

**Initial Statement of Reasons for the**  
**Proposed Amendments to California Code of Regulations, Title 18, Division 4.1,**  
***Office of Tax Appeals’ Rules for Tax Appeals.***

**SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS**

The Office of Tax Appeals (OTA) proposes to amend Division 4.1 of Title 18 of the California Code of Regulations (hereinafter referred to collectively as the “proposed regulatory action”). If adopted, the proposed regulatory action would amend OTA’s current regulations (“OTA’s Rules for Tax Appeals.”)

Senate Bill 92 (Stats. 2019, Ch. 34) added Section 15676.2 of the Government Code to establish a process for taxpayers to appear before a single administrative law judge (hereinafter referred to as the “Small Case Program”). This proposed regulatory action provides further guidance on, and makes technical changes to, the Small Case Program.

Assembly Bill 1578 (Stats. 2021, Ch. 401) made various changes to the Administrative Procedure Act (hereinafter referred to as the “APA”). The proposed regulatory action would make technical changes to reflect these changes.

Assembly Bill 473 (Stats. 2021, Ch. 614) added Article 3 to Chapter 3.5 of Division 7 of Title 1 of the Government Code to recodify the California Public Records Act. The proposed regulatory action would make technical changes and update references using the new statutes.

Senate Bill 189 (Stats. 2022, Ch. 48) amended Section 15670 of the Government Code to require OTA to adopt ethics standards, including rules governing conflicts of interest and ex parte communication, and to permit certain non-attorney employee classifications to be OTA panel members. The proposed regulatory action would provide ethics standards as required by recent statutory changes.

**Specific Issues, Purpose, and Necessity for the Proposed Regulatory Action**

As indicated, the proposed regulatory action is necessary to provide guidance and implement recent statutory changes. OTA has determined that the adoption of the proposed regulatory action (including each “provision” thereof within the meaning of California Code of Regulations, title 1, section 10(b)(2),) is reasonably necessary for the specific purposes of complying with recent statutory changes, as described above.

**Summary of Existing Law**

The Taxpayer Transparency and Fairness Act of 2017 (Stats. 2017, Ch. 16), as amended by Assembly Bill 131 (Stats. 2017, Ch. 252), collectively referred to hereinafter as “the Act,” created OTA on July 1, 2017. The Act transferred to OTA the various duties, powers, and responsibilities of the State Board of Equalization (hereinafter “board” or “BOE”) necessary or appropriate to conduct appeals hearings, except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution. Therefore, under the Act, BOE’s constitutional duties, powers, and responsibilities are now limited to the following five items:

- (1) The review, equalization, or adjustment of a property tax assessment pursuant to Section 11 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that review, equalization, or adjustment.
- (2) The measurement of county assessment levels and adjustment of secured local assessment rolls pursuant to Section 18 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that measurement and adjustment.
- (3) The assessment of pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity pursuant to Section 19 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that assessment.
- (4) The assessment of taxes on insurers pursuant to Section 28 of Article XIII of the California Constitution and any duty, power, or responsibility conferred by statute on the board in connection with that assessment.
- (5) The assessment and collection of excises taxes on the manufacture, importation, and sale of alcoholic beverages in this state pursuant to Section 22 of Article XX of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that assessment and collection.

(Gov. Code, §15600, subd. (a).) Effective July 1, 2017, the newly created agency “The California Department of Tax and Fee Administration” (CDTFA) is the successor to, and is vested with, all of the duties, powers, and responsibilities of BOE with respect to the administration of taxes and fees, except those five areas of constitutional duties, powers, and responsibilities described above. (Gov. Code, §15570.22.)

As of January 1, 2018, OTA is the successor to, and is vested with all the duties, powers, and responsibilities of the BOE necessary or appropriate to conduct appeals hearings with respect to tax and fee programs that were previously the duties, powers, or responsibilities of BOE. (Gov. Code, § 15672.) This includes hearing appeals of tax and fee programs administrated by the Franchise Tax Board (FTB) and CDTFA. For purposes of the Act, OTA has jurisdiction to hear the following appeals:

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- (1) Petitions, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, or petition for rehearing.
- (2) Administrative protests with respect to a tax or fee administered by the California Department of Tax and Fee Administration.
- (3) Claims, including a claim for refund with respect to a tax or fee administered by the California Department of Tax and Fee Administration.
- (4) Appeals from an action of the Franchise Tax Board filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code or Chapter 1 (commencing with Section 20501) and Chapter 4 (commencing with Section 20641) of Part 10.5 of Division 2 of the Revenue and Taxation Code.
- (5) Applications, including, but not limited to, an application for administrative hearing.
- (6) Any other item that may be scheduled for a hearing, including, but not limited to, requests for relief of taxes, fees, interest, or penalties.

(Gov. Code, §15671.) The Act does not specifically list the tax and fee programs subject to appeal before OTA, but it would include all those programs administered by CDTFA.

OTA adopted emergency regulations effective January 5, 2018, through January 1, 2019, to provide taxpayer guidance for tax appeals before OTA. OTA amended its regulations effective January 2, 2019, and again on March 1, 2021. OTA now seeks to further update its regulations to comply with recent statutory changes and make technical corrections to its existing regulations.

#### Explanation of the Initial Statement of Reasons

The specific purpose and necessity for OTA to adopt, amend, or repeal each proposed section under proposed division 4.1 is identified in further detail below. The specific purpose and necessity for OTA to adopt or amend the Rules for Tax Appeals, including all the regulations and provisions contained is also described in greater detail, above.

