

**Initial Statement of Reasons for the Proposed Adoption of
California Code of Regulations, Title 18, Division 2, Chapter 8.2, Lead-Acid
Battery Fees, Section 3210, Definitions, Section 3220, Manufacturer Battery Fee,
Section 3230, California Battery Fee, and Section 3240, Written Certification**

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

Current Law

Assembly Bill No. (AB) 2153 (Stats. 2016, ch. 666) added article 10.5 (commencing with section 25215), the Lead-Acid Battery Recycling Act of 2016 (Battery Recycling Act), to chapter 6.5 of division 20 of the Health and Safety Code (HSC). As relevant here, AB 2153 added HSC section 25215.25 to impose a California battery fee (CBF) on persons purchasing replacement lead-acid batteries from a dealer, on and after April 1, 2017. AB 2153 also added HSC section 25215.35 to impose a manufacturer battery fee (MBF) on manufacturers of lead-acid batteries, on and after April 1, 2017. Also, AB 142 (Stats. 2019, ch. 860) amended the Battery Recycling Act and made several changes to the CBF and MBF.

California Department of Tax and Fee Administration

The Governor approved AB 102 (Stats. 2017, ch. 16) on June 27, 2017. AB 102 established the California Department of Tax and Fee Administration (Department) and transferred the State Board of Equalization's (Board's) duties, powers, and responsibilities to administer and enforce the sales and use taxes and the taxes and fees collected pursuant to the Fee Collection Procedures Law (FCPL) (Rev. & Tax. Code (RTC), § 55001 et seq.), including the MBF and CBF, to the Department, effective July 1, 2017. (Gov. Code (GC), §§ 15570, 15570.22). Accordingly, any references to the Board in the Battery Recycling Act, the RTC sections, including the FCPL sections, and the regulations cited herein currently refer to and mean the Department pursuant to GC section 15570.24 and RTC section 20.5. Also, references to the Department's activities before July 1, 2017, herein refer to and mean the Board's activities.

Manufacturer Battery Fee

Until April 1, 2022, a MBF of one dollar (\$1.00) is "imposed on a manufacturer of lead-acid batteries for each lead-acid battery it sells at retail to a person in California or that it sells to a dealer, wholesaler, distributor, or other person for retail sale in California." (HSC, § 25215.35, subd. (a).) On and after April 1, 2022, the amount of the MBF is two dollars (\$2.00). (HSC, § 25215.35, subd. (b).)

A lead-acid battery "manufacturer" is defined in the Battery Recycling Act to mean either of the following:

- (1) The person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state.

(2)(A) If there is no person described in paragraph (1) that is subject to the jurisdiction of the state, the manufacturer is the person who imports the lead-acid battery into the state for sale or distribution. (HSC, § 25215.1, subd. (h).)

Also, the Battery Recycling Act provides that “a person is subject to the jurisdiction of this state with respect to a lead-acid battery if the person is engaged in business in this state” and “a person shall be considered to be engaged in business in this state if the person is a ‘retailer engaged in business in this state,’ as defined in subdivision (c) of [RTC section 6203], with respect to that lead-acid battery, or if the person has a substantial nexus with this state for purposes of the commerce clause of the United States Constitution.” (HSC, § 25215.1, subd. (h)(2)(B).)

A lead-acid battery “importer” is defined in the Battery Recycling Act to mean “the person who imports the lead-acid battery into the state for sale or distribution.” (HSC, § 25215.1, subds. (e) and (h)(2).) A person who manufactures a lead-acid battery but is not subject to California’s jurisdiction “may agree in writing with the importer of that lead-acid battery to pay the MBF on behalf of the importer.” (HSC, § 25215.3, subd. (a).) A person who pays the manufacturer battery fee on behalf of an importer pursuant to such an agreement shall be credited for that payment, pursuant to HSC section 25215.56, if the person:

1. Submits to California’s jurisdiction and registers with the Department to pay and remit the MBF;
2. Provides to the importer a statement that includes the person’s manufacturer account number with the Department, an identification of the lead-acid battery or batteries sold that will be subject to the MBF, and a “statement that the person will pay the [MBF] to the state on behalf of the importer”; and
3. Retains records sufficient to document that the lead-acid battery or batteries for which the person has agreed to pay the MBF were delivered for retail sale in California, the identity of the importer, and that the required statement was provided to the importer of the battery or batteries in a timely manner. (HSC, § 25215.3, subd. (b))

An importer that receives a timely statement from such a manufacturer will be relieved from any obligation for the MBF on the lead-acid battery or batteries, provided that the manufacturer remits the MBF on the sale of the battery or batteries to the Department. An importer that has paid the MBF for a lead-acid battery or batteries that subsequently receives an untimely statement from such a manufacturer may file a claim for a refund. A statement shall be considered timely if it is issued before the person paying the MBF on behalf of the importer bills the importer for the lead-acid battery or batteries, within the person’s normal billing and payment cycle, before delivery of the battery or batteries to the importer, or before the date on which a return would be due pursuant to HSC section 25215.47. (HSC, § 25215.3, subd. (c).) Also, the Department is authorized to disclose to an importer the amount of the MBF paid or not paid on its behalf, and the Department is generally authorized to disclose specified information about persons registered with the Department to pay the MBF to the public. (HSC, § 25215.48.)

