underscore and strike-out versions of the Board's current and proposed regulations showing the Board's proposed regulatory actions. These documents and all information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations are available on the Internet at the Board's Web site, <http://www.boe.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

The Board will prepare the Final Statement of Reasons for the proposed regulatory action in accordance with Government Code section 11346.9 after the Board conducts the public hearing on September 11, 2007. The Final Statement of Reasons will be made available on the Internet at the Board's Web site once it is prepared. The Final Statement of Reasons will also be available for inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the September 11, 2007, hearing, the Board may, in accordance with law, adopt the proposed regulatory actions if the text of the proposed regulations remains substantially the same as described in the text

originally made available to the public. If the Board makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the proposed regulatory action. The text of any modified regulations will be mailed to those interested parties who commented on the proposed regulatory actions orally or in writing or who asked to be informed of such changes. The modified text of regulations will also be available to the public from Ms. Olson. The Board will consider written comments on the modified text of regulation for fifteen days after the date on which the modified text is made available to the public.

TITLE 19. STATE FIRE MARSHALL

NOTICE OF PROPOSED RULEMAKING

OFFICE OF THE STATE FIRE MARSHAL California Code of Regulations Title-19

The State Fire Marshal proposes to adopt the proposed regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PUBLIC HEARING

The State Fire Marshal has not scheduled a public hearing on this proposed action. However, The State Fire Marshal will hold a public hearing if a written request is received from any interested party or their authorized representative no later than 15 days before the end of the 45-day comment period.

WRITTEN COMMENT PERIOD

The State Fire Marshal will accept written comments regarding this regulatory action until 5 pm on September 10, 2007.

Send mailed comments to:

OFFICE OF THE STATE FIRE MARSHAL
Attention: Diane Arend
P.O. Box 944246
Sacramento, CA 94244-2460

Or by e-mail to
ProposedPipelineSafetyFees@fire.ca.gov

Or you may fax your comments to:

Attention: Diane Arend
(916) 445-8459

AUTHORITY & REFERENCE

The State Fire Marshal is proposing this regulatory action pursuant to Government Code Sections: 51019 and 51019.05 with reference to 51010, 51013.5, 51014.5, 51019 and 51010.05, Government Code.

INFORMATIVE DIGEST — POLICY STATEMENT OVERVIEW

The State Fire Marshal proposes to: amend Title 19 CCR, Chapter 14, Section 2040 to address an increase in fees for interstate and intrastate pipeline operators.

Current Law requires the State Fire Marshal to establish and control a program in compliance with federal law relating to hazardous liquid pipeline safety and the regulations adopted pursuant thereto including, but not limited to, compliance orders, penalties, and inspection and maintenance provisions, and including amendments to those laws and regulations.

This proposal amends section 2040. in Chapter 14, Hazardous Liquid Pipeline Safety, Title 19 CCR so the annual fees assessed from pipeline operators will maintain the current level of pipeline safety in the State.

The State Fire Marshal utilized the recommendations of the Pipeline Safety Advisory Committee, discussed the proposed regulation at a pipeline industry workshop in May 2007 and followed the recommendation of an internal agency audit to consider a fee increase to maintain services at the current level. The Western States Petroleum Association (WSPA) was also consulted.

Proposed Title 19 Modified Sections

Section 2040. is being proposed to be amended to address the cost and expenditures that have exceeded income due to increased program operating expenses from inflation, rising personnel costs and pipeline program expansion. The proposed modified fees have not been increased since 1987.

DISCLOSURES REGARDING THE PROPOSED ACTION

The State Fire Marshal has made the following determinations:

1. Mandate on local agencies and school districts: **None**
2. Cost or savings to any State agency: **None**
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code, Section 17561: **None**

4. Other non-discretionary cost or savings imposed upon local agencies: **None**
 5. Cost or savings in federal funding to the State: **None**
 6. Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other States: **None**
 7. Cost impact on representative private persons or affected businesses: The State Fire Marshal is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
- a) create or eliminate jobs within California;
 - b) create new businesses or eliminate existing businesses within California; or
 - c) affect the expansion of businesses currently doing business within California.
8. Significant effect on housing costs: **None**

SMALL BUSINESS EFFECTS

The State Fire Marshal has made the initial determination that the amendments to these regulations will have no substantial effect to small businesses and the State Fire Marshal has not identified any alternatives that would lessen any adverse impact, if any, on small businesses. The State Fire Marshal amendment to these regulations increases the fees assessed for interstate and intrastate pipeline operators and maintains the current level of pipeline safety in the State.

CONSIDERATION OF ALTERNATIVES

The State Fire Marshal must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

The State Fire Marshal invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory action, or requests for copies of the proposed text of the regula-

tions, the initial statement of reasons, the modified text of the regulations, or other information upon which the rulemaking is based may be directed to:

Diane Arend
 P.O. Box 944246
 Sacramento, California 94244-2460
 Telephone: (916) 324-9592
 Fax: (916) 445-8459
 E-mail: diane.arend@fire.ca.gov

Alternate Contact:

Bob Gorham, Chief
 CDF/Office of the State Fire Marshal
 Pipeline Safety Division
 3950 Paramount Blvd. #210
 Lakewood, Ca 90712
 Telephone: (562) 497-9102
 Fax: (562) 497-9104
 E-mail: bob.gorham@fire.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Office of the State Fire Marshal will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, shown above. As of the date this notice is published in the Notice Register the State Fire Marshal rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons for the proposed action. The full text of the regulations, along with the final statement of reasons upon which the changes are based is available from the contact person as shown. Copies may be obtained by contacting Diane Arend at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the 45-day comment period, the State Fire Marshal may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text — with changes indicated — shall be made available to the public for at least 15 days before the State Fire Marshal adopts (amends or repeals) the regulations as revised. Requests for copies of any modified regulations should be sent to Diane Arend at the address indicated above. The State Fire Marshal will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Diane Arend at the above address.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of proposed regulations, highlighted in underline and strikethrough, can be accessed through our web-site at <http://osfm.fire.ca.gov>.

GENERAL PUBLIC INTEREST

**BUREAU OF HOME FURNISHINGS
AND THERMAL INSULATION**

**TITLE 4, DIVISION 3, OF THE CALIFORNIA
CODE OF REGULATIONS 1371
NOTICE OF RESCHEDULED
REGULATORY HEARING**

NOTICE IS HEREBY GIVEN that the Bureau of Home Furnishings & Thermal Insulation has rescheduled the regulatory hearing originally scheduled for July 31, 2007, located at the So. Coast Air Quality management District, Room CC2 regarding proposed regulations (notified by Notice No. Z07-0605-01, Reg. 2007, No. 24-Z, published 6-5-2007).

The new date and location of the regulatory hearing is as follows:

Date of Hearing: Monday, August 6, 2007

Place: So. Coast Air Quality Management District
Room CC2
21865 E. Copley Drive
Diamond Bar, California 91765

Time: 10:00 a.m.

Persons who have previously submitted written comments to the Commission regarding the proposed action need not submit comments again. Any comments previously submitted remain in the rulemaking file. Please note, the hearing scheduled for July 30, 2007, located at DCA, Bureau of Home Furnishings & Thermal Insulation, Conference Room, 3485 Orange Grove Avenue,

Suite A, North Highlands, California remains unchanged.

If you have any questions or comments, you may direct them to:

April Alameda
Compliance Analyst
Bureau of Home Furnishings & Thermal Insulation
3485 Orange Grove Avenue, Suite A
North Highlands, CA 95660
(916) 574-2442
e-mail address: april_alameda@dca.ca.gov

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
Tracking Number 2080-2007-016-06

PROJECT: Blythe Energy Project
LOCATION: Blythe, Riverside County, California
NOTIFIER: Blythe Energy LLC

BACKGROUND

On November 22, 2005 the U.S. Fish and Wildlife Service ("Service") issued Biological Opinion No. 1-6-00-F-1166.2 for the Blythe Power Project, describing the project actions and setting forth measures to mitigate impacts to the desert tortoise (*Gopherus agassizii*) and its habitat. This species is listed as a Threatened Species under the California Endangered Species Act, Fish and Game code section 2050 et seq. ("CESA"). On June 11, 2007, the Director of the Department of Fish and Game ("Department") received a notice from Mr. Gary Palo, seeking a determination on behalf of the project applicant, pursuant to Section 2080.1, that the Federal Biological Opinion is consistent with CESA.

The proposed project would be located entirely within Riverside County, between the Buck Substation west of the City of Blythe and the Julian Hinds Substation near Hayfield, California. Blythe Energy has decided to build the Buck to Julian Hinds component of the proposed Blythe Energy transmission line project. The construction of this component would include:

- Modifications of the Blythe Energy Project interconnection and construction of a new switchyard within the fenced Blythe Energy Project facility.
- Modification of the Julian Hinds substation.

- The development of 6.7 miles of new double circuit, single pole 230 kV, and 60.7 miles of new single pole, single circuit 230 kV transmission paralleling existing D–PV1 500 kV lines that also parallel Interstate 10.

This project would impact 154.7 acres of Category I and III desert tortoise habitat; 119.5 acres within a Desert Wildlife Management Area classified as Category I, and 35.2 acres within Category III habitat (relatively low impact). Approximately 135 acres of critical habitat will be impacted for the desert tortoise.

DETERMINATIONS

The Department has determined that the Federal Biological Opinion No. 1–6–00–F–1166.2 (“Opinion”), which amends a previous Federal Biological Opinion (FWS 1–6–01–F–1166.2), is consistent with CESA because the project and measures described in the Opinion meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) for authorization of incidental take of species protected under CESA. The Opinion’s measures to mitigate project impacts to the desert tortoise include:

- The compensation of lost tortoise habitat in Category I habitat at a 5:1 replacement: loss ratio (597.5 acres) and Category III habitat at a 1:1 replacement: loss ratio (35.2 acres) in the Chuckwalla Desert Wildlife Management Area, for a total of 632.7 acres, plus a management endowment and enhancement fee to the Department for the compensation lands;
- The on–site biological supervision and monitoring conducted by a qualified biologist to minimize harm and harassment of desert tortoises during all project–related activities;
- The handling of tortoises only using procedures described in *Guidelines for Handling Desert Tortoises During Construction Projects* (DTC 1994, revised 1996).

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of the desert tortoise in carrying out the project, provided the project constructed remains as it is described in the Opinion. If the project, including the mitigation measures therein, changes after the date of the Opinion, or if USFWS amends or replaces the BO, a new consistency determination (in accordance with Fish and Game Code Section 2080.1) or

a separate incidental take permit (in accordance with Fish and Game Code section 2081) from DFG will be required.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice

For Publication July 27, 2007

CESA CONSISTENCY DETERMINATION FOR
Contra Costa Water District Alternative
Intake Project
Contra Costa and San Joaquin Counties

The Department of Fish and Game (“Department”) received a notice on July 6, 2007 that the Contra Costa Water District (“CCWD”) proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (“CESA”). This project consists of the construction and operation of: a new intake facility along the lower third of Victoria Canal on Victoria Island in the central Delta, and a new pipeline from the intake facility to the existing Old River conveyance system.