#### SUMMARY OF PROPOSED AMENDMENTS

OTA proposes this regulatory action to implement and interpret recent statutory changes. Recent statutory changes requires OTA to amend its regulations for the Small Case Program, to update citations to the APA and California Public Records Act, to update language to include non-attorney panel members at OTA, and to adopt ethical standards governing the conduct of attorney and non-attorney panel members.

Specifically, the proposed regulatory action proposes to make the following amendments to the OTA Rules for Tax Appeals:

#### **Chapter 1: Title of Division**

30000. Statement of Intent; Title of Division

The purpose of this amendment is to provide technical corrections and consistency throughout Division 4.1. The amendment abbreviates the title “Office of Tax Appeals” to “OTA” and provides other minor stylistic changes for consistency. The language was also revised to ensure consistency with the first sentence of OTA Regulation 30101.

**Chapter 2: General Applicability, Definitions, and Jurisdiction**

This amendment retitles Chapter 2 to provide additional clarity for taxpayers.

**Article 1: Application of Division 4, Definitions, and Jurisdiction**

30101. Application of Division 4.1

The purpose of this amendment is to make minor technical and stylistic corrections, including corrections and updates to cited authorities. There were no substantive changes. The reference to claims for reimbursement submitted to or subject to the jurisdiction of OTA is a reference to taxpayer bill of rights reimbursement claims; this is not a reference to claims for refund, which are included within the meaning of “appeal.”

30101.5. Inapplicability of Division 2.1

The purpose of this regulation is to clarify that OTA’s Rules for Tax Appeals apply to all actions before OTA, and that rules applicable to the BOE, OTA’s predecessor, do not apply to appeals before OTA.

This regulation is intended to clarify the existing regulatory framework of OTA since the adoption of its own regulations. This regulation is not intended to change the rights of any party to an appeal before OTA.

30102. Definitions

The purpose of this amendment is to make technical corrections to the current definitions and add additional defined terms to provide clarity.

This amendment defines the term “administrative record” for the purpose of distinguishing the administrative record from the evidentiary record. Tax appeal panels decide appeals based on evidence in the evidentiary record. The evidentiary record is distinguishable from the administrative record because the administrative record broadly includes all documents, including procedural communications, correspondence, and withdrawn or rejected evidence, which must be maintained by OTA.

Definitions were added for “Action of CDTF” and “Action of FTB” because these terms were used in OTA’s Rules for Tax Appeals but not explicitly defined.

This amendment defines the term “California Public Records Act” by reference to the newly-recodified California Public Records Act.

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This amendment makes technical corrections to the definition of panel member and panel, to provide for panel members that are not administrative law judges, and to provide for appeals that may be decided by a single panel member, pursuant to the Senate Bill 189 (Stats. 2022, Ch. 48) and Senate Bill 92 (Stats. 2019, Ch. 34).

This amendment defines the term “material” for the purpose of providing a common standard within OTA’s Rules for Tax Appeals.

The definition of the term “mail” is amended to include electronic submissions through OTA’s web portal.

Pursuant to the adoption of Senate Bill 189 (Stats. 2022, Ch. 48), this amendment removes the definition of “ex parte communication” from this section because ex parte communications are now defined under the newly-adopted ethical standards contained in Regulation 30215.

This amendment makes other minor technical and stylistic changes for consistency within OTA’s Rules for Tax Appeals and updates citations to authorities.

30103. Jurisdiction

The purpose of this amendment is to provide minor stylistic corrections for consistency within OTA’s Rules for Tax Appeals.

This amendment also provides that OTA has jurisdiction over perfected claims for refund for the purpose of distinguishing claims for refund in which the tax has been paid from a tax deposit, which is a claim solely for tolling the statute of limitations, because OTA does not have jurisdiction over the latter type of claims until the tax has been paid. This amendment does not change the scope of OTA’s jurisdiction but does clarify OTA’s existing jurisdiction over claims for refund.

This amendment also provides that OTA has jurisdiction over appeals of supplemental and revised deductions of the CDTFA, and clarifies that unless otherwise provided, OTA may determine the validity of an action of CDTFA and may determine whether the person appealing a decision is the person liable for the tax or fee at issue. This amendment does not change the scope of OTA’s jurisdiction but does provide clarity on OTA’s existing jurisdiction over appeals of actions of the CDTFA.

30104. Limitations on Jurisdiction

The changes are intended to summarize existing law as applied to OTA.

As introduced, the proposed regulatory action contained a provision clarifying OTA’s jurisdiction to invalidate regulations of FTB and CDTFA. These proposed amendments have been withdrawn from the proposed regulatory action.

This proposed amendment provides stylistic and technical corrections for consistency within OTA’s Rules for Tax Appeals, and updates citations to authorities.

The proposed amendment will address some non-precedential OTA Opinions issued which purported to limit and constrict the scope of OTA's jurisdiction to decide appeals over which BOE historically held jurisdiction and heard such matters. This clarifies the language in OTA regulation 30104, subdivision (e). OTA's position is that it was never the intent of OTA or regulation 30103, subdivision (e), to limit OTA's jurisdiction in the context of situations described in newly proposed subdivision (f). This change is intended to clarify that OTA does in fact have the same jurisdiction as BOE did to decide these types of appeals and, as such, OTA's jurisdiction is not constricted by 30103(e).

The proposed amendment would also provide that OTA does not have jurisdiction to issue an order for declaratory relief, issue an advisory opinion, or otherwise issue a holding that is hypothetical or advisory. This amendment is not intended to change the jurisdiction of OTA, but only to provide clarity and guidance of OTA's existing jurisdiction, as provided in *Appeal of Body Wise International, LLC* 2022-OTA-340P.