A “lead-acid battery” is defined in the Battery Recycling Act to mean “a battery weighing over five kilograms [(approximately 11 pounds)] that is primarily composed of both lead and sulfuric acid, whether [the] sulfuric acid is in a liquid, solid, or gel state, with a capacity of six volts or more that is used for any of the following purposes:

- (1) As a starting battery that is designed to deliver a high burst of energy to an internal combustion engine until it starts.
- (2) As a motive power battery that is designed to provide the source of power for propulsion or operation of a vehicle, including a watercraft.
- (3) As a stationary storage or standby battery that is designed to be used in systems where the battery acts as either electrical storage for electricity generation equipment or a source of emergency power, or otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source.
- (4) As a source of auxiliary power to support the electrical systems in a vehicle, as defined in Section 670 of the Vehicle Code, including an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or an aircraft.”
(HSC, § 25215.1, subd. (f).)

Also, the Battery Recycling Act provides that the terms “retail sale” and “sale at retail” have the same meaning as defined in RTC section 6007 in the Sales and Use Tax Law (RTC, § 6001 et seq.). (HSC, § 25215.1, subd. (p)(1).) RTC section 6007, subdivision (a), provides that:

- (1) A “retail sale” or “sale at retail” means a sale for a purpose other than resale in the regular course of business in the form of tangible personal property.
- (2) When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner, or factor to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.

In addition, the Battery Recycling Act provides that the term retail sale does not include any of the following:

- (A) The sale of a battery for which a CBF has previously been paid.
- (B) The sale of a replacement lead-acid battery that is temporarily stored or used in California for the sole purpose of preparing the replacement lead-acid battery for use thereafter solely outside of the state and that is subsequently transported outside the state and thereafter used solely outside of the state.
- (C) The sale of a battery for incorporation into new equipment for subsequent resale.
- (D) The replacement of a lead-acid battery pursuant to a warranty or a vehicle service contract described under Insurance Code section 12800.
- (E) The sale of any battery intended for use with or contained within a medical device, as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) as that definition may be amended. (HSC, § 25215.1, subd. (p)(2).)

If a lead-acid battery is sold or will be used in a manner or for a purpose excluding it from the MBF, the Battery Recycling Act requires the manufacturer to “obtain written documentation from the purchaser certifying that the lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the manufacturer battery fee.” (HSC, § 25215.35, subd. (d)(1).) If a purchaser provides such a written certification to a

manufacturer and subsequently sells or uses the battery in a manner so that no exception to the MBF applies, the purchaser is liable for payment of the MBF on that battery to the Department. (HSC, § 25215.35, subd. (d)(2).)

California Battery Fee

Except as provided below, the CBF is imposed on a person for each replacement lead-acid battery purchased from a dealer on or after April 1, 2017. (HSC, § 25215.25, subd. (a)(1).) The CBF is one dollar (\$1.00) until March 31, 2022, and two dollars (\$2.00) on or after April 1, 2022. (*Ibid.*)

A “replacement lead-acid battery” is defined in the Battery Recycling Act to mean “a new lead-acid battery that is sold at retail subsequent to the original sale or lease of the equipment or vehicle in which the lead-acid battery is intended to be used” and “does not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-acid battery.” (HSC, § 25215.1, subd. (n).) A “used lead-acid battery” is defined to mean “a lead-acid battery no longer fully capable of providing the power for which it was designed or that a person no longer wants for any other reason.” (HSC, § 25215.1, subd. (q).)

The CBF does not apply to a replacement lead-acid battery described in HSC section 25215.1, subdivision (f)(3), which is a lead-acid battery used as a stationary storage or standby battery that is designed to be used in systems where the battery acts as either electrical storage for electricity generation equipment or a source of emergency power, or otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source. (HSC, § 25215.25, subd. (a)(1).) Also, on and after January 1, 2020, “if a new motor vehicle dealer sells or leases to a person a used vehicle into which the new motor vehicle dealer has incorporated a replacement lead-acid battery, the [CBF] . . . shall not apply to the person with regard to that replacement lead-acid battery.” (HSC, § 25215.25, subd. (c).)

Dealers are required to collect the CBF from purchasers at the time of sale, dealers may retain 1.5 percent (0.015) of the fee collected as reimbursement for any costs associated with collecting the fee, and dealers are required to pay the remainder of the fee collected to the Department. (HSC, § 25215.25, subd. (a)(3).) “A person who purchases a replacement lead-acid battery in this state is liable for the [CBF] until that fee has been paid to the [Department], except that payment to a dealer registered under [the Battery Recycling Act] is sufficient to relieve the person from further liability” for the CBF. (HSC, § 25215.25, subd. (a)(5).) The term “dealer” is defined in the Battery Recycling Act to mean “a person who engages in the retail sale of replacement lead-acid batteries directly to persons in California” and the term “includes a manufacturer of a new lead-acid battery that sells at retail that lead-acid battery directly to a person through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or internet website or any other similar electronic means.” (HSC, § 25215.1, subd. (d).)

“If a lead-acid battery is sold or will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the [CBF], the dealer shall obtain written documentation from the purchaser certifying that the lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the [CBF].” (HSC § 25215.25, subd.

(d)(1).) If a purchaser provides such a written certification to a dealer and subsequently sells or uses the battery in a manner so that no exception to the CBF applies, the purchaser is liable for payment of the CBF to the Department. (HSC, § 25215.25, subd. (d)(2).)

Administration

The Battery Recycling Act provides that the MBF and CBF are to be collected by the Department in accordance with the FCPL. (HSC, § 25215.45, subd. (a)(1).) The Battery Recycling Act expressly authorizes the Department to adopt and enforce regulations relating to the administration and enforcement of the MBF and CBF. (HSC, § 25215.74, subd. (a).) Also, California Code of Regulations (CCR), title 18, section (Regulation or Reg.) 4901, Records, currently prescribes the records that a feepayer must maintain and make available to determine its correct liability for fees collected in accordance with the FCPL.