The U.S. Fish and Wildlife Service, on May 16, 2007, issued to the U.S. Bureau of Reclamation (“BOR”) a no jeopardy federal biological opinion (1–1–07–F–0179) which considers the Federally and State threatened giant garter snake (*Thamnophis gigas*) and Delta smelt (*Hypomesus transpacificus*), and authorizes incidental take of the species and their habitats. The National Marine Fisheries Service, on July 13, 2007, Issued to the BOR a no jeopardy federal biological opinion (151422SWR2005SA20268) which considers the Federally and State endangered winter–run Chinook salmon (*Oncorhynchus tshawytscha*) and the Federally and State threatened spring–run Chinook salmon (*O. tshawytscha*), and authorizes incidental take of the species and their habitats.

Pursuant to California Fish and Game Code Section 2080.1, the CCWD is requesting a determination that federal biological opinions 1–1–07–F–0179 and 151422SWR2005SA20268 are consistent with CESA. If the Department determines that the federal biological opinions are consistent with CESA, the CCWD will not be required to obtain an incidental take permit under Fish and Game Code Section 2081 for the proposed project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice

For Publication July 27, 2007

**CESA CONSISTENCY DETERMINATION FOR
Indian Creek Rehabilitation Site: Trinity
River Mile 93.7 to 96.5
Trinity County**

The Department of Fish and Game (“Department”) received notice on July 17, 2007 that the Trinity County Planning Department (“County”) proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (“CESA”). This project consists of the rehabilitation of 2.8 miles of the Trinity River in order to improve salmonids habitat and reduce impacts to adjacent private landowners from high fishery flow releases in Trinity County. The proposed project will cross Haehl, Baechtel, Broaddus, and Mill creeks.

The National Marine Fisheries Service (“NMFS”) issued a no jeopardy federal biological opinion (151422SWR2000AR8271:FR) to the U.S. Fish and Wildlife Service and the U.S. Bureau of Reclamation on October 12, 2000 which authorizes incidental take of the federally and state threatened Southern Oregon/Northern California Coast ESU Coho Salmon (*Oncorhynchus kisutch*).

Pursuant to California Fish and Game Code Section 2080.1, the County is requesting a determination that biological opinion 151422SWR2000AR8271:FR is consistent with CESA. If the Department determines that the federal biological opinion is consistent, the County will not be required to obtain a separate incidental take permit under Fish and Game Code section 2081 for the project.

DEPARTMENT OF FISH AND GAME

**CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
CESA No. 2080–2007–015–02**

PROJECT: Natomas Cross Canal Phase I Levee
Improvements
LOCATION: Sutter County
NOTIFIER: EDAW Inc.
APPLICANT: Sacramento Area Flood Control
Agency (SAFCA)

BACKGROUND

As part of its overall effort to improve the integrity of the levee system protecting Sacramento area residents

from flooding, the Sacramento Area Flood Control Agency (SAFCA) proposes to construct a levee seepage “cutoff wall” through the levee crown in the westerly 9,700 feet of the Natomas Cross Canal (NCC) south levee and along 500 feet of the Sacramento River east levee immediately south of the NCC. This proposed project (project) is designed to remediate through-seepage and under-seepage conditions for this portion of levee, which is presently vulnerable to flooding in a less than 100-year flood event. Construction and restoration activities are expected to begin in early July, 2007 and be completed by October 1, 2007.

The project site will be limited to an area of temporary ground disturbance that includes: the upper ten feet of the waterside slope for two-thirds of the project’s distance; the levee crown area; the landside levee slope; the maintenance corridor along the landside levee toe; and areas between the landside levee toe maintenance corridor and the adjacent agricultural areas which will be used for construction staging and temporary stockpiling.

Suitable upland giant garter snake (*Thamnophis gigas*; “GGS”) habitat exists on-site within the areas described above. These features were determined to be upland GGS habitat because the project is adjacent to known aquatic habitat (irrigation and drainage canals), which will be avoided, and there are 13 known GGS records which have been reported within five miles of the project site. Because of the presence of on-site suitable upland habitat, the GGS is reasonably certain to occur within the project location, and the potential exists for take of GGS. Project construction will temporarily affect 27.3 acres of upland GGS habitat; however, after completion of construction activities SAFCA will restore vegetation at the project site such that the quality of upland habitat is enhanced beyond pre-project conditions. Additionally, construction of the project and restoration activities will be completed within one season, thereby minimizing temporal impacts to GGS.

Because of the project’s potential for take of the federally threatened GGS, the U.S. Army Corps of Engineers consulted with the U.S. Fish and Wildlife Service (Service), as required by the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). On June 1, 2007, the Service issued Biological Opinion No. 1–1–07–F–0207 for the Natomas Cross Canal Phase I Levee Improvements Project, describing the project actions and setting forth measures to mitigate impacts to GGS and its habitat. On June 18, 2007 the Service amended the Biological Opinion (No. 1–1–07–F–0231) to clarify the requirements of the on-site restoration activities. Because GGS is also listed as a threatened species under the California Endangered Species Act (CESA) (Fish and Game Code Section 2050 et seq.), on June 5, 2007, EDAW Inc (representing

SAFCA) notified the Director of the Department of Fish and Game (DFG) requesting a determination pursuant to Fish and Game Code Section 2080.1 that the Biological Opinion, as amended, and associated Incidental Take Statement is consistent with CESA.

DETERMINATION

DFG has determined that the Biological Opinion, as amended, including its Incidental Take Statement is consistent with CESA because the mitigation measures contained therein meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) for authorization of incidental take of species protected under CESA. Specifically, DFG finds that the measures identified in the Biological Opinion will minimize and fully mitigate the project’s potential impacts to GGS. These measures include, but are not limited to, the following:

1. Construction will occur between May 1 and October 1 of one construction season when GGS are more active and are therefore more able to avoid danger.
2. SAFCA will implement a worker awareness training program for construction personnel, which will be conducted by a qualified biologist prior to commencement of construction activities. The program will inform construction personnel about the life history and status of GGS, the need to avoid damaging suitable GGS habitat, and the need to avoid harm or mortality of GGS.
3. Prior to initiating construction activities, SAFCA will erect high-visibility fencing to protect all aquatic habitat from encroachment. SAFCA shall inspect the fence daily and maintain it for the duration of construction activities. Construction personnel shall avoid fenced areas.
4. Prior to the initiation of construction activities, an on-site monitoring biologist shall survey the project site for GGS. The on-site monitoring biologist shall also be present during initial ground disturbance activities, including clearing and grubbing, and will conduct a site visit at least once per week to ensure implementation of avoidance and minimization measures.
5. Upon completion of construction activities, SAFCA shall restore all areas disturbed by the project to better than pre-project conditions by replanting and hydro-seeding with a specifically selected seed mix any disturbed soil surfaces to prevent erosion, in accordance with item 4. c. of the U.S. Fish and Wildlife Service’s *Guidelines for Restoration and/or Replacement of Giant Garter Snake Habitat*.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of GGS for the project, provided SAFCA implements the project as described in the Biological Opinion, as amended, and complies with the mitigation measures and other conditions described therein. If there are any substantive changes to the project, including changes to the mitigation measures, or if the Service amends or replaces the Biological Opinion, SAFCA will be required to obtain a new consistency determination or a CESA incidental take permit (in accordance with Fish and Game Code section 2081) from DFG.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
Tracking Number 2080–2007–011–05

PROJECT: Otay Mesa Energy Center
 LOCATION: San Diego County
 NOTIFIER: Ed Merrihew, Otay Mesa Energy Center LLC

BACKGROUND

The proposed action is the construction of an electric generating facility in the Otay Mesa area of southwest San Diego County, California. The project is a natural gas-fired, combined cycle, nominally rated 510 MW power plant. In addition to the power plant site, the project includes upgrades to existing electrical lines, and construction of a new 230 kV electrical transmission line, a natural gas supply line, a wastewater discharge line, and access roads. Project components completed within the power plant site include: mass and precise grading, storm drain system, two siltation/detention basins, irrigated landscaping on the exposed slopes, and fencing.

The action was originally designed to avoid impacts to Otay tarplant (*Deinandra conjugens*, formerly *Hemizonia conjugens*). The original project, for which the Department of Fish and Game (“Department”) issued Consistency Determination 2080–2003–023–05, proposed tunneling beneath all known historic locations of this annual plant within the project footprint. However, updated engineering analysis identified the need to trench, rather than tunnel, in three locations and the modified project will result in direct impacts to six Otay tarplant individuals along the proposed pipeline route. Otay tarplant is listed as endangered under the California Endangered Species Act, Fish and Game Code 2050, *et seq.* (“CESA”) and threatened under the federal Endangered Species Act.

On December 2, 2005, the U.S. Fish and Wildlife Service (“Service”) issued a Biological Opinion (“BO”), File #1–6–06–F–783, for the Otay Mesa Energy Center (formerly the Calpine Corporation–Otay Mesa Generating Project) located in San Diego County, California, to address project changes since the original opinion, describe the project actions, and set forth measures to mitigate impacts to the *Deinandra conjugens* and its habitat. These measures included direct acquisition and in–perpetuity management of off–site habitat for the species. On January 6, 2006, the Department issued Consistency Determination 2080–2005–039–05 for the updated project.

On March 28, 2007, the Service amended the BO to allow the Applicant the choice of either directly acquiring off–site habitat or providing funds to the Friends of the San Diego National Wildlife Refuge (“Friends”), which would be used to acquire and manage mitigation habitat. The Amended BO requires that the Service, the Department, and the United States Army Corps of Engineers review and approve any habitat acquired by either the Applicant or the Friends in order to certify that the acquisitions fulfill or exceed the requirements of the BO and other permits/approvals as applicable. On June 5, 2007, the Director of the Department received a notice from Mr. Edward Merrihew of Otay Mesa Energy Center LLC seeking a determination pursuant to section 2080.1 of the Fish and Game Code that the amended BO is consistent with CESA.

DETERMINATION

After reviewing the above–referenced amended BO and other relevant documents, the Department has determined that BO #1–6–05–F–783, as amended, is consistent with CESA because the project and mitigation measures meet the conditions set forth in Fish and Game Code section 2081(b) and (c) for authorization of incidental take of species protected under CESA. Measures incorporated into the project and described in the federal biological opinion include, but are not limited to, the following elements.

- Temporary impacts to 0.25 acre of occupied Otay tarplant habitat will be mitigated off–site at a 3:1 ratio (0.75 acre requirement), and permanent impacts to 0.47 acre of potential Otay tarplant habitat will be mitigated off–site at a 2:1 ratio (0.94 acre requirement). The total off–site acquisition required for Otay tarplant is 1.69 acres. The acquired land will occur within U.S. Fish and Wildlife Service designated Otay tarplant critical habitat.

- The off–site habitat acquired will support a minimum of eighteen (18) Otay tarplant individuals; or, if no Otay tarplant individuals occur within the acquired parcel(s), a revegetation plan detailing the methods that will be used to establish at least eighteen Otay tarplants within the preserved habitat will be developed and implemented.

Pursuant to section 2080.1 of the Fish and Game Code, incidental take authorization under CESA will not be required for incidental take of *Deinandra conjugens* as a result of the project. Any substantive changes to the project as described in the biological opinion, including changes to the mitigation measures, will require the notifier to obtain a new consistency determination or a CESA incidental take permit from the Department.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice

For Publication July 27, 2007
CESA CONSISTENCY DETERMINATION FOR
Tisdale Bypass Channel Rehabilitation Project
Sutter County

The Department of Fish and Game (“Department”) received a notice on July 10, 2007 that the Department of Water Resources (“DWR”) proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (“CESA”). This project consists of the removal of approximately 2 million cubic yards of sediment from Tisdale Bypass, a flood control structure in Sutter County. Project activities will result in impacts to approximately 34.28 acres of upland habitat and 1.05 acres of aquatic habitat suitable for the giant garter snake (*Thamnophis gigas*), and could result in mortality of individuals of the species.