#### 30105. Questions of Jurisdiction and Timeliness

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

#### 30106. Jurisdiction Over Transitioning Appeals

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

#### 301107. OTA Publication of Notices, Forms, and Other Guidance

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to update authorities cited.

### **Chapter 3: Appeal Requirements and Procedures**

#### **Article 1: Filing an Appeal**

##### 30201. Appeal Filing Requirements

The purpose of this amendment was to incorporate the option to file appeals electronically through OTA's web portal. The amendment also provides for appeals from actions of CDTFA where multiple decisions, or supplemental decisions, are issued.

The amendment provides stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

##### 30202. Methods for Delivery of Written Documents and Correspondence

The purpose of this amendment is to provide for submission of documents and correspondence through OTA's web portal, and to allow OTA to accept mail properly addressed to OTA and timely but erroneously misdelivered by the mail service provider (e.g., the United States Postal Service) to be accepted when forwarded to OTA by the recipient (e.g., FTB).

This amendment is necessary to provide clarity and update OTA's regulations for the acceptance of submissions through OTA's web portal.

**30203. Time for Submitting an Appeal**

The purpose of this amendment is to increase the clarity and readability of this regulation. By adding headings to each subsection, this amendment allows taxpayers to easily determine the applicable time frame for submitting an appeal. Comments were made regarding this section during the interested parties' meeting, and the comments were integrated into the amendment. This section is not intended to change the time frame for submitting appeals to OTA, but to provide clarity and effective guidance for submitting an appeal.

**30204. Extensions**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

**30205. Date of Mailing**

The purpose of this amendment is to provide additional guidance on what date will be properly considered the date of mailing, including clarifying that postage must be properly addressed with postage paid, and that the deadline will be extended to the subsequent business day in the case of weekends or California state holidays. The purpose of this amendment is to provide additional clarity and guidance regarding applicable deadlines.

**30207. Acknowledging an Appeal**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

**30208. Perfecting an Appeal**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

**30209. Submission for an Opinion**

The purpose of this amendment is to provide clarity regarding the record upon which an opinion will be based. Where a taxpayer has requested an oral hearing, the case will be decided based on the oral hearing record, which is closed at the conclusion of the hearing. Where a taxpayer has waived the right to an oral hearing, the case will be decided based on the written record.

This amendment also provides minor stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

**Article 1.5.: Small Case Program**

**30209.05. Definitions**

The purpose of this regulation is to provide definitions for the newly created Small Case Program. Under Senate Bill 92 (Stats. 2019, Ch. 34) and Senate Bill 189 (Stats. 2022, Ch. 48), OTA is required to implement guidance for the Small Case Program. This proposed amendment is necessary to provide further guidance and implementation of that program, by defining terms used in the implementation of the program.

**30209.1. Total Amount in Dispute, Eligibility, Election to Participate**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and updates to incorporate recent statutory changes. For example, this amendment would replace the term "ALJ" with the term "Panel Member," to provide for non-attorney panel members as required in Senate Bill 189 (Stats. 2022, Ch. 48).

This amendment is intended to provide clarity and guidance for OTA's Small Case Program. The proposed amendment would provide guidance on which appeals are eligible for the Small Case Program and on removal of non-compliant appeals from the Program, including appeals that present precedential or complex issues discovered after the appeal was accepted into the Program.

**Article 2: Appeal Procedures**

**30210. Conferences**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. Based on comments received at the interested parties' meeting, this amendment also provides that notice of a prehearing conference will be included with the notice of oral hearing that is provided to parties in advance of the oral hearing.

**30211. Representation**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals and to update cited authorities.

**30211.5 Privileges and Confidentiality**

The purpose of this amendment is to provide stylistic corrections for consistency within OTA's Rules for Tax Appeals.

**30212. Consolidation and Deconsolidation**

The purpose of this amendment is to provide additional clarity for parties on the appeal consolidation and deconsolidation process, including the issuance of opinions in consolidated appeals, or, in the case of certain appeals, consecutive oral hearings. This amendment is not intended to change the existing appeals consolidation process, and only provides additional guidance for taxpayers on current practices.

**30212.1 Bifurcating or Severing Appeals**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. This amendment also clarifies that OTA may hold more than one oral hearing in the case of a bifurcated appeal.

**30213. Authority of Panel Members**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and updates to incorporate recent statutory changes. For example, this amendment would replace the term "ALJ" with the term "Panel Member," to provide for non-attorney panel members as required in Senate Bill 189 (Stats. 2022, Ch. 48).



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30213.5. Orders

The purpose of this amendment is to additionally provide that OTA may issue orders to facilitate the efficient resolution of appeals. This amendment is necessary to provide for efficient resolution of appeals for the benefit of all parties.

30214. Evidence

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to provide additional clarity and guidance to all parties concerning the evidentiary rules governing appeals before the OTA. This amendment is not intended to change OTA's existing evidentiary rules, but to provide written guidance clarifying the rules. For example, the current Regulation states that declarations must be signed under penalty of perjury, and this amendment would additionally provide the specific language for declarants to include to effect signing under penalty of perjury. This amendment also provides that opinions issued by panels will include factual findings that form the basis for their opinion. This amendment also expands upon and clarifies the procedure and format for witness declarations in the context of an oral hearing. The amendments also clarify the weight and effect of sworn versus unsworn testimony.

30214.5. Noncompliance with Discovery Requests

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

30215. Application of Ethical Standards

The purpose of this amendment is to establish ethical standards as required by Senate Bill 189 (Stats. 2022, Ch. 48).