Sales and Use Tax Law

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail in the state. (RTC, § 6051.) The sales tax applies to a retailer's gross receipts from the retail sale of tangible personal property in California, unless an exemption or exclusion applies. (RTC, §§ 6012, 6051.)

When sales tax does not apply, use tax is imposed on the storage, use, or other consumption in California of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. (RTC, §§ 6201, 6401.) As relevant here, "storage" includes any keeping or retention of tangible personal property in this state for any purpose except sale in the regular course of business. (RTC, § 6008.) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except the sale of that property in the regular course of business. (RTC, § 6009.) Also, the person storing, using, or otherwise consuming the property is liable for the use tax, unless an exemption or exclusion applies. (RTC, §§ 6201, 6202.) However, every "retailer engaged in business in this state" as defined in RTC section 6203 and making sales of tangible personal property for storage, use, or other consumption in this state must collect the use tax from their customers, give the customers a receipt as prescribed, and then report and pay the amount required to be collected to the Department. (RTC, § 6203; Reg. 1684, Collection of Use Tax by Retailers.) And subdivision (c) of RTC section 6203 generally provides that "retailer engaged in business in this state" means "any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty."

The Sales and Use Tax Law presumes that a retailer's sales of tangible personal property are subject to sales or use tax until the contrary is established and places the burden of proving that a sale of tangible personal property is not a sale at retail upon the person who makes the sale, unless the seller takes from the purchaser a certificate to the effect that the property is purchased for resale. (RTC, §§ 6091, 6241.) The Sales and Use Tax Law provides that the certificate relieves the seller from liability for sales tax or the duty to collect use tax only if taken in good faith from a person engaged in the business of selling tangible personal property (RTC, §§ 6092, 6242) and requires a properly completed certificate to be signed by and bear the name and

address of the purchaser, and indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. (RTC, §§ 6093, 6243.) Regulation 1668, Sales for Resale, prescribes all the requirements for a document to be regarded as a properly completed resale certificate, including the requirement that the certificate include the purchaser's seller's permit number or a sufficient explanation as to the reason the purchaser is not required to hold a seller's permit in lieu of a seller's permit number. Regulation 1668 requires a retailer to timely accept a properly completed resale certificate in good faith to satisfy its burden of proof. Regulation 1668 also permits purchasers to issue a "blanket" resale certificate containing a general description of the items to be purchased and covering those items, unless otherwise specified on the purchase order, or a "qualified" resale certificate that only covers items that are designated as purchased for resale on a purchase order.

The Sales and Use Tax Law also expressly provides for purchasers to issue certificates to retailers certifying that the property purchased will be used in a manner or for a purpose that is exempt from sales tax and that such an exemption certificate relieves the seller from liability for sales tax only if taken in good faith. (RTC, § 6421.) Also, Regulation 1667, Exemption Certificates, presumes, for purposes of the proper administration of the Sales and Use Tax Law, that a retailer's gross receipts are subject to tax until the contrary is established, and provides that a retailer may rebut the presumption and be relieved of liability for the tax by timely taking a properly completed exemption certificate from the purchaser in good faith, in accordance with the regulation.

In addition, subdivision (c)(4) of Regulation 1655, Returns, Defects and Replacements, provides that "[a] deductible paid by a customer under the terms of a mandatory or optional warranty contract is subject to [sales and use] tax measured by the amount of the deductible allocable to the sale of tangible personal property to the customer." Also, Regulation 1706, Drop Shipments, implements, interprets, and makes specific the provisions defining "retail sale" and "sale at retail" in RTC section 6007, subdivision (a)(2), for sales and use tax purposes. Subdivision (b) of Regulation 1706 explains that:

A drop shipment generally involves two separate sales. The true retailer [who is not a retailer engaged in business in this state] contracts to sell tangible personal property to a consumer. The true retailer then contracts to purchase that property from a supplier and instructs that supplier to ship the property directly to the consumer. The supplier is a drop shipper. A drop shipper that is a retailer engaged in business in this state is reclassified as the retailer and is liable for tax [unless the sale is exempt]. When more than two separate sales are involved, the person liable for the applicable tax as the drop shipper is the first person who is a retailer engaged in business in this state in the series of transactions beginning with the purchase by the true retailer.

So, a retail sale, as defined by RTC section 6007, subdivision (a)(2), is commonly referred to as a "drop shipment" in accordance with Regulation 1706.

Marketplace Facilitators

Furthermore, AB 147 (Stats. 2019, ch. 5) added the Marketplace Facilitator Act (MFA) (RTC, § 6040 et seq.) to the Sales and Use Tax Law, operative October 1, 2019, to generally make a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of tangible personal property by a marketplace seller the retailer selling or making the sale of the property for sales and use tax purposes. (RTC, § 6043.) Also, AB 1402 (Stats. 2021, ch. 421) added RTC section 6043.1 to the MFA, operative January 1, 2022, to generally make a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of a replacement lead-acid battery by a marketplace seller the dealer for purposes of collecting and remitting the CBF imposed on the consumer in regard to that retail sale.