The U.S. Fish and Wildlife Service (“Service”) issued a “no jeopardy” federal biological opinion (1–1–07–F–0164) to the U.S. Army Corps of Engineers (“Corps”) on May 18, 2007 which considers the Project’s impacts on the Federally and State threatened giant garter snake and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, DWR is requesting a determination that federal biological opinion 1–1–07–F–0164 is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, DWR will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the project.

**DEPARTMENT OF HEALTH
CARE SERVICES**

NOTICE OF GENERAL PUBLIC INTEREST

**THE CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES WILL ADOPT
REVISED BILLING CODES FOR MEDI-CAL
PROGRAM 2007 CURRENT PROCEDURAL
TERMINOLOGY — 4TH EDITION (CPT-4)
AND 2007 HEALTHCARE COMMON
PROCEDURE CODING SYSTEM
(HCPCS) LEVEL II**

Effective for dates of service on or after August 1, 2007, the California Department of Health Care Services (DHCS) will adopt the 2007 Healthcare Common Procedure Coding System (HCPCS) Update, including the 2007 Current Procedural Terminology — 4th Edition (CPT-4), and the 2007 HCPCS Level II codes and modifiers. DHCS will establish specific reimbursement rates as follows:

- The maximum reimbursement for durable medical equipment using the updated billing codes, except wheelchairs and wheelchair accessories, will be established at an amount not to exceed 80 percent of the 2007 Medicare rates. Reimbursement for wheelchair and wheelchair accessories will be established at an amount not to exceed 100 percent of the 2007 Medicare rates (Welfare and Institutions Code section 14105.48).
- The maximum reimbursement for orthotic and prosthetic appliances and clinical laboratory services using the updated billing codes will be established at an amount not to exceed 80 percent of the 2007 Medicare rates (Welfare and Institutions Code sections 14105.21 and 14105.22).
- Maximum reimbursement for physician services, including surgical procedures, using the updated billing codes will be established at an amount not to exceed 80 percent of the 2007 Medicare rate for the same service.

These proposed changes will impact the following provider categories:

- Clinical laboratories
- Durable medical equipment
- Hospital outpatient departments and clinics
- Long-term care facilities
- Ground medical transportation
- Other outpatient clinics
- Optometrists
- Orthotists and prosthetists
- Pharmacies/pharmacists
- Physicians
- Podiatrists
- Providers of services under the California Children's Services/Genetically Handicapped Persons Program

PUBLIC REVIEW

The proposed changes are available for public review at local county welfare offices throughout California. Written comments must be submitted within 45 days from the publication date of these changes in the California Regulatory Notice Register. All comments should include the author's name, organization or affiliation, phone number and Provider ID number, if appropriate. Members of the public may request the proposed list of billing codes, and proposed reimbursement rates under the 2007 HCPCS Update from, and submit comments to:

Kathleen Menda, Chief
Professional Provider Unit
California Department of Health Care Services
1501 Capitol Avenue
MS 4612
P.O. Box 997417
Sacramento, CA 95899-1417

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(Proposition 65)**

**NOTICE TO INTERESTED PARTIES
July 27, 2007**

**EXTENSION OF THE PUBLIC COMMENT
PERIOD ON PROPOSED LISTING OF GALLIUM
ARSENIDE AS KNOWN TO CAUSE CANCER
AND HEXAFLUOROACETONE, NITROUS
OXIDE AND VINYL CYCLOHEXENE DIOXIDE
AS KNOWN TO CAUSE REPRODUCTIVE
TOXICITY**

[Notice was posted on the OEHHA web site
on July 17, 2007]

On June 15, 2007 the Office of Environmental Health Hazard Assessment (OEHHA) published a notice in the California Regulatory Notice Register (Register No. 2007, 24-Z) announcing its proposal to add *gallium arsenide* [CAS No. 1303-00-0] to the list of chemicals known to the state to cause cancer, and *hexafluoroacetone* [CAS No. 684-16-2], *nitrous oxide* [CAS No. 10024-97-2] and *vinyl cyclohexene dioxide* [CAS No. 106-87-6] to the list of chemicals known to the state to cause reproductive toxicity, for the purposes of Proposition 65. The June 15 notice announced a July 16, 2007 public workshop and initiated a 30-day public comment period which was scheduled to close on July 16, 2007. OEHHA received a request to extend the comment period to allow for the submittal of relevant information. OEHHA hereby extends the public com-

ment period to 5 p.m., Wednesday, August 15, 2007. An announcement of the extension was made at the July 16, 2007 workshop.

Written comments in triplicate, along with any supporting documentation, may be submitted to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Street Address: 1001 I Street, MS-19B
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900
coshita@oehha.ca.gov

Comments may also be delivered in person or by courier to the above address. In order to be considered, comments must be received at OEHHA by 5:00 p.m. on Wednesday, August 15, 2007.

**REQUEST FOR GOVERNOR'S
OFFICE REVIEW OF
OAL DECISION**

BOARD OF EQUALIZATION

**REQUEST FOR GOVERNOR'S OFFICE
REVIEW
OF OAL DECISION
(Pursuant to Government Code section 11349.5)**

On June 18, 2007, the Board of Equalization requested a review by the Governor's Office of a decision made by the Office of Administrative Law disapproving the Board's regulations concerning Petroleum Refining Property. (Summary of Disapproval Decision published in the June 22, 2007 edition of the California Regulatory Notice Register, 2007, 25-Z, p. 1092.)

Pursuant to Government Code section 11349.5, the Board's request to the Governor's Office, OAL's Response, and the Governor's Office decision are being published.

**BOARD OF EQUALIZATION'S
REQUEST FOR REVIEW**

June 18, 2007

Ms. Andrea Lynn Hoch
Legal Affairs Secretary
Office of the Governor
State Capitol
Sacramento, CA 95814

**Re: *Appeal of OAL Decision of Disapproval
07-0427-04SR***

***Title 18 California Code of Regulations
Proposed Section 474 "Petroleum Refining
Property"***

Dear Ms. Hoch:

This is a written request, pursuant to Government Code¹ section 11349.5, subdivision (a), for review of a denial by the Office of Administrative Law (OAL) to adopt section 474 to title 18 of the California Code of Regulations (hereinafter referred to as proposed rule 474 or the proposed rule) submitted by the Board of Equalization (BOE) (the regulatory action). The BOE respectfully requests that OAL's denial be overruled since the BOE fully complied with all the requirements set forth in the California Administrative Procedures Act (APA) (Gov. Code, §§ 11340, et seq.), and since the intent of the Legislature in creating the OAL was that it should not "substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations." (Gov. Code, § 11340.1, subd. (a).)

I. History

The Board of Equalization originally submitted the proposed Rule 474 to the Office of Administrative Law on December 26, 2006, after fully complying with the APA. The Board of Equalization withdrew the proposed rule on February 8, 2007 before the Office of Administrative Law took action on the filing. On April 27, 2007, the Board of Equalization resubmitted the regulatory action to the Office of Administrative Law. This resubmission incorporated the prior rulemaking file by reference. The only change in the resubmission from the prior rulemaking file was one minor deletion from the reference citations for section 474.

On June 8, 2007, the Office of Administrative Law disapproved the regulatory action alleging that the Initial Statement of Reasons (ISOR) was deficient for lack of stating the necessity for the regulation.

¹ All further section references are to the Government Code unless otherwise specified.

II. The BOE Complied Fully with the APA, Including Stating the Necessity for the Proposed Rule in its Initial Statement of Reasons

The adoption of regulations by a state agency must satisfy requirements established by the APA and is subject to OAL review for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in section 11349.1. However, in performing its 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.

Section 11349.1, subdivision (a)(1) requires proposed regulations to meet a "necessity" standard, stating that:

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.* (Emphasis added.)

Section 11346.2, subdivision (b)(1) requires every agency to submit to OAL an initial statement of reasons for proposing the adoption of the regulation which must include, among other items, "a statement of the specific purpose of each adoption . . . and the rationale for the determination by the agency that each adoption . . . is reasonably necessary to carry out the purpose for which it is proposed."

In this case, the ISOR submitted with the regulation is adequate as drafted, particularly when read in conjunction with the draft rule, which was provided to the interested parties concurrently with the ISOR. The ISOR states that "The Board of Equalization proposes to adopt Rule 474 to clarify and make specific certain specialized appraisal techniques for the valuation of real property, personal property, and fixtures used to refine petroleum." Rule 474 also clearly and explicitly states the rule's necessity: "The unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1 and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section."²

Thus, the ISOR states the purpose for the rule (i.e., implement special rules for valuing petroleum refinery property) and also states (1) the Constitutional neces-

² The text of the proposed rule goes on, of course, to state the specialized appraisal techniques in detail.

sity for fair market value assessment and the concurrent necessity that an appropriate appraisal unit be utilized; and (2) the resulting necessity to adopt the rule to clarify and make specific certain specialized appraisal techniques for valuing petroleum refinery property, which “special appraisal” provisions are expressly stated (i.e., to “establish a rebuttable presumption for purposes of recognizing declines in value that fixtures and machinery and equipment classified as improvements for petroleum refining property are part of the same appraised unit as the land and structures”). Not only are the rule’s express terms included in the ISOR, but such terms remain unchanged and unmodified in the proposed rule text up to the present date.

Furthermore, as recognized by OAL itself, the ISOR is required by the APA in order to provide the public with an opportunity to review and comment upon an agency’s perceived need for a regulation. (Disap. Dec. 07–0427–04 SR, p. 2.) Thus, an ISOR is designed to be an initial brief statement that puts the public on notice of the subject matter that the agency intends to address in the proposed rulemaking. And it may be supplemented with the Final Statement of Reasons (FSOR), if necessary. (Gov. Code, § 11346.9, subd. (a)(1).) This is consistent with the statutory scheme requiring that a determination of “necessity” be made *taking into account the totality of the record*. (Gov. Code, § 11349.1, subd. (a).)

Public participation during the rulemaking process clearly demonstrates that adequate public notice was provided and that there was no confusion as to the subject matter of proposed Rule 474. Oral and/or written comments were received by, among others, Los Angeles County Assessor and former President of the California Assessors’ Association Rick Auerbach, Contra Costa County Assessor Gus Kramer, Deputy Sacramento County Counsel Thomas Parker representing Sacramento County and the California Assessors’ Association, the Western States Petroleum Association, the California Chamber of Commerce, the California Manufacturers and Technology Association, and the California Taxpayer’s Association. Collectively, these participants represent the bulk of the parties that would be interested in proposed Rule 474, representing both the government’s and taxpayer’s interests.

The comments clearly demonstrate that the interested parties — assessors and petroleum refiners alike — clearly recognized that the proposed rule was premised upon a need to consistently value refineries as single integrated units for property tax purposes, which would have the general effect of raising the annual property taxes of refineries in the State of California. This statement can be confirmed by a review of the Rulemaking File, particularly with respect to the interested parties’ comments and letters.