These ethical standards apply to all panel members, including ALJs and non-attorney panel members. The amendment would follow the Administrative Adjudication Code of Ethics for appeals before the OTA, which modifies and incorporates certain provisions of the California Code of Judicial Ethics to apply to administrative hearings. The amendment would follow the ex parte communications rules of the APA in prohibiting ex parte communications between parties and all panel members. The proposed amendment would provide for disqualification of a panel member consistent with the Administrative Adjudication Bill of Rights.

The amendment provides that these ethical standards shall only be followed to the extent that they do not otherwise conflict with OTA's Rules for Tax Appeals. The amendment also provides that OTA does not conform to certain provisions that are inapplicable to the OTA, including specific provisions applying to water control, certain agency communications, ratemaking, settlement, and site certification.

This Regulation is necessary to provide ethical standards consistent with recent statutory changes that applies to attorney and non-attorney panel members. This amendment is necessary to improve the public's understanding of the change in the law, the administrative review process, and to ensure transparency and fairness in the conduct of appeals before OTA.

30216. Incorporation of the Administrative Procedure Act

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to address recent changes to the Administrative Procedure Act, which impacted OTA's non-applicability provisions.

30217. Determination that a Franchise or Income Tax Appeal Is Frivolous

The purpose of this amendment is to clarify that OTA may only determine that an appeal is frivolous in the case of a franchise or income tax appeal.

30218. Application of Ethics Codes

This amendment would repeal this Regulation section, as part of the adoption of comprehensive ethics standards in Regulation 30215.

30219. Application of Burden of Proof

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. Based on comments received at the interested parties' meeting, the amendment was revised to provide clarity that in the case of new matters first raised at appeal, the burden of proof will be on the party raising the new matter. The proposed amendment is not intended to change the existing burden of proof on appeal before OTA, but to restate the rule to provide additional clarity and guidance to all parties.

The amendment adopts the position in OTA's precedential case *Appeal of Praxair*, 2019-OTA-301P, which clarified that applicable precedent in Franchise and Income Tax Appeals from FTB concerning the effect of a tax agency raising a new matter, would also apply to Business Tax Appeals from CDTFA. Possible language to clarify whether or when a new theory may be considered a new matter were discussed internally but were not added to this regulation because this issue has not yet been addressed in any precedential Business Tax Appeals involving CDTFA. The language is intentionally silent on this aspect.

**Article 3: Postponements, Deferrals, and Dismissals**

Section 30220. Postponement and Deferral

The purpose of this amendment is to provide additional guidance to taxpayers on the grounds for postponement and deferral by defining and distinguishing the two terms. The proposed amendment would also remove the consent of all parties from the enumerated list of items that constitute good cause. The purpose of this proposed change is not to prevent parties from seeking postponement or deferral, but in the case where a single party has requested multiple postponements or deferrals and the other party does not object, OTA may request additional showing of good cause by the requesting part for the postponement or deferral to be granted to avoid unreasonable delay.

This amendment also includes a definition for a "postponement" and for a "deferral" because these terms are commonly thought of interchangeably. However, these terms are used by OTA staff to refer to different scenarios.

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This amendment also proposes stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

Section 30221. Settlement or Resolution

The purpose of this amendment is to provide stylistic corrections for consistency within OTA's Rules for Tax Appeals.

Section 30222. Written Notice

The purpose of this amendment is to provide stylistic corrections for consistency within OTA's Rules for Tax Appeals.

Section 30223. Dismissal

The purpose of this amendment is to provide additional clarity and guidance for the process for dismissal of appeals. The amendment provides guidance for dismissal of an appeal in the case of agreement between the parties or where OTA determines the issues are moot or that OTA lacks the authority to provide the relief requested. The amendment would also provide that repeated non-responsiveness of any party may be grounds for dismissal. In the event of dismissal, notice will be issued stating the reason for dismissal. This would apply equally to any party.

One purpose of this amendment is to address appeals where one of the parties stops responding. This may happen, for example, where a party passes away or a business is terminated, and at that point there are no longer any responses to OTA communications, and letters are returned to OTA as undeliverable. This amendment would also allow OTA to close out appeals where one of the parties no longer wishes to pursue the appeal.

The amendment also makes stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals and incorporates language to provide for non-attorney panel members.

This amendment is necessary to provide guidance for taxpayers that clearly sets out the grounds for dismissal of an appeal, and to update language consistent with recent statutory changes concerning non-attorney panel members.

Section 30224. Request for Reconsideration of an Appeals Bureau decision

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals and include supplemental decisions of the CDTFA in the grounds for reconsideration of a CDTFA decision.

## **Chapter 4: Briefing Schedules and Procedures**

### **Article 1: General Briefing Schedule**

Section 30301. Application of Chapter

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

Section 30302. General Requirements

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The purpose of this amendment is to provide the additional formatting requirement that legal briefs be legible, and to provide that OTA may accept nonconforming briefs if the briefs are in substantial compliance with OTA's formatting requirements.

The amendment also proposes stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to provide updates to incorporate recent statutory changes.

**30303. General Briefing Schedule**

The purpose of this amendment is to provide that an appeal form, such as an FTB Form 1037 or an OTA Form L-01, may constitute an appellant's opening brief in lieu of an appeal letter.

The amendment further proposes stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. For example, the terms "nonappearance matters" and "oral hearing matters" are revised to "nonappearance appeals" and "oral hearing appeals." This revision is necessary to avoid confusion about the meaning of the previously utilized terms.

**30304. Requests for Additional Briefing**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to provide updates to incorporate recent statutory changes.

**Article 2: General Briefing Schedule for Innocent Spouse Appeals**

**30310. Application**

The purpose of this amendment is to make stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. The amendment clarifies that the provisions of Regulation 30302 apply to the briefing schedule for innocent spouse appeals.