Proposed Chapter and Regulations

Issues Created by AB 2153 that Continue to be Issues After AB 142

The Department determined that AB 2153 created the following issues (or problems within the meaning of GC, § 11346.2) with the Battery Recycling Act that continue to be issues that were not addressed by AB 142:

- The act clarifies that the MBF may not be imposed on a person that manufactured a lead-acid battery, unless that person is subject to the jurisdiction of this state, but it does not clarify that the MBF cannot be imposed on an importer or that a dealer may not be required to collect the CBF, unless they are subject to the jurisdiction of the state.
- The act refers to “equipment” in the statutory definition of “replacement lead-acid battery” and refers to “new equipment” in the statutory definition of “retail sale” and “sale at retail,” but does not define the terms “equipment” and “new equipment.”
- The act defines a “replacement lead-acid battery” in part to mean a “new lead-acid battery,” but it does not clarify what “new” means.
- The act uses the term “vehicle” in the statutory definition of “lead-acid battery” without defining the term.
- The act excludes from the definition of “retail sale” the sale of a replacement lead-acid battery that is “temporarily stored or used in California,” but it does not clarify what “temporarily stored or used in California” means.
- The act excludes from the definition of “retail sale” the sale of a lead-acid battery that is incorporated into new equipment for resale, but it does not clarify whether the battery and new equipment must be sold together as a single item for the sale of the battery to qualify for the exclusion.
- The act excludes from the definition of “retail sale” the sale of a battery for which a CBF has previously been paid. but it does not clarify whether the MBF applies to sales of batteries for which the MBF was previously paid.
- The act does not expressly clarify that, under the statutory definition of “manufacturer,” only one person may be the manufacturer of a lead-acid battery for purposes of the MBF.
- The act does not expressly clarify that the MBF applies to different sales transactions depending upon whether the MBF is being imposed on a person who manufactured the lead-acid battery or the person who imported the battery into the state and does not

clarify that importing a lead-acid battery into California, by itself, does not trigger imposition of the MBF.

- The act does not provide guidance to manufacturers and dealers about how to determine the purpose for which a battery will be used for purposes of determining whether the battery is a lead-acid battery as defined in the act.
- The act does not clarify whether there is a retail sale when a consumer is required to pay a separate charge to receive a lead-acid battery as a replacement under a warranty or vehicle service contract, as there would be under Sales and Use Tax Regulation 1655.
- The act does not establish presumptions regarding whether sales are retail sales, whether lead-acid batteries will be resold at retail for purposes of the MBF, or whether sales and purchases of lead-acid batteries are excluded from the MBF or CBF that are necessary for the proper administration of the act.
- The act does not expressly clarify whether the CBF applies to lead-acid batteries purchased from dealers for resale.
- Manufacturers required to pay the MBF and dealers required to collect the CBF may not realize that they are required to maintain and make available records in accordance with Regulation 4901.

As a result of the forgoing issues, the Department drafted new chapter 8.2, Lead-Acid Battery Fees, to be added to division 2 of title 18 of the CCR, and Regulations 3210, Definitions, 3220, Manufacturer Battery Fee, 3230, California Battery Fee, and 3240, Exclusion Certificates, to be included in new chapter 8.2, for the specific purpose of addressing these issues.

2017 Interested Party Meetings and Discussion Papers

The Department drafted an initial discussion paper regarding the new regulations, which was provided to the interested parties on March 24, 2017, and held an interested party meeting on April 13, 2017. The interested parties voiced concerns at the meeting and the Department received written comments from the Department of Toxic Substances Control and Battery Council International (BCI). As relevant here, industry was concerned that:

- The act defines “retail sale” as having the same meaning as RTC section 6007, but it does not clarify that retail sales include drop shipments under RTC section 6007, subdivision (a)(2).
- The act does not specify the requirements for purchasers to issue valid exclusion and exemption certificates to manufacturers and dealers in instances where the sale of a battery is not subject to the MBF and/or CBF and does not specify when manufacturers and dealers are required to obtain such certificates.
- It would be impractical for a business that buys large quantities of lead-acid batteries from overseas and then temporarily stores them in California for the sole purpose of selling them outside the state to issue a separate exclusion certificate for each battery purchased.

Therefore, the Department revised proposed Regulations 3210 through 3240 for the specific purpose of addressing those issues (or problems). The Department drafted a second discussion paper dated May 26, 2017, that discussed the revised regulations. The Department also held a second interested party meeting on June 8, 2017, and no new issues were identified at that time.

Formal Issue Paper

The Department prepared a Formal Issue Paper dated May 21, 2018, for the Director and recommended that the Department propose to adopt the revised versions of the new regulations for the specific purpose of addressing the issues with the Battery Recycling Act discussed above. The Director approved the recommendation, and the approved regulations and issue paper were posted on the Department's website on June 21, 2018.

Amendments to the Battery Recycling Act

The Legislature considered enacting AB 1663 in 2017 and 2018, and the Department paused the rulemaking process in 2018 because AB 1663 could have resolved some of the issues regarding the Battery Recycling Act discussed above. Although AB 1663 was not enacted, AB 142 was enacted in 2019 and made significant amendments to the Battery Recycling Act that are included in the above discussion of the act.

Additional Issues After AB 142

As relevant here, the Department determined that the following additional issues (or problems) with the Battery Recycling Act needed to be addressed by the proposed regulations after the enactment of AB 142:

- The act defines the term importer to mean “the person who imports the lead-acid battery into the state,” but does not otherwise clarify the meaning of the phrase “person who imports the lead-acid battery into this state.”
- The act establishes an exemption from the CBF that applies when a new motor vehicle dealer sells or leases a used vehicle to a person into which the new motor vehicle dealer has incorporated a replacement lead-acid battery but does not specify that dealers must retain documentation to support the exemption.
- If a lead-acid battery is sold or will be used in a manner or for a purpose entitling the manufacturer or dealer to regard the purchase as not subject to the MBF or CBF, the act requires the manufacturer or dealer to obtain written documentation from the purchaser certifying that the lead-acid battery will be used in a manner or for a purpose entitling the manufacturer or dealer to regard the purchase as not subject to the fee, but the act does not specify what other information the written documentation should contain or when the written documentation must be obtained.