Therefore, the ISOR meets the requirement of putting the public on notice as well as stating the necessity for the proposed rule. However, even if it does not sufficiently state proposed Rule 474’s necessity, as OAL alleges, the totality of the record clearly establishes the proposed section’s need, and thus the requirements of the APA have been met. This is especially true since OAL has never asserted that either the FSOR, or the remainder of the rulemaking record, is deficient in stating the necessity of the proposed section, or in any other way.

Since the ISOR, as well as the totality of the record, clearly demonstrates the need for proposed section 474, OAL’s disapproval determination should be overruled.³

III. Even if the ISOR was not Sufficient as Drafted, the APA Allows Nonsubstantive Changes to the ISOR Without a 15–day Comment Period or Readoption by the State Agency

In addition to OAL’s erroneous determination that proposed section 474’s ISOR is inadequate, OAL also makes an erroneous legal determination as to the procedures required by the APA upon supplementing an ISOR.

OAL states that:

In that the 45–day comment period had already been completed, Board staff were advised by OAL in early February, prior to the withdrawal of the original submission of this rulemaking, that the defect could be remedied by making the information required to be contained in the Initial Statement of Reasons available to the public for a 15–day written comment period pursuant to sections 11346.8(d) and 11347.1 of the Government Code. . . . In the event any comments are received by the agency on the documents during the 15–day comment period, Government Code section 11346.8(a) would require that the comments be considered by the agency prior to adoption. (Disap. Dec. 07–0427–04 SR, p. 3.)

OAL cites section 11346.8, subdivision (d), as authority for the requirement that a change to the ISOR

³ We note, in passing, that OAL does not seem to be consistent in its approach to ISORs and the need for a detailed statement of necessity. To offer just one example out of many, take Regulations 45000, et seq., of the Board’s Cigarette and Tobacco Products Tax Regulations, effective April 2007. The ISOR of those regulations contain such “statements of necessity” as: (1) “This regulation is necessary to provide guidance to persons affected by the Act;” and (2) “The level of specificity in the regulation is provided to assist the understanding of the person from whom product may be seized.” The apparently lenient standard applied by OAL to the Cigarette regulations vis-à-vis the rigorous standard applied to Rule 474 raises the question: why is Rule 474 being given harsher treatment and greater scrutiny than other regulations?

must be made available for a 15–day comment period. However, that subdivision can not reasonably be read to apply in this situation. Section 11346.8, subdivision (d) provides that:

No state agency shall add any material to the record of rulemaking proceeding after the close of the public hearing or comment period, unless the agency complies with Section 11347.1. *This subdivision does not apply to material prepared pursuant to Section 11346.9.* (Emphasis added.)

Section 11346.9 requires an agency to submit a FSOR with the rulemaking record when submitting a regulation for review. That section also allows changes to the ISOR to be made when submitting the FSOR. Section 11346.9, subdivision (a)(1) allows changes to the ISOR — but only requires a 15–day comment period (as provided for in section 11347.1) — when an update to the ISOR:

[I]dentifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption, amendment, or repeal of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period. . . . (Emphasis added.)

These provisions make clear that an ISOR can be amended with the FSOR, and that a 15–day comment period is required only when a substantive change to the ISOR is made. Significantly, in permitting such augmentation, the statutes do not impose a requirement for either a new adoption vote or new public hearing to consider the augmenting information. Rather, the interested parties need only be given notice and an opportunity to comment on augmenting materials, and the agency must respond to any comments received in an updated FSOR.

We also note that no additional information that would require a 15–day comment period is being required to be added by OAL, nor has BOE proposed to add this type of information. Thus, in this case, even if BOE amended the ISOR to buttress the necessity statement, no 15–day comment period would be required since the change could be made with the submission of the Final Statement of Reason or FSOR and any change would not be substantive. It would merely be restating the reasons for necessity already contained in the ISOR and the total rulemaking record.

Furthermore, OAL’s construction of the APA ignores subdivision (c) of section 11346.8 which provides that “[n]o 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.*” (Emphasis added.)

OAL also ignores Government Code section 11349.4, subdivision (a) which specifies that, even after an initial denial by OAL, re adoption by an agency is required *only if* an agency makes a significant substantive change to the text of the rule itself (or if a resubmittal is not made within 120 days of the written denial). Thus, the APA allows changes even to the regulation itself as long as the change is nonsubstantial or does not substantively change the regulation. By adding the requirement of a 15–day comment period and re adoption for a non-substantive change to an ISOR, OAL is exceeding its statutory authority and placing burdens upon state agencies not contemplated by the APA. We note again that in this case, there has been *no* change to the rule text (save the nonsubstantial reference removal).

In your review, we would urge you to closely read *Californians for Safe Prescriptions v. California State Board of Pharmacy* (1993) 19 Cal. App. 4th 1136. In that case, after regulations were rejected by OAL, the agency amended the regulations without holding another public hearing; litigation ensued. The court backed the agency, however, and rejected OAL’s arguments, finding that an agency may rewrite and resubmit regulations without complying with the notice and public hearing requirements of the Administrative Procedure Act, unless substantive provisions of the regulations have been significantly changed. In finding that the amended regulations resubmitted to OAL did not contain significant changes as alleged by appellant, the court of appeal held that no new public hearing was required: “*All of [appellant’s] contentions are without merit as appellant either misconstrues the regulations or fails to acknowledge that the issues raised by the amendments were in fact addressed at the public hearing and the amendments thus could have been anticipated from the existing record of the originally proposed regulatory action and the public hearing thereon . . . Pursuant to Government Code section 11346.8 and 11349.4(a), taken together, such an additional public hearing was only required if there was a substantive change to the regulation which was not sufficiently related to the original text of the regulation that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.*” In other words, even an otherwise post–public hearing substantive change to regulatory text need not be subject to a second public hearing if the circumstances indicate that the public was placed on notice that such a change might be forthcoming. In this case, we note that:

- (a) The public was given adequate notice of the purpose and content of the proposed rulemaking in the ISOR, and both the necessity for the proposed rulemaking and the proposed special appraisal techniques were explicitly stated in the proposed rule that was distributed with the ISOR. Any post-adoption amendment to the ISOR adding a necessity section would be repetitive and unnecessarily duplicative;
- (b) The substance of the proposed enhanced "statement of necessity" that OAL asserts must be added to an amended ISOR could have been (and in fact was) anticipated by the public, as evidenced by the number and substance of the public comments, both from parties supporting and opposing the rule;
- (c) The ISOR could be amended as OAL initially proposed without substantially or significantly changing the rule in any way; and
- (d) The substance of the rule was not changed between initial publication and final adoption.

In communications with an OAL attorney, that attorney expressed a concern that a finding that the Board's ISOR was adequate in this case would establish a precedent that a "state agency [would be] free to completely withhold its reasons for a particular regulation from the initial statement of reasons and thereby the public and wait until after the public comment period is over to provide its reasons in the final statement of reasons which is not made available to the public for comment." We note, however, that this statement lacks persuasiveness as it obviously is inapplicable here as the text of the rule itself contains an express statement of the necessity for the rule. Furthermore, as explained above, all parties were on notice as to the stated necessity of the Rule; and finally, the Board of Equalization acted in good faith, following well-established procedures in a manner consistent with OAL's acceptance of prior proposed rules. Thus, it cannot logically or sincerely be stated here that the Board was or is in any way withholding any information from the public.

IV. Conclusion

In conclusion, we respectfully request that OAL's disapproval of proposed section 474 be overruled. In particular, we urge that you overrule OAL's decision with respect to the asserted requirement of a readoption of the Rule if the Board decides to amend the ISOR. This part of the decision, in particular, is completely unsupported and stands in opposition to both the statutes and the case law. The ISOR, as well as the rulemaking record, clearly indicate compliance with all provisions of the APA, including the need to state and give notice of the necessity for the proposed rule. Further, OAL, in

requiring a 15-day comment period and Board readoption in response to comments to a nonsubstantive change to an ISOR, burdens state agencies with requirements not found in any statutory or judicial authority. Allowing the OAL such wide latitude sets a dangerous precedent, exceeds the OAL's statutory mandate, and usurps the legislature's authority.

If you have any questions, please call me at 916.324.6593.

Sincerely,

/s/

Robert Lambert
Acting Assistant Chief Counsel

RL:jlh
Rules/474/07/Appeal to OAL.474.doc
Enclosures

cc: Susan Lapsley
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339

Mr. Ramon Hirsig (MIC:73)
Ms. Kristine Cazadd (MIC:83)
Mr. David Gau (MIC:63)
Mr. Dean Kinnee (MIC:64)
Mr. Todd Gilman (MIC:70)
Ms. Diane Olson (MIC:80)

**OFFICE OF ADMINISTRATIVE
LAW'S RESPONSE**

OFFICE OF ADMINISTRATIVE LAW
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

SUSAN LAPSLEY
Director

VIA HAND DELIVERY

June 25, 2007

Ms. Andrea Lynn Hoch
Legal Affairs Secretary
Office of the Governor
State Capitol
Sacramento, California 95814

Re: Request for Review of OAL Decision of Disapproval 07-0427-04SR Title 18 California Code of Regulations Proposed Section 474 "Petroleum Refining Property"

Dear Ms. Hoch:

Enclosed please find the original response to the above referenced matter, pursuant to Government Code section 11349.5.

If you have any questions, please contact me at 916-323-6808.

Sincerely,

/s/

Craig S. Tarpenning
Senior Counsel

Cc: Ramon Hirsig
Executive Director

Robert Lambert
Acting Assistant Chief Counsel

Ms. Diane Olson

Enclosures

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW

In re:

BOARD OF EQUALIZATION

REGULATORY ACTION:

Title 18, California Code of Regulations

ADOPT SECTION 474

RESPONSE TO REQUEST

FOR REVIEW OF OAL

DECISION OF DISAPPROVAL

OF REGULATORY ACTION

(Gov. Code, sec. 11349.5)

OAL File No. 07-0427-04 SR

I. BACKGROUND OF THE REQUEST
FOR REVIEW

The Board of Equalization's proposed regulatory action seeks to adopt section 474 to title 18 of the California Code of Regulations. Proposed section 474 defines "petroleum refining property" and establishes a rebuttable presumption, for purposes of recognizing declines in value for such property, that land, improvement, and fixtures and other machinery and equipment classified as improvements constitute one appraisal unit, except when measuring declines in value caused by disaster, in which case the land constitutes a separate appraisal unit.

The proposed regulatory action was originally submitted by the Board of Equalization (Board) to the Of-

fice of Administrative Law (OAL) on December 26, 2006. It was subsequently withdrawn by the Board on February 8, 2007 before OAL took any action on the filing. On April 27, 2007, the Board resubmitted the regulatory action to OAL. This resubmission incorporated the prior rulemaking file by reference. The only change in the resubmission from the prior rulemaking file was one minor deletion from the reference citations for section 474. On June 8, 2007, OAL disapproved the above referenced regulatory action because the Initial Statement of Reasons failed to provide the public with the rationale for the determination by the agency that the provisions in section 474 are needed to carry out the purpose for which it is proposed.