**30311. Definitions**

The purpose of this amendment is to make a technical correction to the definition of "non-appealing spouse." This amendment is necessary to clarify the meaning of that term.

**30312. Special Rules and Procedures**

The purpose of this amendment is to provide additional guidance on the special rules and procedures pertaining to innocent spouse appeals.

The amendment proposes eliminating the rule found at subdivision (a) that an appealing spouse's nonconforming brief must be perfected according to the provisions of Regulation 30208. Instead, the provisions of Regulation 30302, pertaining to the acceptance of nonconforming briefs that are in substantial compliance with OTA's formatting requirements, will apply, as specified in the proposed amendments to Regulations 30302 and 30310.

The amendment proposes that Regulation 30401, pertaining to the selection of the hearing locations, apply to the selection of the hearing location for innocent spouse appeals, and provides that in the event the parties disagree as to the hearing location, OTA will determine the hearing location.

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The amendment proposes stylistic and technical corrections that clarify the process for requesting separate oral hearings in innocent spouse appeals. The proposed stylistic and technical corrections also clarify how OTA will evaluate requests for separate oral hearings.

The amendment preserves the rule that a panel will refrain from deciding an innocent spouse appeal until both separate hearings are held. However, the rule has moved within the regulation section to improve readability.

The amendment proposes stylistic and technical corrections that clarify the process for requesting a close hearing and/or sealing the record in an innocent spouse appeal. The amendment also proposes criteria by which OTA will evaluate a request for a closed hearing and/or seal the record in an innocent spouse appeal, such as unwarranted annoyance, embarrassment, oppression, or any other ground provided in Regulation 30432. These revisions are necessary to address the special privacy concerns that may be present in innocent spouse appeals while maintaining transparency and fairness in the conduct of appeals before OTA.

The amendment proposes stylistic and technical corrections that clarify the process concerning an Agency or OTA receiving a request for innocent spouse relief during an appeal.

The amendment proposes various minor stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. For example, several of the subdivisions have been revised to include titles.

30313. Protection of Confidential Information

The purpose of this amendment is to make a minor technical correction to the reference section.

30314. Opening Briefs

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. For example, the term "Respondent's" has been revised to "Agency's" to avoid confusion over the meaning of the previously utilized term, because the Agency is always the respondent in an innocent spouse appeal. This change was not made to the general briefing schedule because the respondent can be other than an Agency in an appeal from CDTPA.

30315. Reply Briefs.

The purpose of this amendment is to provide additional guidance regarding the submission of reply briefs in innocent spouse appeals. The amendment proposes various stylistic and technical corrections to clarify the briefing process. For example, the amendment proposes the subdivisions be organized by party, i.e., appealing spouse, non-appealing spouse, and agency, rather than organize the process under a single subdivision for other reply briefs.

30316. Conformity with Federal Action

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

**Chapter 5: General Oral Hearing Procedures**

**Article 1: Scheduling an Oral Hearing**

### 30401. Process for Requesting an Oral Hearing

The purpose of this amendment is to provide additional guidance on the process for requesting an oral hearing.

The amendment clarifies that the persons who may request an oral hearing are appellants, taxpayers, or local entities, who are referred to as “appellants” for purposes of Regulation 30401. This amendment clarifies that an Agency may request an oral hearing if they are the appellant (i.e., if the Agency did not prevail in the appeal before CDTFA, because CDTFA administers tax and fee programs for other Agencies).

The amendment provides appellants with the option to request an electronic oral hearing instead of an in-person oral hearing. The amendment also provides the option for appellants to have electronic witness testimony during an in-person oral hearing, subject to approval by OTA.

The amendment provides additional guidance concerning the forfeiture of an oral hearing:

- Regulation 30401 already provides that an appellant forfeits the right to an oral hearing if their presence at an oral hearing may threaten the health or safety of any other person present. OTA intends this provision apply to unique or extreme circumstances. For example, an appellant threatening the life of an OTA employee may result in the appellant forfeiting their right to an oral hearing.
- The amendment proposes that an appellant forfeits the right to an oral hearing if their actions unreasonably and without good cause frustrate the timely processing or resolution of an appeal. The amendment proposes two factors OTA will consider when evaluating whether a party has forfeited their right to an oral hearing for unreasonable delay, which are whether the purpose of the delay is intended to harass a party or delay resolution of the appeal, or whether the party has been previously granted more than three rescheduled oral hearings. OTA intends this to be a last resort for unusual or extreme circumstances, which OTA will evaluate on a case by case basis, based on all the facts and circumstances. For example, an appellant (or their representative) rescheduling an oral hearing because of illness would not be considered unreasonable or without good cause.
- The amendment proposes that an appellant who has forfeited their right to an oral hearing pursuant to these provisions may request a review of that forfeiture decision with OTA’s Chief Counsel, who may for good cause allow an electronic oral hearing to be scheduled. The request must be timely and in writing. This amendment is necessary to provide a process of review for forfeiture decisions.

The amendment proposes various minor stylistic and technical corrections for consistency within OTA’s Rules for Tax Appeals.

### 30402. Notice of Oral Hearing

The purpose of this amendment is to provide a minor technical correction.

### 30403. Response to Notice of Oral Hearing

The purpose of this amendment is to provide additional guidance on the procedure for responding to a notice of oral hearing. The amendment provides that a party who will have a

witness testify at an oral hearing must provide OTA with additional contact information for that witness.