As a result, the Department further revised proposed Regulations 3210 through 3240 for the specific purpose of addressing these issues, including changing the name of Regulation 3240 to “Written Certification.”

Third Discussion Paper and Third Interested Party Meeting

The Department drafted a third discussion paper regarding the Battery Recycling Act, new chapter 8.2, and revised Regulations 3210, 3220, 3230 and 3240, which was provided to the interested parties on May 19, 2020. The Department held an interested party meeting to discuss the revised regulations on June 10, 2020, and the Department received written comments from

BCI dated June 26, 2020, and joint written comments from the California Automotive Wholesalers' Association and the Auto Care Association, dated June 26, 2020, regarding the revised regulations.

As relevant here, the industry objected to language in revised Regulations 3230 and 3240 that requires dealers selling replacement lead-acid batteries for use as a stationary storage or a standby battery to obtain written certifications from their purchasers to establish that their purchases are not subject to the CBF. The industry argued that lead-acid batteries used for these purposes are excluded from the CBF under HSC sections 25215.25, subdivision (a)(1), and 25215.1, subdivision (f)(3). However, the Department did not make any changes in response to the concern because HSC section 25215.25, subdivision (d)(1), expressly provides that “[i]f a lead-acid battery is sold or will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the [CBF], the dealer shall obtain written documentation from the purchaser certifying that the lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the [CBF].” Also, the description of a battery on an invoice may not be sufficient for the Department to determine whether the battery will be used as a stationary storage or standby battery. However, a written certification from the purchaser stating that a battery will be used as a stationary storage or standby battery in accordance with Regulations 3230 and 3240 establishes that the dealer is entitled to regard the purchase of that battery as not subject to the CBF and the dealer is not required to collect the CBF from the purchaser on the sale of that battery.

The industry objected to the word “storage” as used in revised Regulation 3230, subdivision (a), which states, in part, that “a [CBF] is imposed on a person for each replacement lead-acid battery purchased from a dealer in a retail sale for storage, use, or other consumption in California.” The industry argued that HSC section 25215.1, subdivision (p)(2)(B), provides that a battery stored in California prior to use in another state is exempt from the CBF and that using the word “storage” in Regulation 3230, subdivision (a), will create confusion by suggesting that the mere storage of a battery in California will subject the battery to the CBF. The Department did not make any changes to Regulation 3230 in response to the industry’s concern because the word “storage” is used in reference to transactions that are retail sales under the Sales and Use Tax Law, which are sales for any purpose other than resale, including storage. Also, the use of the word “storage” in subdivision (a) should not create confusion because Regulation 3230, subdivision (b)(3), expressly provides that “The [CBF] does not apply to . . . [a] sale of a replacement lead-acid battery that is temporarily stored or used in California for the sole purpose of preparing the battery for use thereafter solely outside of California and that is subsequently transported outside the state and thereafter used solely outside of the state.”

The industry also raised a concern that revised Regulation 3240 contained information that duplicated information in revised Regulations 3220 and 3230, and that the duplication was unnecessary and should be avoided. The Department agreed and removed the duplicative language from Regulations 3220 and 3230.

Additional Issue After AB 1402

The Department determined that there was an additional issue (or problem) with the Battery Recycling Act because it defines “dealer” for purposes of the CBF, but it does not clarify that the

term includes a marketplace facilitator that is the “dealer” for purposes of collecting and remitting the CBF under RTC section 6043.1 in the MFA.

Subsequent Changes

After the interested parties meeting, the Department revised the definition of “dealer” in proposed Regulation 3210 to clarify that the term includes a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of a replacement lead-acid battery by a marketplace seller and is the dealer for purposes of collecting and remitting the CBF imposed on the consumer in regard to that retail sale pursuant to RTC section 6043.1. The Department revised the definition of “subject to the jurisdiction of this state” in proposed Regulation 3210 to make it consistent with the provisions of HSC section 25215.1(h)(2)(B), which provide that a person is subject to the jurisdiction of this state if they are “engaged in business in this state,” and clarify that a person who manufactures a lead-acid battery is not engaged in business in this state solely because that person submitted to California’s jurisdiction to pay and remit the MBF on behalf of an importer.

The Department added subdivision (e)(1)(C) to proposed Regulation 3220 to incorporate the statutory requirement in subdivision (b)(3) of HSC section 25215.3 that a person who manufactures a lead-acid battery and enters into a written agreement to pay the MBF on behalf of an importer must retain specific records for a period of no less than four years to receive a credit pursuant to HSC section 25215.56, and clarify that they must make the records available to the Department pursuant to Regulation 4901. The Department deleted similar record keeping requirements from subdivision (f)(2) of Regulation 3220 and renumbered subdivision (f)(3) as subdivision (f)(2). The Department also revised subdivision (d) of Regulation 3230 to clarify that a new motor vehicle dealer must maintain documentation to support the new motor vehicle dealer exemption in subdivision (c) of HSC section 25215.25.

In addition, the Department revised subdivision (a)(1) of Regulation 3240 to clarify that if a written certification that a lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the MBF is timely taken from a purchaser in proper form as set forth in the regulation and in good faith, the manufacturer is not required to pay a MBF on the sale of that battery. The Department revised subdivision (a)(2) of Regulation 3240 to clarify that if a written certification that a lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the CBF is timely taken from the purchaser in the proper form as set forth in the regulation and in good faith, the dealer is not required to collect the CBF from the purchaser on the sale of that battery. The Department also added a presumption to subdivision (c) of Regulation 3240 that, in the absence of evidence to the contrary, a seller has taken a written certification in good faith if the certification contains the essential elements as described in the regulation and otherwise appears to be valid on its face, which is consistent with the same presumption in Regulation 1668.