On June 18, 2007, the Board of Equalization filed a written request for review with the Governor's Legal Affairs Secretary of this disapproval pursuant to Government Code section 11349.5, subdivision (a) claiming the disapproval should be overruled because: (1) the Board fully complied with all APA requirements; and (2) the intent of the Legislature in creating OAL was that OAL should not substitute its judgment for that of the agency as expressed in the substantive content of proposed regulations.

In this case, OAL has not attempted to in any way substitute its judgment for that of the agency as to the substantive content of the proposed regulations. Rather, OAL has told the Board that they have not fully complied with the rulemaking requirements of the APA for the proposed regulation. Specifically, they must make their explanation for the need for the proposed regulatory provisions available to the public for comment prior to their adoption as a regulation.

II. THE KEY ISSUE FOR REVIEW IS
WHETHER A STATE AGENCY MUST MAKE ITS
EXPLANATION OF THE NEED FOR PROPOSED
REGULATORY PROVISIONS AVAILABLE TO
THE PUBLIC FOR COMMENT PRIOR TO THEIR
ADOPTION AS A REGULATION.

Government Code section 11349.1(a)(1) requires that OAL review all regulations for compliance with the "necessity" standard. Government Code section 11349(a) defines "necessity" to mean "... 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, subdi-

vision (b) of section 10 of the Title 1 of the California Code of Regulations provides:

“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 regulations 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 perceived need for a regulation, the APA requires that the agency describe the need for the regulation in the Initial Statement of Reasons. Government Code section 11346.2(b) requires that “[a]n initial statement of reasons *shall* include. . .(1) A statement of the specific purpose of each adoption, amendment, or repeal and the *rationale* for the determination by the agency that each adoption, amendment, or repeal is *reasonably necessary to carry out the purpose for which it is proposed*. . .” (emphasis added).

The Initial Statement of Reasons is not a “brief document” as described by the Board in this appeal, but rather is the primary document in the rulemaking record that demonstrates that the adoption, amendment, or repeal satisfies the “necessity” standard. The Initial Statement of Reasons must include a statement of the specific purpose and the rationale for the determination by the agency that each regulation is reasonably necessary to carry out the purpose for which it is proposed or, simply restated, “why” a regulation is needed and “why” the particular provisions contained in this regulation were chosen to fill that need. (Gov. Code, sec. 11346.2(b)(1).) The Initial Statement of Reasons must also identify any technical, theoretical, or empirical study, report, or similar document upon which the agency relies. (Gov. Code, sec. 11346.2(b)(2).)

The Initial Statement of Reasons 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 the information upon which the proposal is based. (Gov. Code, secs. 11346.2(b) and 11346.5(a)(16) and (b).) In this way the public is in-

formed 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 to comment knowledgeably. The Initial Statement of Reasons and all data and other factual information, studies or reports upon which the agency is relying in the regulatory action must also be included in the rulemaking file. (Gov. Code, sec. 11347.3(b)(2) and (7).) The Final Statement of Reasons updates the information contained in the Initial Statement of Reasons and is prepared at the end of the rulemaking process after the public availability and comment periods have concluded. (Gov. Code, sec. 11346.9(a)(1).)

The Initial Statement of Reasons provided with this regulatory action (attached hereto as Exhibit A) does not meet the basic requirement of Government Code section 11346.2. It contains just five short paragraphs: the first paragraph describes in one sentence the general purpose of section 474, the second and third paragraphs briefly describe pertinent provisions in Article XIII of the California Constitution and section 51 of the Revenue and Taxation Code, and the last two paragraphs briefly describe the effect of section 474.

The Board’s Initial Statement of Reasons fails to provide the public with the rationale for the determination by the Board as to why the provisions in section 474 are needed to carry out the purpose for which it is proposed, i.e., why the particular provisions contained in the regulation were chosen. For example, for subsection (d)(2) of section 474, there is no information explaining why fixtures and other machinery and equipment classified as improvements on petroleum refining property should be rebuttably presumed to constitute a single appraisal unit with the land and improvements. This is an exception from the assessment practice for most other commercial property.

In this request for review, the Board asserts that the text of proposed regulation section 474 itself provides the missing information. However, proposed regulation section 474 only says that petroleum refining property is “unique” and “. . . requires the application of specialized appraisal techniques to satisfy the requirements of article XIII. . . .” It does not explain what makes this type of property unique and why this type of property should be assessed in the manner prescribed in order to satisfy the requirements of article XIII. To find this information, one has to read the first five *pages and Response 3–1* of the *Final* Statement of Reasons for this rulemaking (attached hereto as Exhibit B; see pp. 1–5; and Response 3–1 on p. 8).

It is vital that this information be made available to the public during the rulemaking process so that the public is informed of the basis of the proposed action and can comment knowledgeably during the public com-

ment period. In that the 45–day comment period had already been completed, Board staff were advised by OAL in early February, prior to the withdrawal of the original submission of this rulemaking, that this defect in the rulemaking existed and that the defect could be remedied by making the information required to be contained in the Initial Statement of Reasons available to the public for a 15–day written comment period pursuant to sections 11346.8(d) and 11347.1 of the Government Code. The Board could have then made this information available to the public utilizing this quick and easy process and resubmitted the regulation to OAL in short order. Instead, the Board inexplicably elected to withdraw the file from OAL review, wait two and a half months, and resubmit the regulation to OAL without taking any action whatsoever.

This request for review spends some time discussing why further public hearing is not required citing Government Code section 11346.8(c) and urging you to read *Californians for Safe Prescriptions v. California State Board of Pharmacy* (1993), 19 Cal. App. 4th 1136. We also urge you to read this case closely. Although Government Code section 11346.8(c) concerns changes made to the regulation text rather than documents being added to the rulemaking record, the two procedures are nearly identical. In *Californians for Safe Prescriptions*, the Board of Pharmacy made changes to their proposed regulations available to the public pursuant to Government Code section 11346.8(c). Subdivision (c) of Government Code section 11346.8 provides that “. . . 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.** . . .” (emphasis added). The Court upheld this procedure against challenges that the regulations go back out to public hearing. This ruling is absolutely consistent with OAL’s action in disapproving the rulemaking action which is the subject of this request for review. In the disapproval decision, OAL did **NOT** advise Board staff that the public hearing on the proposed regulatory action had to be reopened, but rather that the information required to be included in the Initial Statement of Reasons be made available to the public for at least 15 days as required by Government Code sections 11346.8(d) and 11347.

Government Code section 11346.8(d) provides:

“No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless the agency complies with section 11347.1. This subdivision does not apply to material prepared pursuant to Section 11346.9.”

Government Code section 11347.1 requires in subdivisions (b) and (c):

“(b) At least 15 calendar days **before the proposed action is adopted** by the agency, the agency shall mail to all of the following persons a notice identifying the added document and stating the place and business hours that the document is available for public inspection:

- (1) Persons who testified at the public hearing.
- (2) Persons who submitted written comments at the public hearing.
- (3) Persons whose comments were received by the agency during the public comment period.
- (4) Persons who requested notification from the agency of the availability of changes to the text of the proposed regulation.

(c) The document shall be available for public inspection at the location described in the notice for at least 15 calendar days **before the proposed action is adopted** by the agency.” (Emphasis added.)

In the event any comments are received by the agency on the documents during the 15–day comment period, Government Code section 11346.8(a) requires that the comments be considered by the agency prior to adoption:

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

As such, Government Code sections 11346.8(d) and 11347.1(b) and (c) require that this information be made available to the public and Government Code sections 11347.1(b) and (c) and 11346.8(a) require adoption of the regulation after the public comment periods have concluded. The Board has argued that the last sentence of Government Code section 11346.8(d) allowed the Board to add the information explaining the agency’s perceived need for the regulatory provisions to the Final Statement of Reasons without making the information available to the public for at least 15 days prior to adoption as required by Government Code section 11347.1(b) and (c). However, Government Code section 11346.9(a)(1) provides only that the Final Statement of Reasons include an “. . . **update** of the information contained in the initial statement of reasons. . . .” (emphasis added). It does not allow an agency to refrain from making the information explaining the agency’s perceived need for the particular regulatory provisions available to the public in the Initial Statement of Reasons in favor of simply adding the information to the Final Statement of Reasons after the public comment pe-

riods have concluded. To do so, would completely undermine the most basic tenet of the rulemaking process and the APA.

CONCLUSION

A state agency must make its explanation of the need for proposed regulatory provisions available to the public for comment prior to their adoption as regulations. The Board's Initial Statement of Reasons fails to meet the basic requirement of Government Code section 11346.2(b) thereby failing to provide the public with the rationale for the determination by the Board that the provisions in section 474 are needed to carry out the purpose for which it is proposed. For these reasons, the request for review is without merit. OAL respectfully requests that its decision be upheld.

Date: June 25, 2007

/s/
CRAIG S. TARPENNING
Senior Staff Counsel

for: SUSAN LAPSLEY
Director

Original: Andrea Lynn Hoch, Legal Affairs Secretary
cc: Ramon Hirsig, Executive Director
Robert Lambert, Acting Assistant Chief Counsel
Diane G. Olson

DECISION OF THE GOVERNOR'S OFFICE

OFFICE OF THE GOVERNOR

July 11, 2007

Via Facsimile (916) 323-3387 & U.S. Mail
Mr. Robert Lambert
Acting Assistant Chief Counsel
State Board of Equalization
Post Office Box 942879
Sacramento, California 94279-0082

Via Facsimile (916) 445-9515 & U.S. Mail
Ms. Susan Lapsley
Director
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, California 95814-4339

Re: In re Board of Equalization
Office of Administrative Law File No.
07-0427-04 SR
Title 18, California Code of Regulations:
Proposed Section 474
Board of Equalization Request for Review of
Decision of Disapproval

Dear Mr. Lambert and Ms. Lapsley:

Pursuant to Government Code section 11349.5, this written decision is submitted in response to the Board of Equalization's request for review dated June 18, 2007. Based on our review of the record and the statements submitted by the Board of Equalization (BOE) and the Office of Administrative Law (OAL), the Governor's Office affirms OAL's Decision of Disapproval. We conclude that BOE's Initial Statement of Reasons did not substantially comply with the requirements of the Administrative Procedure Act.

I

BOE originally submitted the proposed regulation to OAL on December 26, 2006. BOE proposed to add a new section 474 to Title 18 of the California Code of Regulations, pertaining to the valuation of property used for refining petroleum. However, on February 8, 2007, BOE withdrew the proposal before OAL took formal action on it.

In a letter to OAL Deputy Director Linda Brown dated May 7, 2007, BOE's Acting Assistant Chief Counsel Robert Lambert said that earlier in the year, OAL had indicated that BOE could either voluntarily withdraw the original submission of the proposed regulation or OAL would reject it. The May 7 letter explained that the reason given by OAL was that the Initial Statement of Reasons was inadequate, and that BOE would need to redraft the Initial Statement of Reasons.

BOE withdrew the original submission. But BOE re-submitted the proposal on April 27, 2007, without revising the Initial Statement of Reasons. In fact, the re-submission was almost identical to the prior submission, except that in the text of proposed section 474, a citation to Revenue and Taxation Code section 53.5 was deleted as a Reference. BOE explained in its May 7 letter to OAL that after reviewing applicable law, BOE concluded that the originally submitted Initial Statement of Reasons was adequate, particularly when read in conjunction with the draft of section 474. The May 7 letter then provided several pages of legal analysis explaining why BOE believed OAL was incorrect regarding the alleged inadequacy of the Initial Statement of Reasons.