The amendment also provides stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

**30404. Waiver of Oral Hearing**

The purpose of this amendment is to provide additional guidance concerning actions that constitute a waiver of the right to an oral hearing:

- Regulation 30404 already provides that a party who requested an oral hearing, but who fails to respond to the oral hearing notice, waives the right to an oral hearing, resulting in the appeal being decided on the basis of the written record. The amendment proposes stylistic and technical corrections to this provision for consistency within OTA's Rules for Tax Appeals.
- The amendment proposes that OTA may remove an appeal from the oral hearing calendar and decide the appeal on the basis of the written record, if the party who requested the oral hearing informs OTA they will not appear at the scheduled oral hearing, after being denied a deferral or postponement.
- The amendment proposes that if only one party appears for a duly noticed oral hearing and wishes to proceed, OTA may conduct the oral hearing in the absence of the party who failed to appear or submit the appeal for decision based on the written record and remove the appeal from the hearing calendar. The amendment also proposes that if all parties fail to appear for a duly noticed oral hearing, the appeal will be submitted for decision based on the written record.

The amendment proposes various minor stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

This amendment is reasonably necessary to clarify what actions constitute a waiver of the right to an oral hearing.

**30405. Posting of the Oral Hearing Schedule on OTA's Website**

The purpose of this amendment is to make stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. For example, the term "matter" is revised to "appeal." This revision is necessary to avoid confusion with the previously utilized term.

**Article 2: Conducting an Oral Hearing**

**30410. Oral Hearing Rights**

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to provide updates to incorporate recent statutory changes.

**30411. Disqualification of Administrative Law Judge for Cause**

The purpose of the amendment is to relocate the provision pertaining to disqualification of an ALJ for cause to Regulation 30215, pertaining to the application of ethical standards. OTA is

not eliminating or abridging the right of a party to file a motion to disqualify an ALJ for cause. This revision is reasonably necessary because Regulation 30411 appears within the oral hearing provisions, which could lead to the incorrect assumption that there is no right to disqualify an ALJ when a party requests a decision on the basis of the written record without an oral hearing.

30412. Concluding an Oral Hearing

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

30413. Correcting an Oral Hearing Transcript

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

**Article 3: Presentation of Evidence at an Oral Hearing; Motions**

30420. Presentation of Evidence at an Oral Hearing

The purpose of this amendment is to provide authorization and additional guidance on the presentation of evidence at an oral hearing, as well as to provide stylistic and technical corrections for consistency and updates to incorporate recent statutory changes.

The amendment proposes that OTA may grant a request for electronic witness testimony during an in-person oral hearing upon a showing of good cause and technological availability. The amendment further proposes a timeframe for requesting electronic witness testimony during an in-person oral hearing and provides that OTA may grant an untimely request for electronic witness testimony upon a showing of good cause for the late request.

30421. Motions

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to provide updates to incorporate recent statutory changes.

**Chapter 5.5: Public Transparency and Protection of Confidential Information**

This amendment proposes to create Chapter 5.5 relating to public transparency and the protection of confidential information, and to relocate Regulation Sections 30430 through 30433 to Chapter 5.5. These Regulation Sections were previously under Article 4, relating to the observation of oral hearings. The amendment further proposes that Article 4 be deleted. This amendment is necessary to provide additional guidance on the provisions pertaining to public transparency and the protection of confidential information. The amendment is also reasonably necessary to avoid confusion because the provisions relating to public transparency and the protection of confidential information involve numerous OTA procedures and processes, including, but not limited to, the observation of oral hearings.

30430. Public Transparency

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to provide updates to incorporate recent statutory changes.



#### 30430.5. Protection of Confidential Information

The purpose of this regulation is to advise the public that any documentation submitted to OTA is generally part of the administrative record and may be subject to public disclosure when required by law, and to provide the actions that OTA will undertake to protect confidential information in its possession from public disclosure. To accomplish this purpose, OTA proposes to create Regulation 30430.5. This amendment is necessary to inform the public that documentation submitted to OTA may be subject to public disclosure, but that OTA will take steps to ensure that confidential information is not disclosed to the public.

#### 30431. Requests to Close an Oral Hearing from Public Observation or Seal the Record

The purpose of this amendment is to provide stylistic and technical corrections for consistency and clarity.

#### 30432. Closing Hearings, Sealing the Record, and Redacting Information

The purpose of this amendment is to provide stylistic and technical corrections for consistency and clarity, and to provide updates to incorporate recent statutory changes.

The amendment eliminates the provision generally granting closed hearings to appellants who are attest clients of CPA firms because the CPA firm cannot represent the client unless the oral hearing is closed. This revision is necessary because Senate Bill 189 (Stats. 2022, Ch. 48) repealed Government Code Section 15676.5. This amendment clarifies that requests for a closed oral hearing will be evaluated for whether the appeal involves trade secrets or confidential research, or other information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person.

The amendment clarifies that OTA will publish an Opinion for each appeal, regardless of whether a motion to close the hearing or seal the record was granted, but OTA will not publish confidential information in the Opinion.

This amendment further clarifies that the grant of a request for a closed hearing or sealed record does not automatically preclude disclosure under applicable law, such as in response to a California Public Records Act Request.

#### 30433. Ruling Upon a Request to Close an Oral Hearing, Seal the Record, or Redact Information

The purpose of this amendment is to provide stylistic and technical corrections for consistency and clarity.

### **Chapter 5.6: Panel Assignments**

#### 30436. Panel Assignments.

The purpose of this regulation is to provide guidance to the public on how panel members are selected for appeals. To accomplish this purpose, OTA has created Chapter 5.6 pertaining to panel assignments. The amendment proposes that panel members will be randomly selected, and the randomly selected panel members will be assigned to an appeal if certain conditions are met, e.g., their workload permits the assignment, they have sufficient background in the subject matter, and the work is an appropriate level for their state classification. The amendment

clarifies how panel members will be replaced in the event an assigned panel member is no longer able to complete the assignment. This amendment is necessary to provide transparency to the public regarding how panel members are assigned.