Proposed Regulations

After the revisions, proposed Regulation 3210:

- Defines the term “dealer” in accordance with subdivision (d) of HSC section 25215.1 and

clarifies that the term includes a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of a replacement lead-acid battery by a marketplace seller and is the dealer for purposes of collecting and remitting the CBF imposed on the consumer in regard to that retail sale pursuant to RTC section 6043.1.

- Defines “Department” to mean the California Department of Tax and Fee Administration.
- Defines “equipment” to mean and include “any tangible personal property that is powered in whole or part by a lead-acid battery” and clarifies that equipment is considered “new equipment” if it has never been sold to a person in a sale at retail.
- Defines “importer” and the phrase “person who imports the lead-acid battery into this state” to mean the person who imports the lead-acid battery into this state for sale or distribution and is subject to the jurisdiction of this state in accordance with subdivisions (e) and (h)(2) of HSC section 25215.1, clarifies that a person imports a lead-acid battery into this state “if they ship, deliver, transport, or otherwise bring the lead-acid battery into this state for sale or distribution,” and clarifies that an “importer does not include a common carrier, a contract carrier, or a California consumer who purchases the replacement lead-acid battery for their own use.”
- Defines “lead-acid battery” in accordance with subdivision (f) of HSC section 25215.1 and clarifies that a lead-acid battery is used for any of the purposes included in the definition of lead-acid battery if the battery “is designed to be used” for such purpose.
- Defines “manufacturer” in accordance with subdivision (h) of HSC section 25215.1, clarifies that only one person shall be considered a “manufacturer” of a lead-acid battery for purposes of the MBF, and clarifies that a drop shipper of a lead-acid battery is the manufacturer of that battery if they are subject to the jurisdiction of this state and no other person is the manufacturer.
- Defines “replacement lead-acid battery” in accordance with subdivision (n) of HSC section 25215.1 and clarifies that a lead-acid battery is new if it has not previously been purchased in a retail sale for which the CBF was imposed and paid.
- Defines “retail sale” and “sale at retail” in accordance with subdivision (a)(1) of RTC section 6007, clarifies that a “retail sale” includes a drop shipment of a lead-acid battery by a drop shipper in accordance with subdivision (a)(2) of RTC section 6007, and clarifies that a “retail sale” does not include the five types of transactions expressly excluded from the definition of retail sale by subdivision (p)(2) of HSC section 25215.1.
- Establishes a rebuttable presumption that a replacement lead-acid battery is not temporarily stored or used in California for the sole purpose of preparing the battery for use thereafter solely outside of the state if the battery remains in this state for more than 90 days after purchase, and clarifies that a battery is not temporarily stored or used in California for the sole purpose of preparing the replacement lead-acid battery for use thereafter solely outside of the state if there is any functional use of the battery in California following its purchase.
- Clarifies that the sale of a lead-acid battery will only qualify for the exclusion from the definition of retail sale provided by subdivision (p)(2)(C) of HSC section 25215.1 if the purchaser will incorporate it into new equipment for purposes of reselling the new equipment with the battery “such that the battery and the new equipment will be sold together as a single item to the consumer” and further clarifies that “this includes multiple inter-changeable lead-acid batteries sold with a single piece of new equipment to allow continuous operation by exchanging depleted lead-acid batteries so long as the use of

multiple lead-acid batteries is required or customary for the usual operation of that new equipment.”

- Clarifies that there is no retail sale under subdivision (p)(2)(D) of HSC section 25215.1 when a lead-acid battery is replaced without charge to the consumer under a warranty or vehicle service contract, but there is a retail sale if a consumer is required to pay a separate charge for the lead-acid battery, including a pro-rated price.
- Explains when a person is “subject to the jurisdiction of this state” in accordance with subdivision (h)(2)(B) of HSC section 25215.1 and clarifies that a person who manufactures a lead-acid battery is not engaged in business in this state solely because the person submitted to the jurisdiction of the state to pay and remit the MBF on behalf of an importer under Regulation 3220.
- Defines “vehicle” to mean “any device or machine which can be used to move persons or property, including but not limited to, a watercraft, aircraft, vehicle as defined in Vehicle Code section 670, or an implement of husbandry as defined in Vehicle Code section 36000,” and clarifies that “vehicle” does not include a device moved exclusively by human power (e.g., a bicycle) or a device used exclusively upon stationary rails or tracks, as provided in Vehicle Code section 670.

Proposed Regulation 3220:

- Prescribes the application of the MBF.
- Clarifies that only one person is the manufacturer of a lead-acid battery for purposes of liability for the MBF, that liability for the MBF is imposed at the time of the manufacturer’s retail sale of a lead-acid battery to a consumer in California or at the time of the manufacturer’s sale of a lead-acid battery to a dealer, wholesaler, distributor or other person for retail sale in California, and that importing a lead-acid battery into California, by itself, does not trigger imposition of the MBF.
- Establishes rebuttable presumptions, for purposes of the proper administration of the MBF, that a manufacturer’s sale of a lead-acid battery to a person in California is a retail sale and that a lead-acid battery sold to a person in California for purposes of resale in the regular course of business will be resold in California in a retail sale, and clarifies that a “manufacturer has the burden of proving that a sale of a lead-acid battery is for resale and that a lead-acid battery purchased for resale will not be resold in California in a retail sale.”
- Clarifies that the MBF does not apply to a sale of a lead-acid battery for which the manufacturer battery fee has previously been paid by a person subject to the jurisdiction of this state or a person that registered with the Department to report and pay the fee, and does not apply to the four types of transactions expressly excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1.
- Clarifies that when the MBF does not apply to a lead-acid battery because it is sold or used in a manner or for a purpose excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1, the manufacturer must obtain written certification from the purchaser, in accordance with Regulation 3240, stating that the lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the MBF, as required by subdivision (d)(1) of HSC section 25215.35.