On June 8, 2007, OAL disapproved the regulation because BOE's Initial Statement of Reasons was deficient. In its Decision of Disapproval, OAL indicated

that the Initial Statement of Reasons failed to adequately inform the public of the reasons that proposed section 474 is needed.

The Board of Equalization submitted its request for review of OAL's decision to the Governor's Legal Affairs Secretary on June 18, 2007, and OAL submitted its response on June 25, 2007.

II

The California Administrative Procedure Act provides for the adoption and review of proposed state regulations. (Gov. Code, § 11340 et seq.) State agencies must follow specific procedures in adopting regulations. (See Gov. Code, § 11346 et seq.) Moreover, the regulations (along with the rulemaking record) are reviewed by OAL before they become final to ensure that the requirements set forth in the Government Code have been followed. (See Gov. Code, § 11349 et seq.)

BOE needed to follow "basic minimum procedural requirements" for the adoption of the proposed regulation. (Gov. Code, § 11346, subd. (a).) Among other things, BOE was required to prepare, submit to OAL, and make available to the public upon request, a copy of the proposed regulation and an Initial Statement of Reasons for proposing the adoption of the regulation. (Gov. Code, § 11346.2.) Government Code section 11346.2, subdivision (b), states that the Initial Statement of Reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of the regulation and the rationale for the determination by the agency that the regulation is reasonably necessary to carry out the purpose for which it is proposed.

(2) Identification of each study, report or similar document, if any, upon which the agency relies in proposing the regulation.

(3) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. (Nonetheless, an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.)

(4) Facts, evidence, documents, or testimony on which the agency relies to support an initial determination that the regulation will not have a significant adverse economic impact on business.

(Gov. Code, § 11346.2, subd. (b).)

BOE was also required to maintain a rulemaking file that serves as the "record" of the rulemaking proceeding. (Gov. Code, § 11347.3.) The rulemaking file must be made available to the public for inspection and copy-

ing. (*Id.*, at subd. (a).) The rulemaking file must include the Initial Statement of Reasons. (*Id.*, at subd. (b)(2).)

Following public comment (see, e.g., Gov. Code, §§ 11346.45, 11346.8), BOE was required to prepare and submit to OAL, among other things, a Final Statement of Reasons. (Gov. Code, § 11346.9, subd. (a).) The Final Statement of Reasons must include, among other things, all of the following:

(1) An update of the information contained in the initial statement of reasons.

(2) A determination as to whether adoption of the regulation imposes a mandate on local agencies or school districts.

(3) A summary of each objection or recommendation made regarding the regulation, along with an explanation of how the regulation has been changed to accommodate each objection or recommendation, or the reasons for making no change.

(4) 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.

(Gov. Code, § 11346.9, subd. (a).) The Final Statement of Reasons must be placed in the rulemaking file. (Gov. Code, § 11347.3, subd. (b)(2).)

OAL must review all regulations adopted by state agencies. (Gov. Code, § 11349.1, subd. (a).) OAL must approve the regulation if it complies with the standards set forth in Chapter 3.5, which includes Government Code sections 11340 through 11365. (Gov. Code, § 11349.1, subd. (a).) Although OAL may not substitute its judgment for that of the agency regarding the substantive content of the proposed regulation (Gov. Code, § 11340, subd. (a)), OAL may disapprove a regulation based on failure to comply with the procedural requirements of Chapter 3.5. (Gov. Code, § 11349.3, subd. (b).)

III

BOE's Initial Statement of Reasons did not substantially comply with the requirements of the Administrative Procedure Act. Among other things, an Initial Statement must describe the "specific" purpose of the regulation and the "rationale" for the determination by the agency that the regulation is reasonably necessary to carry out the purpose for which it is proposed. (Gov. Code, § 11346.2, subd. (b)(1).) BOE's Initial Statement consisted of a single page, and contained only a single sentence under the heading "Specific Purpose," stating that "[t]he purpose of the proposed rule is to implement and make specific the requirements for valuation of real property, personal property, and fixtures used to refine petroleum." Although that sentence indicates that the

proposed regulation relates to certain unmentioned “requirements” pertaining to the valuation of property used to refine petroleum, it does not describe a “specific” purpose and it does not describe BOE’s “rationale” for why the regulation is necessary. The remainder of the Initial Statement consists of four brief paragraphs under the heading “Factual Basis.” Those paragraphs do not set forth any facts, however, and they do not specifically describe the problem that the regulation is intended to address, or why the regulation is necessary.

By way of comparison, BOE’s Final Statement of Decision includes the explanations that were not included in the Initial Statement, although they could have been. The first five pages of the Final Statement describe, in specific detail, the purpose of the proposed regulation and the legal and factual reasons why the regulation is needed. The Final Statement explains that existing Property Tax Rule 461, subdivision (e) [18 Cal. Code Regs, § 461(e)] sets forth the general rule that for real property appraisals conducted to determine whether a decline in value has occurred, the fixtures and machinery classified as improvements on the real property are treated as a separate appraisal unit. The reason for this general rule, as explained in the Final Statement, is that for most types of property, the land and improvements are usually sold separately from the fixtures and equipment. Accordingly, the general rule provides for separate valuation. But the Final Statement explains that for some special types of property, fixtures and machinery are not treated as a separate appraisal unit. Thus, in order to be consistent with the marketplace, the land, improvements, fixtures and machinery should be valued as a single appraisal unit to determine whether there has been a decline in value. The Final Statement explains that existing property tax regulations 468, 469 and 473 already address some of these special properties. Those existing regulations pertain to oil and gas, mining, and geothermal properties. According to the Final Statement, proposed regulation 474 would do the same thing for properties used to refine petroleum, because those properties also generally treat land, improvements, fixtures and equipment as a single appraisal unit.

The detailed discussion in the Final Statement sets forth the specific purpose of the proposed regulation and explains BOE’s rationale for determining that the regulation is reasonably necessary. But BOE did not include this explanation, or any similar type of explanation, in the Initial Statement. While it is reasonable to expect that BOE would have more facts and information after the public comment period, BOE is nonetheless required to prepare an Initial Statement that sets forth the specific purpose and rationale for the regulation. This is important, because the Initial Statement must be included in the rulemaking file, and must be made available to the public for inspection and copying.

(Gov. Code, § 11347.3, subd’s (a) and (b)(2).) BOE’s Initial Statement could have explained the general rule established by Rule 461 for most properties, and it could have explained that some properties are different. BOE also could have explained the changes adopted by Rules 468, 469 and 473 to address this problem, and BOE could have explained that properties used to refine petroleum are also different, because the land, improvements, fixtures and equipment are treated as a single appraisal unit.

Government Code section 11346.2, subdivision (b), lists additional information that must be included in the Initial Statement, such as identification of each study or report relied upon, a description of reasonable alternatives to the regulation, the agency’s reasons for rejecting those alternatives, and a description of the facts, evidence, documents, or testimony on which the agency relies to support its initial determination that the regulation will not have a significant adverse economic impact on business. These items are not contained in BOE’s Initial Statement.

BOE contends that the Initial Statement is designed to be an initial brief statement that puts the public on notice of the subject matter of the rulemaking action. (BOE’s Request for Review, p. 3.) BOE says that the Initial Statement can be supplemented with the Final Statement, and that a determination of necessity must take into account the totality of the record. (*Ibid.*) But the requirements of Government Code section 11346.2, subdivision (b)(1), indicate that the Initial Statement is intended to do more than simply put the public on notice of the general subject matter of the proposed regulation. And, following the public comment process, the Final Statement must include an “update” of the information contained in the Initial Statement. (Gov. Code, § 11346.9, subd. (a)(1).) However, the Final Statement’s “update” is not intended to supersede a deficient Initial Statement. Finally, although “necessity” is determined based on the totality of the record, the record in this appeal demonstrates that when BOE resubmitted its proposed regulation in April, BOE could have provided sufficient detail in its Initial Statement to explain why Section 474 was being proposed and to articulate the problem it was intended to address.

It is unclear why BOE did not revise its Initial Statement before resubmitting the proposed regulation in April. In any event, BOE can begin again with a new submission, this time complying with the procedural requirements of the Administrative Procedure Act.

Sincerely,

/s/
ANDREA LYNN HOCH
Legal Affairs Secretary

<p>SUMMARY OF REGULATORY ACTIONS</p>

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

Voluntary Accelerated Vehicle Retirement Regulation

This regulatory action amends the Voluntary Accelerated Vehicle Retirement program to allow the optional use of remote sensing devices (RSD). It also re-organizes the regulations.

Title 13
California Code of Regulations
AMEND: 2601, 2602, 2603, 2604, 2605, 2606,
2607, 2608, 2609, 2610 REPEAL: 2611
Filed 07/13/07
Effective 08/12/07
Agency Contact: Alexa Malik (916) 322-4011

AIR RESOURCES BOARD

Off-Highway Recreational Vehicles

This action amends regulations and test procedures for new 1997 and later off-highway recreational vehicles (OHRV) and engines by adding evaporative emission standards that are equivalent to those required federally and becoming effective in 2008; revising the riding seasons for OHRVs that do not meet California's exhaust emission standards; reclassifying off-road utility vehicles and sand cars to allow manufacturers to use the all-terrain vehicle test procedure that is allowed federally; and clarifying engine labeling requirements.

Title 13
California Code of Regulations
AMEND: 2111, 2112, 2411, 2412, 2413, 2415
Filed 07/16/07
Effective 08/15/07
Agency Contact: Alexa Malik (916) 322-4011

BOARD OF ACCOUNTANCY

Audit Documentation, Continuing Education, Substantial Relationship

This regulatory action amends the audit document assembly period; establishes the requirements for group

internet-based continuing education programs and amends the criteria for "substantial relationship" for the purposes of denial, suspension or revocation of a certificate or permit.

Title 16
California Code of Regulations
AMEND: 68.3, 68.4, 88, 88.1, 88.2, 89, 99
Filed 07/11/07
Effective 08/01/07
Agency Contact: Aronna Wong (916) 561-1788

BOARD OF EQUALIZATION

Taxable Sales of Food Products

This action clarifies the applicability of sales tax to tips that are billed by restaurants and other providers of meals and that are not optional for the customer.

Title 18
California Code of Regulations
AMEND: 1603
Filed 07/16/07
Effective 08/15/07
Agency Contact: Mira Tonis (916) 319-9518

CALIFORNIA ARCHITECTS BOARD

Rules of Professional Conduct

This action reorganizes and makes small amendments to the current rules of professional conduct, moving a paragraph on knowing the law and refraining from violating it to a new subdivision entitled "willful misconduct," and adding new requirements for landscape architects to respond to a Board request for information in connection with an investigation or for information concerning a candidate for licensure within 30 days.

Title 16
California Code of Regulations
AMEND: 2670
Filed 07/16/07
Effective 08/15/07
Agency Contact: Ethan Mathes (916) 575-7233

CALIFORNIA ARCHITECTS BOARD

Rules of Professional Conduct

In this action California Architects Board amends Title 16, California Code of Regulations, section 160 to add additional rules of professional conduct for licensed architects.