## **Chapter 6: OTA Opinions**

### **30501. Publication of an Opinion**

The purpose of this amendment is to provide additional guidance on the publication of OTA Opinions.

The amendment clarifies that if a panel denies a petition for rehearing, an Opinion on Petition for Rehearing will be published in addition to the Opinion subject to the petition. OTA believes that, in the interest of public transparency, OTA is required to publish all Opinions which have been decided.

The amendment further clarifies that an Opinion will not be published if an appeal is withdrawn before publication; however, an Opinion will remain published if an appeal is withdrawn after publication.

The amendment proposes that Small Case Program Opinions and superseded Opinions be marked with an S or X, respectively, in their citations.

The amendment provides stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals and provides updates to incorporate recent statutory changes.

### **30502. Citation of OTA Opinions and Precedential Effect**

The purpose of this amendment is to provide additional guidance on the process for designating an Opinion as precedential.

The amendment clarifies the process for posting a precedential Opinion to OTA's website. The amendment further clarifies the meaning of a pending precedential Opinion, providing a 30-day public comment period for all Opinions designated as pending precedential. The amendment clarifies that OTA will review and consider timely submitted public comments before OTA makes a final determination on precedential status, and that it may hold an Opinion in a Pending Precedential status for 60 days.

The amendment clarifies that superseded Opinions will be noted as "Superseded" and remain published on OTA's website. OTA believes that, in the interest of public transparency, superseded Opinions must remain posted on its website.

The amendment further proposes stylistic and technical corrections for consistency and clarity.

### **30503. Withdrawal of Precedential Status**

The purpose of this amendment is to provide additional guidance concerning the withdrawal of the precedential status of an opinion.

The amendment clarifies that OTA may withdraw, in whole or in part, the precedential status of an opinion, including a State Board of Equalization opinion on a subject over which OTA has jurisdiction. Regulation 30504 already permitted OTA to withdraw the precedential status of a Board of Equalization opinion, and this revision is not intended to expand the scope of Regulation 30503. Rather, this revision is intended to reflect current practice that, when the precedential status of a State Board of Equalization opinion is withdrawn, OTA must follow the same procedures as removing an OTA Opinion from precedential status.

The amendment further proposes stylistic and technical changes for consistency within OTA's Rules for Tax Appeals.

#### 30504. Precedential Decisions of the Board of Equalization

The purpose of this amendment is to provide stylistic and technical changes for consistency within OTA's Rules for Tax Appeals.

#### 30505. Finality of Written Opinions

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

The amendment moves the provision concerning OTA's authority to correct typographical or non-substantive errors in an Opinion to Regulation 30506.

#### 30506. Revising an Opinion After Issuance

The purpose of this amendment is to provide additional guidance on the process for revising an Opinion after it has been issued.

The amendment provides that OTA may on its own initiative revise an Opinion for non-substantive errors before an Opinion becomes final. In this context, an error is non-substantive if it does not change, in whole or in part, the holding or reasoning of the Opinion. Likewise, the amendment provides that OTA may make errata changes at any point, even after the Opinion becomes final, and no notice to the parties is required. In this context, errata changes are typographical errors or grammatical corrections which do not change the holding of the appeal.

The amendment provides that a party may file a motion for a stipulated substantive revision to an Opinion, and that there is no right to file a petition for rehearing of an Opinion revised due to a stipulated agreement by the parties.

The amendment provides stylistic and technical corrections for consistency and clarity.

### **Chapter 7: Petitions for Rehearing**

#### 30601. Definitions

The purpose of this amendment is to provide stylistic and technical corrections to the definitions used in Chapter 7: Petitions for Rehearing. This also adds new definitions for terms which are used in Chapter 7.

30602. Time for Filing a Petition for Rehearing

The purpose of this amendment is to provide a single technical correction for consistency within OTA's Rules for Tax Appeals.

30602.1. General Briefing for Petitions for Rehearing

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

30603. Form and Content of the Petition for Rehearing

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

30604. Grounds for Rehearing

The purpose of this amendment is to clarify a rehearing will be granted where one of the enumerated grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing, where previously this section provided a rehearing may be granted where one of the enumerated grounds for a rehearing exists and materially affects the substantial rights of the party seeking a rehearing. This revision is necessary to avoid the incorrect assumption that OTA has discretion to deny a rehearing even if one of the enumerated grounds is met and materially affects the substantial rights of the party seeking a rehearing, assuming the petition for rehearing is otherwise in compliance with OTA's Rules for Tax Appeals.

The amendment proposes stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

30605. Number of Petitions for Rehearing

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

30606. Opinions on Petitions for Rehearing

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rule for Tax Appeals, and to provide updates to incorporate recent statutory changes.

This amendment also proposes to move subdivision (f) concerning requests for an oral rehearing to Regulation 30607. This revision is reasonably necessary to maintain consistency within OTA's Rules for Tax Appeals.

30607. Briefing on a Granted Rehearing

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. OTA intends these corrections to clarify the briefing requirements and briefing schedule for a granted rehearing.

30608. Effect of Withdrawal or Failure to Participate During a Petition for Rehearing

The purpose of this amendment is to provide rules to address the possibility a party withdraws their petition for rehearing or fails to participate in the appeals process after filing a petition for rehearing, and to address the possibility a tax agency withdraws its assessment or determination, or otherwise concedes the issue or issues in an appeal after the filing of a petition for rehearing.