- Incorporates the provisions of subdivision (a) of HSC section 25215.3 permitting a person who manufactures a lead-acid battery and is not subject to the jurisdiction of this state to enter into a written agreement with the importer of that lead-acid battery to pay the MBF imposed on the importer due to the sale of that battery on behalf of the importer.
- Incorporates the requirements from subdivision (b) of HSC section 25215.3 for a person that pays the MBF on behalf of an importer to receive a credit for that payment pursuant to HSC section 25215.56 and clarifies that such a person shall make the records required to be maintained to claim the credit reasonably available to the Department upon request in the manner set forth in Regulation 4901.
- Incorporates the provisions of subdivision (c) of HSC section 25215.3 relieving an importer of liability for the MBF paid on its behalf and permitting an importer to claim a refund if they paid the MBF before they received notice that it was paid on their behalf.
- Incorporates the provisions of HSC section 25215.48 permitting the Department to disclose to an importer the amount of the MBF paid or not paid on its behalf, and generally permitting the Department to disclose specified information about persons registered with the Department to pay the MBF to the public.
- Provides notice to manufacturers required to pay the MBF that they are required to maintain and make available all records necessary to determine their liabilities for the MBF and all records necessary for the proper completion of their returns in the manner set forth in Regulation 4901.
- Clarifies that the records necessary include, but are not limited to, purchase orders, bills of lading, receipts, invoices, shipping documents, job orders, contracts, customers written certifications, and other relevant documents.

Proposed Regulation 3230:

- Prescribes the general application of the CBF.
- Clarifies that a dealer subject to the jurisdiction of this state is required to collect the CBF.
- Clarifies that the CBF only applies to replacement lead-acid batteries purchased in a retail sale and does not apply to sales of replacement lead-acid batteries for resale in the regular course of business.
- Clarifies that the CBF does not apply to the five types of transactions expressly excluded from the definition of retail sale by subdivision (p)(2) of HSC section 25215.1 or a sale of a replacement lead-acid battery described in subdivision (f)(3) of HSC section 25215.1.
- Incorporates the new motor vehicle dealer exemption in subdivision (c) of HSC section 25215.25 and clarifies that a new motor vehicle dealer must maintain and make available documentation to support the new motor vehicle dealer exemption.
- Establishes a rebuttable presumption, for purposes of the proper administration of the CBF, that a dealer's sale of a lead-acid battery to a person in California is a retail sale.
- Clarifies that when the CBF does not apply to a lead-acid battery because it is sold or used in a manner or for a purpose excluded from the definition of retail sale by subdivision (a)(1) of RTC section 6007 or subdivisions (p)(2)(B) through (E) of HSC section 25215.1, or not subject to the CBF pursuant to subdivision (a) of HSC section 25215.25 because it is described in subdivision (f)(3) of HSC section 25215.1, the dealer must obtain written certification from the purchaser, in accordance with Regulation 3240,

stating that the lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the CBF.

- Clarifies that a dealer is not required to obtain a written certification from the purchaser for a sale of a replacement lead-acid battery for which the CBF has previously been paid or a sale that qualifies for the new motor vehicle dealer exemption.
- Provides notice to dealers required to collect the CBF that they are required to maintain and make available all records necessary to determine their liabilities for the CBF and all records necessary for the proper completion of their returns in the manner set forth in Regulation 4901.
- Clarifies that the records necessary include, but are not limited to, purchase orders, bills of lading, receipts, invoices, shipping documents, job orders, contracts, customers' written certifications, and other relevant documents.

Proposed Regulation 3240:

- Requires a manufacturer to obtain written certification from the purchaser that a lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the MBF if a lead-acid battery is sold or will be used in a manner or for a purpose that is expressly excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1.
- Clarifies that if a written certification is timely taken from the purchaser in proper form as set forth in the regulation and in good faith, the manufacturer is not required to pay a MBF on the sale of that battery.
- Requires a dealer to obtain written certification from the purchaser that a lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the CBF if a replacement lead-acid battery is sold or will be used in a manner or for a purpose excluded from the definition of retail sale by subdivision (a)(1) of RTC section 6007 or subdivisions (p)(2)(B) through (E) of HSC section 25215.1, or not subject to the CBF pursuant to subdivision (a) of HSC section 25215.25 because it is described in subdivision (f)(3) of HSC section 25215.1.
- Clarifies that if a written certification is timely taken from the purchaser in the proper form as set forth in the regulation and in good faith, the dealer is not required to collect the CBF from the purchaser on the sale of that battery.
- Prescribes the minimum requirements for a purchaser's written certification that a lead-acid battery will be used in a manner or for a purpose entitling the seller to regard the purchase as not subject to the lead-acid battery fees, allows a purchaser to use any written document to make such a certification, but recommends that a seller obtain a General Exclusion and Exemption Certificate substantially in the form provided in Appendix A to preclude potential controversy, and provides that such a certification remains in effect until revoked in writing.
- Clarifies when a written certification is considered timely taken in accordance with subdivision (b)(1) of Regulation 1667, and that, in the absence of evidence to the contrary, a seller will be presumed to have taken a written certification in good faith if the certification contains the essential elements required by the regulation and otherwise appears to be valid on its face in accordance with subdivision (c) of Regulation 1668.