Title 16
California Code of Regulations
AMEND: 160
Filed 07/12/07
Effective 08/11/07
Agency Contact: Hattie Johnson (916) 575-7203

DEPARTMENT OF CONSERVATION

Distributor Administrative Fee

This rulemaking action increases the percentage from 1% to 1.5% of the California Redemption Value fee retained by beverage distributors to cover the cost of preparing documents required by the Department of Conservation, and revises the relevant reporting forms to reflect this change. The Department of Conservation allows distributors to retain an administrative fee that is a certain percentage of the California Redemption Value (CRV) they must pay on beverage containers they sell in California. This action changes this percentage and updates the reporting form in the relevant regulations to conform to the statutory change.

Title 14

California Code of Regulations

AMEND: 2305, 2310, 2320

Filed 07/17/07

Effective 07/17/07

Agency Contact: Cheryl DuBose (916) 323-0728

DEPARTMENT OF FOOD AND AGRICULTURE

Light Brown Apple Moth Eradication Area

In this emergency regulatory action, the Department of Food and Agriculture amends its regulation pertaining to the "Light Brown Apple Moth Eradication Area" to add the counties of Los Angeles and Solano to the list of counties subject to eradication measures for this pest.

Title 3

California Code of Regulations

AMEND: 3591.20(a)

Filed 07/13/07

Effective 07/13/07

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE

Light Brown Apple Moth Interior Quarantine

This proposed emergency amendment will establish additional quarantine areas with respect to the light brown apple moth (LBAM; *Epiphyas postvittana*) in the counties of Los Angeles (Sherman Oaks area) and Solano.

Title 3

California Code of Regulations

AMEND: 3434(b)

Filed 07/18/07

Effective 07/18/07

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF HEALTH CARE SERVICES

Estate Recovery Claim Exemption Regulations

These regulatory changes add clarification and specification to the estate recovery program for Medi-Cal benefits paid. They describe the documentation necessary for establishing a disability and the process as to how and when the State's recovery for Medi-Cal benefits from a decedent's estate will terminate or be suspended. The regulatory changes also clarify the State's interest in revocable and irrevocable transfers of property.

Title 22

California Code of Regulations

ADOPT: 50966 AMEND: 50961, 50962

Filed 07/16/07

Effective 08/15/07

Agency Contact: Lynette Cordell (916) 650-6827

DEPARTMENT OF MOTOR VEHICLES

Truck Tractor with Living Quarters

This action adopts one regulation declaring truck tractors with living quarters "commercial vehicles" under Vehicle Code section 260 unless the living quarters permanently prevent the tractor from towing.

Title 13

California Code of Regulations

ADOPT: 150.08

Filed 07/11/07

Effective 08/10/07

Agency Contact: Christie Patrick (916) 657-5567

DEPARTMENT OF MOTOR VEHICLES

Registration Services

This regulatory action revises form ADM 9050 to reflect statutory changes in Civil Code section 1189 (language required for notary public certificate of acknowledgement).

Title 13

California Code of Regulations

AMEND: 330.08

Filed 07/13/07

Effective 08/12/07

Agency Contact: Christie Patrick (916) 657-5567

DEPARTMENT OF PUBLIC HEALTH

Mammography Machine Identification

This regulatory action deals with mammography machine identification. (Agency File Number R-06-019.)

Title 17

California Code of Regulations

AMEND: 30315.33, 30316.60, 30317, 30319.20

Filed 07/11/07

Effective 08/10/07

Agency Contact: Jasmin Delacruz (916) 440-7688

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL
Phase I Environmental Site Assessments

This regulatory action adds organochlorine pesticides (OCPs) to the chemicals for which the environmental review can be a streamlined process (Phase I Addendum) that minimizes costs, but is only allowed on properties considered unlikely to have contamination. It eliminates the need for a more-intensive and costly Preliminary Endangerment Assessment (PEA). It also makes some clarifying revisions in the sampling and analysis procedures for lead, PCBs, and OCPs. These changes bring the DTSC regulations in compliance with the American Society for Testing and Materials (ASTM) E1527-05, which is the nationally recognized standard for conducting Phase Is. This is required for certain funding protections.

Title 22
California Code of Regulations
ADOPT: 69109 AMEND: 69100, 69101, 69102,
69103, 69104, 69105, 69106, 69107, 69108
Filed 07/18/07
Effective 07/18/07
Agency Contact: Laura Hayashi (916) 322-6409

EMPLOYMENT TRAINING PANEL
February Clean-up (Amendment of "Employer Eligibility" Regulation; Miscellaneous Regulation Repeals)

In this regulatory action, the Employment Training Panel (ETP) amends a regulation pertaining to "Employer Eligibility" for ETP funding for purposes of retraining or new hire placement of trainees. The ETP also repeals several of its existing regulations.

Title 22
California Code of Regulations
AMEND: 4401.5 REPEAL: 4401, 4402, 4432, 4441
Filed 07/18/07
Effective 08/17/07
Agency Contact: Spencer Kenner (916) 327-5578

FAIR EMPLOYMENT AND HOUSING COMMISSION
Harassment Training and Education

This action is the Fair Employment and Housing Commission's resubmittal of previously disapproved regulations governing required sexual harassment training for supervisory employees located in California. These regulations are mandated by AB 1825 (Stats. 2004, Chap. 933). The previously disapproved regulatory action resubmitted here was OAL file number 06-1214-01S.

Title 2
California Code of Regulations
ADOPT: 7288.0, 7288.3 AMEND: 7288.0, 7288.1,
7288.2
Filed 07/18/07
Effective 08/17/07
Agency Contact: Ann Noel (415) 557-2325

FAIR POLITICAL PRACTICES COMMISSION
FPPC Civil Litigation

This regulatory action does the following: 1) requires first review by the General Counsel or an attorney from the Legal Division of any decision by the Executive Director to initiate civil litigation and that such attorney be present at an executive session in which the Commission reviews such decision; gives the Commission more discretion in conducting its deliberations; and includes requirements of Commission staff regarding submission of evidence in rebuttal to respondents. Several revisions are made to improve sentence structure and clarity.

Title 2
California Code of Regulations
AMEND: 18361.2, 18361.4
Filed 07/18/07
Effective 08/17/07
Agency Contact: Scott Hallabrin (916) 322-5660

STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998, New Construction Eligibility

State Allocation Board proposes amendment to Title 2 regulations and three related forms that affect the ongoing calculation of school district eligibility for construction funding under the provisions of the School Facility Program. The amendments allow adjustments to new construction and modernization project baseline eligibility and district financial hardship status based on specified conditions.

Title 2
California Code of Regulations
AMEND: 1859.2, 1859.51, 1859.61, 1859.81,
1859.202, 1866
Filed 07/18/07
Effective 07/18/07
Agency Contact: Robert Young (916) 445-0083

STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998; Career Tech. Facilities

This is a deemed emergency pursuant to Assembly Bill 1302, Statutes of 2006, to implement the Career Technical Education Facilities Program (CTEFP) into the School Facility Program (SFP) in accordance with

Assembly Bill 127, Chapter 35, Statutes of 2006. The purpose of the program is to implement \$500 million dollars in funding for career technical school facilities pursuant to Prop 1D (the Kindergarten–University Public Education Facilities Bond Act of 2006). (Previously submitted as OAL File Number 07–0618–05 E.)

Title 2

California Code of Regulations

ADOPT: 1859.190, 1859.191, 1859.192, 1859.193, 1859.193.1, 1859.194, 1859.195, 1859.196, 1859.197, 1859.198, 1859.199 AMEND: 1859.2, 1859.51, 1859.81

Filed 07/13/07

Effective 07/13/07

Agency Contact: Robert Young (916) 445–0083

STATE ALLOCATION BOARD

Leroy F. Greene School Facilities Act of 1998; Career Tech Facilities

This is a non–substantive submission to reference Form SAB 50–04 (Revised 07/07) and Form SAB 50–05 (Revised 01/07) in the definition section of Section 1859.2 of Title 2, which were mistakenly omitted from the original filing [07–0703–03 ER (Filed with the Secretary of State 7/13/07).]

Title 2

California Code of Regulations

AMEND: 1859.2

Filed 07/17/07

Effective 07/17/07

Agency Contact: Lisa Jones (916) 322–1043

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN FEBRUARY 14, 2007 TO JULY 18, 2007

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

07/09/07 AMEND: 270
06/28/07 AMEND: 2616

Title 2

07/18/07 AMEND: 18361.2, 18361.4
07/18/07 ADOPT: 7288.0, 7288.3 AMEND: 7288.0, 7288.1, 7288.2

07/18/07 AMEND: 1859.2, 1859.51, 1859.61, 1859.81, 1859.202, 1866
07/17/07 AMEND: 1859.2
07/02/07 ADOPT: 18531.62 AMEND: 18544, 18545
07/02/07 ADOPT: 1859.302, 1859.324.1, 1859.330 AMEND: 1859.302, 1859.318, 1859.320, 1859.321, 1859.322, 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.326, 1859.328, 1859.329
06/20/07 ADOPT: 1859.106.1 AMEND: 1859.106
06/15/07 AMEND: div. 8, ch. 111, sec. 59560
06/13/07 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.71, 20108.75, 20108.80 REPEAL: 20108.37
05/23/07 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.71, 20108.75, 20108.80
05/21/07 AMEND: 18402
05/17/07 AMEND: 52900
05/17/07 ADOPT: 1859.70.4, 1859.71.6, 1859.77.4, 1859.162.1, 1859.162.2, 1859.162.3, 1859.163.4, 1859.163.5, 1859.163.6, 1859.163.7, 1859.169.1 AMEND: 1859.2, 1859.51, 1859.60, 1859.61, 1859.70.3, 1859.71, 1859.78.9, 1859.83, 1859.93.2, 1859.160, 1859.161, 1859.162, 1859.163.1, 1859.163.2, 1859.163.3, 1859.164, 1859.164.1, 1859.164.2, 1859.165, 1859.166, 1859.167, 1859.167.1, 1866.4, 1866.13 REPEAL: 1859.162.1
05/14/07 AMEND: 599.664
05/08/07 ADOPT: 1185.2, 1185.3, 1185.4 AMEND: 1185, 1185.01 (renumbered to 1185.1), 1185.02 (renumbered to 1185.5), 1185.03 (renumbered to 1185.6), 1185.1 (renumbered to 1185.7)
05/08/07 AMEND: div. 8, ch. 48, sec. 53700
04/30/07 AMEND: 1859.124.1
04/25/07 AMEND: 1859.83, 1859.202, 1866
04/16/07 AMEND: 18401

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04/04/07 AMEND: 28010 REPEAL: 36000
 03/27/07 AMEND: 59560
 03/20/07 ADOPT: 18746.3
 03/15/07 AMEND: div. 8, ch. 102, section 59100
 03/14/07 AMEND: div. 8, ch. 73, section 56200
 03/01/07 AMEND: 21922
 02/28/07 AMEND: 714
 02/16/07 AMEND: 1859.2, 1859.76, 1859.83,
 1859.163.1, 1859.167, 1859.202, 1866