The amendment provides that OTA may dismiss a petition for rehearing when the filing party withdraws their petition, or the tax agency withdraws the underlying assessment or determination or otherwise concedes the issues presented in the appeal.

The amendment provides that OTA may withdraw an appeal if the party who filed the petition for hearing fails to participate. OTA intends the dismissal of a party's petition for rehearing for failing to participate to be a last resort for extraordinary circumstances.

The amendment provides that withdrawal of the petition for rehearing or appeal, concession by either party, or any other failure to participate will not affect publication of the underlying opinion. OTA intends this provision to address the issue of a party filing a petition for rehearing and conceding the appeal while the petition is pending so as to avert the underlying opinion from being published. This provision clarifies that conceding an appeal after filing the petition for rehearing does not prohibit OTA from publishing the underlying opinion.

Dismissal of an appeal is generally intended to be a method of last resort, used only in extraordinary circumstances. This subdivision is also intended to clarify that OTA may publish the underlying Opinion in the case of dismissal of a petition for rehearing, and that such an Opinion may be made precedential.

**Chapter 8: Taxpayer Bill of Rights Reimbursement Claims**

30701. Jurisdiction

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals. These revisions are reasonably necessary to clarify OTA's jurisdiction over reimbursement claims arising under the Taxpayers' Bill of Rights.

30702. Appeals from an Action of FTB or CDTPA

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

30705. Reimbursement Claim Procedure

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals, and to clarify the reimbursement claim procedure. These revisions are reasonably necessary to maintain uniformity of defined terms in OTA's Rules for Tax Appeals, as well as to improve readability.

30705.5. Panel on Reimbursement Claim

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The purpose of this amendment is to provide rules for how panel members are selected for reimbursement claims. This amendment is necessary to provide transparency to the public regarding how panel members are selected for reimbursement claims.

30706. Dismissal; Agency Statement; Responses; Oral Hearings

The purpose of this amendment is to provide stylistic and technical corrections for consistency within OTA's Rules for Tax Appeals.

30707. Notice of Decision

The purpose of this amendment is to provide a stylistic correction. This revision is reasonably necessary to clarify who OTA will send written notice to.

**DOCUMENTS RELIED UPON**

In deciding to propose the adoption of the regulatory action described above, OTA primarily relied on Senate Bill 92 (Stats. 2019, Ch. 34), Assembly Bill 1578 (Stats. 2021, Ch. 401), Assembly Bill 473 (Stats. 2021, Ch. 614), Senate Bill 189 (Stats. 2022, Ch. 48), and public discussion during the interested parties meeting that OTA held on March 20, 2023, including comments (written and oral) received during the interested parties' meetings process. OTA did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing to adopt the proposed regulatory action.

**ALTERNATIVES CONSIDERED**

OTA found it necessary to begin the rulemaking process to adopt the proposed regulatory action at this time because OTA determined that the proposed regulatory action is reasonably necessary for the reasons set forth above.

OTA distributed and made available on its website proposed amendments to the OTA Rules for Tax Appeals, and comments from the public were received during this timeframe. Comments were considered and changes were made to the text of the proposed OTA Rules for Tax Appeals where staff determined appropriate.

No reasonable alternative has been identified that would lessen any adverse impact that the proposed regulatory action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed regulatory action.

Therefore, OTA determined that there were no alternatives considered which would be more effective in carrying out the purpose of the proposed Regulatory Action or would be less burdensome with respect to affected private persons or small businesses than the proposed regulatory action.

**NO MANDATE REGARDING USE OF SPECIFIC TECHNOLOGIES**

The proposed regulatory action does not mandate the use of specific technologies or equipment.

## **ECONOMIC IMPACT**

OTA proposes adopting the proposed regulatory action to implement and interpret recent statutory changes, and to provide for stylistic and technical updates.

OTA anticipates that the adoption of the proposed regulatory action will benefit OTA, FTB, CDTFA, local entities, taxpayers, representatives, and the general public by:

- Updating regulatory language to provide for non-attorney panel members in OTA oral hearings, as required by Senate Bill 189 (Stats. 2022, Ch. 48).
- Making minor stylistic changes to improve clarity of the regulations for non-attorney parties to an appeal.
- Update authority citations that have been impacted by recent statutory changes.
- Provide additional guidance on the Small Case Program.
- Establish and clarify comprehensive ethical standards which govern the conduct of all panel members, both attorney and non-attorney, as required by Senate Bill 189 (Stats. 2022, Ch. 48).

All of the provisions in the proposed regulatory action are fully consistent with current law, and there is nothing in the proposed regulatory action that would significantly change how individuals and businesses would generally behave in response to current state and federal law. Therefore, OTA estimates that the proposed regulatory action will not have a measurable economic impact on individuals and businesses, that is in addition to whatever economic impact the provisions of the Act will have on individuals and businesses. OTA has determined that the adoption of the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because OTA has estimated that the proposed regulatory action will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

In addition, OTA has determined that adoption of the proposed regulatory action does not impose any costs of any persons, including businesses, which are not already imposed by state and federal law, including the provisions of the Act, and OTA has determined that there is nothing in the proposed regulatory action that would impact revenue. Therefore, based on these facts and all the information in the rulemaking file, OTA has determined that the adoption of the proposed regulatory action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor affect the expansion of businesses currently doing business in the State of California.

Furthermore, adoption of the proposed regulatory action will not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, OTA has determined that the adoption of the proposed regulatory action will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

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The foregoing information also provides the factual basis for OTA's initial determination that the adoption of the proposed regulatory action will not have a significant adverse impact on business.

The adoption of the proposed regulatory action might affect small business.