Title 3

07/18/07 AMEND: 3434(b)
 07/13/07 AMEND: 3591.20(a)
 07/09/07 AMEND: 3433(b)
 07/06/07 AMEND: 3589(a)
 07/06/07 AMEND: 3591.2(a)
 06/21/07 AMEND: 3434(b), 3434(c)
 06/13/07 ADOPT: 6739 AMEND: 6000, 6720,
 6738, 6793
 06/07/07 AMEND: 3434(b)
 06/06/07 AMEND: 3434(b)
 06/05/07 AMEND: 3591.20(a)
 05/31/07 ADOPT: 900, 900.1, 900.2, 901.5, 901.8,
 901.9, 901.10, 901.11, 902, 902.1, 902.3,
 902.4, 902.5, 902.6, 902.7, 902.8, 902.9,
 902.10, 902.11, 902.12, 902.13, 902.14,
 903, 903.1, 903.2, 903.3, 903.4, 903.5,
 903.6, 903.7, 903.8, 903.9, 903.10,
 903.11, 903.12
 05/07/07 AMEND: 3433
 05/07/07 AMEND: 6860
 05/03/07 ADOPT: 3035 REPEAL: 3035, 3035.1,
 3035.2, 3035.3, 3035.4, 3035.5, 3035.6,
 3035.7, 3035.8, 3035.9
 04/25/07 AMEND: 3433(b)
 04/23/07 AMEND: 3591.20
 04/20/07 AMEND: 3591.20(a)
 04/20/07 ADOPT: 3434
 04/03/07 AMEND: 3591.20(a), 3591.20(b)
 04/02/07 AMEND: 752, 796.6, 1301
 03/28/07 AMEND: 3591.2(a)
 03/27/07 ADOPT: 1446.9, 1454.16
 03/21/07 ADOPT: 3591.20
 03/15/07 ADOPT: 1371, 1371.1, 1371.2
 03/07/07 AMEND: 3423(b)
 03/06/07 AMEND: 3700(c)
 02/15/07 ADOPT: 499.5, 513, 513.5 AMEND:
 498, 499, 500, 501, 502, 504, 505, 509,
 510, 511, 512, 512.1, 512.2, 514, 515,
 516, 517, 525, 551, 552, 553, 554, 604.1
 REPEAL: 499.5, 503, 506, 508, 512.3,
 527, 536, 537, 538, 539, 540, 541, 543,
 544, 546, 547, 550

02/14/07 AMEND: 3700(c)

Title 4

05/30/07 AMEND: 1481
 05/08/07 AMEND: 1433
 05/07/07 AMEND: 1606
 04/24/07 ADOPT: 9071, 9072, 9073, 9074, 9075
 04/19/07 AMEND: 10176, 10177, 10178, 10179,
 10180, 10181, 10182, 10183, 10188
 03/13/07 ADOPT: 7075, 7076, 7077, 7078, 7079,
 7080, 7081, 7082, 7083, 7084, 7085,
 7086, 7087, 7088, 7089, 7090, 7091,
 7092, 7093, 7094, 7095, 7096, 7097,
 7098, 7099 REPEAL: 7000, 7001, 7002,
 7003, 7004, 7005, 7006, 7007, 7008,
 7009, 7010, 7011, 7012, 7013, 7014,
 7015, 7016, 7017

Title 5

06/05/07 AMEND: 19802
 06/04/07 ADOPT: 11996, 11996.1, 11996.2,
 11996.3, 11996.4, 11996.5, 11996.6,
 11996.7, 11996.8, 11996.9, 11996.10,
 11996.11
 06/01/07 REPEAL: 41916
 05/30/07 ADOPT: 30920, 30921, 30922, 30923,
 30924, 30925, 30926, 30927
 05/18/07 ADOPT: 19828.2, 19829.5, 19830.1,
 19837.1, 19838, 19846 AMEND: 19816,
 19816.1, 19828.1, 19830, 19837, 19854
 05/11/07 AMEND: 30023(c)
 05/07/07 ADOPT: 30910, 30911, 30912, 30913,
 30914, 30915, 30916, 30917
 04/27/07 ADOPT: Art. 2.2 (subch.1, ch. 6), 55151,
 55151.5, 55151.7, 58707, 58785,
 AMEND: 55002, 55150, 58160, 58704,
 58770, 58771, 58773, 58774, 58776,
 58777, 58779 REPEAL: 58706, 58775
 04/23/07 ADOPT: 30710, 30711, 30712, 30713,
 30714, 30715, 30716, 30717, 30718
 04/17/07 AMEND: 18013, 18054, 18068
 04/09/07 ADOPT: 11962, 11962.1
 04/06/07 AMEND: 41301
 03/29/07 AMEND: 42356
 03/19/07 AMEND: 41301
 03/19/07 AMEND: 41550
 03/01/07 AMEND: 19816, 19851, 19852, 19853
 02/28/07 AMEND: 80028, 80487
 02/16/07 ADOPT: 11987, 11987.1, 11987.2,
 11987.3, 11987.4, 11987.5, 11987.6,
 11987.7

Title 8

06/19/07 AMEND: 212.01

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06/15/07 ADOPT: 9792.20, 9792.21, 9792.22, 3200.150, 3200.160, 3310, 3400, 3405, 9792.23 3410, 3415

06/07/07 ADOPT: 9792.11, 9792.12, 9792.13, 9792.14, 9792.15

06/01/07 AMEND: 4543

05/23/07 AMEND: 9767.4, 9767.8, 9768.10, 9788.11

05/23/07 AMEND: 5001

05/21/07 AMEND: 9768.5, 9788.31

05/16/07 AMEND: 8397.16

04/27/07 AMEND: 1801, 8416

04/26/07 ADOPT: 10225, 10225.1, 10225.2

04/24/07 AMEND: 5004, 5047, 8379

04/20/07 AMEND: 5148(c)

04/20/07 AMEND: 1620, 1626, 1629

04/18/07 AMEND: 20299, 20363, 20407

03/29/07 AMEND: 3664(a)

03/27/07 AMEND: 3291, 3292, 3295, 3296

03/06/07 AMEND: 1529, 1532, 1532.1, 1535, 5144, 5190, 5198, 5200, 5202, 5207, 5208, 5210, 5211, 5213, 5214, 5217, 5218, 5220, 8358

03/02/07 ADOPT: 1731 AMEND: 1730

03/01/07 AMEND: 1541

02/28/07 AMEND: 9789.40

02/21/07 AMEND: 9780, 9783

02/15/07 AMEND: 9789.11

Title 9

06/12/07 AMEND: 10501, 10508, 10511, 10515, 10518, 10522, 10524, 10527, 10529, 10532, 10533, 10545, 10547, 10550, 10561, 10568, 1606, 10608, 10609, 10613, 10615, 10620, 10626, 10630

05/24/07 AMEND: 13035

05/01/07 ADOPT: 3100, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3410, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 REPEAL: 3100, 3200.000, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140,

Title 10

07/09/07 AMEND: 260.140.8, 260.140.41, 260.140.42, 260.140.45, 260.140.46

06/28/07 AMEND: 2498.6

06/28/07 AMEND: 2498.6

06/28/07 AMEND: 2498.6

06/28/07 AMEND: 2498.5

06/28/07 AMEND: 2498.6

06/28/07 AMEND: 2498.4.9

06/28/07 AMEND: 2498.6

06/28/07 AMEND: 2498.4.9

06/28/07 AMEND: 2498.4.9

06/28/07 AMEND: 2498.4.9

06/28/07 AMEND: 2498.5

05/01/07 AMEND: 2716.1, 2790.1.5, 2810.5 REPEAL: 2716, 2790.1, 2810

04/26/07 ADOPT: 5357, 5357.1, 5358, 5358.1 AMEND: 5350, 5352

04/25/07 AMEND: 2697.6, 2697.61

04/25/07 AMEND: 250.30

04/24/07 AMEND: 2498.6

04/16/07 AMEND: 2318.6, 2353.1, 2354

03/23/07 AMEND: 2695.8(b)(2)

03/09/07 AMEND: 2498.6

03/06/07 AMEND: 260.230, 260.231, 260.236.1, 260.241.4, 260.242 REPEAL: 260.231.2, 260.236.2

Title 11

06/08/07 AMEND: 9072

06/08/07 ADOPT: 9020 REPEAL: 1019

06/06/07 AMEND: 1010 (renumber to 9030 to new Chapter 3)

06/04/07 AMEND: 1081

06/01/07 ADOPT: 999.6, 999.7, 999.8

06/01/07 AMEND: 1005, 1007, 1008

04/19/07 ADOPT: 64.6

04/19/07 ADOPT: 64.5

04/19/07 ADOPT: 64.4

04/18/07 ADOPT: 64.3

03/06/07 AMEND: 1070, 1082

Title 13

07/16/07 AMEND: 2111, 2112, 2411, 2412, 2413, 2415

07/13/07 AMEND: 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610 REPEAL: 2611

07/13/07 AMEND: 330.08

07/11/07 ADOPT: 150.08

07/09/07 AMEND: 225.18, 225.39, 225.45, 225.54 and 225.63

06/29/07 AMEND: 181.00

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05/23/07	AMEND: 2180.1, 2181, 2184, 2185, 2186, 2192, 2194 REPEAL: 2011	4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72 REPEAL: 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06, 4970.07, 4970.08, 4970.09, 4970.10, 4970.11, 4970.12, 4970.13, 4970.14, 4970.15, 4970.16, 4970.17, 4970.18, 4970.19, 4970.20, 4970.21, 4970.22, 4970.23, 4970.24, 4970.25, 4970.26, 4970.27, 4970.28, 4970.29, 4970.30, 4970.31, 4970.32
05/01/07	ADOPT: 1300, 1400, 1401, 1402, 1403, 1404, 1405 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1, 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320, 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1, 1339.2, 1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341, 1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1370, 1371, 1372, 1373, 1374, 1375, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420, 1421, 1422, 1423, 1424, 1425, and Article 15 text	05/03/07 ADOPT: 125.1 AMEND: 125 04/30/07 AMEND: 1257 04/13/07 ADOPT: 18751.2.1, Form CIWMB 303a, Form CIWMB 303b AMEND: 18751.2 REPEAL: Form CIWMB 303
04/26/07	AMEND: 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465	04/02/07 AMEND: 679 03/27/07 AMEND: 11900 03/27/07 AMEND: 11945 03/26/07 AMEND: 2305, 2310, 2320 03/21/07 AMEND: 7.50 03/20/07 AMEND: 11945 03/20/07 AMEND: 790, 815.01, 815.02, 815.03, 815.04, 815.05, 815.06, 815.07, 815.08, 815.09, 816.01, 816.02, 816.03, 816.04, 816.05, 816.06, 817.02, 817.03, 818.01, 818.02, 818.03, 819.01, 819.02, 819.03, 819.04, 819.06, 819.07, 820.01, 825.03, 825.05, 825.07, 826.01, 826.02, 826.03, 826.04, 826.05, 826.06, 827.01, 827.02
04/26/07	AMEND: 2451, 2452, 2453, 2455, 2456, 2458, 2459, 2460, 2461, 2462	03/01/07 AMEND: 10121, 11900(a)(5) 02/28/07 ADOPT: 5.81, 27.91 AMEND: 1.62, 1.63, 1.67, 2.00, 5.00, 5.80, 7.00, 7.50, 8.00, 27.60, 27.65, 27.90, 27.95, 28.20, 29.70, 29.80, 29.85, 195, 701
04/12/07	ADOPT: 2775, 2775.1, 2775.2, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789 AMEND: 2430, 2431, 2433, 2434, 2438	02/23/07 AMEND: 671.5 02/16/07 AMEND: 10214, 10381, 10500, 10620, 11002, 11003, 11005
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