- Allows a purchaser to issue a blanket General Exclusion and Exemption Certificate that applies to all its purchases, unless otherwise indicated on its purchase orders, or a qualified General Exclusion and Exemption Certificate that only applies to purchases that are properly designated on purchase orders and provides procedures for issuing both types of certificates.
- Clarifies that, if a dealer timely takes a resale certificate from a purchaser for the purchase of a replacement lead-acid battery in good faith that contains all the essential elements required by Regulation 1668, the certificate shall satisfy the written certification requirements with respect to the sale of that battery.

Determinations

The Department has determined that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 is reasonably necessary for the specific purpose of addressing the issues (or problems) with the Battery Recycling Act discussed above by:

- Clarifying that the term “dealer” includes a marketplace facilitator that is the dealer for purposes of collecting and remitting the CBF pursuant to RTC section 6043.1.
- Defining the terms “equipment,” “new equipment,” and “vehicle.”
- Clarifying what a “new” lead-acid battery means.
- Clarifying the meaning of the phrase “person who imports the lead-acid battery into this state.”
- Clarifying that a battery is used for any of the purposes included in the definition of lead-acid battery in subdivision (f) of HSC section 25215.1 if the battery is designed to be used for that purpose.
- Clarifying that only one person may be the manufacturer of a lead-acid battery for purposes of the MBF.
- Clarifying that a person that manufactures or imports a lead-acid battery may only be the manufacturer of the battery for purposes of the MBF if that person is subject to the jurisdiction of this state.
- Clarifying that retail sales include drop shipments under RTC section 6007, subdivision (a)(2), and that a drop shipper of a lead-acid battery is the manufacturer of that battery if they are subject to the jurisdiction of this state and no other person is the manufacturer.
- Clarifying what it means for a replacement lead-acid battery to be “temporarily stored or used in California.”
- Clarifying the requirements for a lead-acid battery to be incorporated into new equipment for resale.
- Clarifying that there is a retail sale when a consumer is required to pay a separate charge to receive a lead-acid battery as a replacement under a warranty or vehicle service contract.
- Clarifying that a person who manufactures a lead-acid battery is not engaged in business in this state solely because the person submitted to the jurisdiction of the state to pay and remit the MBF on behalf of an importer.
- Clarifying the application of the MBF, that the MBF applies to different sales transactions depending upon whether the MBF is being imposed on a person who manufactured the lead-acid battery or the person who imported the battery into the state,

and that importing a lead-acid battery into California, by itself, does not trigger imposition of the MBF.

- Clarifying that the MBF does not apply to sales of batteries for which the MBF was previously paid and does not apply to the four types of transactions expressly excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1.
- Establishing presumptions regarding whether sales are retail sales, whether lead-acid batteries will be resold at retail, and whether sales and purchases of lead-acid batteries are excluded from the MBF or CBF that are necessary for the proper administration of the fees.
- Clarifying the application of the CBF and that only dealers subject to the jurisdiction of this state are required to collect the CBF.
- Clarifying that the CBF only applies to replacement lead-acid batteries purchased from dealers in a retail sale, as defined in the Battery Recycling Act, and does not apply to batteries purchased from dealers for resale in the regular course of business or batteries described in subdivision (f)(3) of HSC section 25215.1.
- Clarifying that a new motor vehicle dealer must maintain documentation to support the exemption from the CBF that applies when a new motor vehicle dealer sells or leases a used vehicle to a person into which the new motor vehicle dealer has incorporated a replacement lead-acid battery.
- Clarifying the requirements for manufacturers and dealers to obtain written certifications from purchasers that a lead-acid battery will be used in a manner or for a purpose entitling the seller to regard the purchase as not subject to the lead-acid battery fees and prescribing the minimum requirements for a purchaser's written certification.
- Clarifying when a written certification is considered timely taken in good faith and that if a written certification is timely taken from the purchaser of a battery in proper form and in good faith, a manufacturer is not required to pay a MBF on the sale of that battery and a dealer is not required to collect the CBF on the sale of that battery.
- Providing a blanket General Exclusion and Exemption Certificate that purchasers may issue for all their purchases, unless otherwise indicated, or a qualified General Exclusion and Exemption Certificate that purchasers may issue for purchases that are properly designated on purchase orders.
- Clarifying that manufacturers required to pay the MBF, persons that pay the MBF on behalf of importers, and dealers required to collect the CBF are all required to maintain and make available records in accordance with Regulation 4901.

The Department anticipates that the adoption of proposed Regulations 3210, 3220, 3230, and 3240 will promote fairness and benefit businesses that manufacture, import, buy, or sell lead-acid batteries, individual consumers that purchase lead-acid batteries, and the Department by defining and further clarifying terms and phrases used in the Battery Recycling Act, clarifying the application of the MBF and CBF, providing notice about the records manufacturers and dealers are required to maintain and make available to determine their liabilities for the MBF and CBF, establishing rebuttable presumptions for the proper administration of the fees, prescribing the minimum requirements for a purchaser's written certification that a lead-acid battery will be used in a manner or for a purpose entitling the seller to regard the purchase as not subject to the lead-

acid battery fees, and providing a General Exclusion and Exemption Certificate form that purchasers can use to make their written certifications.

In addition, the Department has determined that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 is not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulations 3210, 3220, 3230, and 3240. The Department has also determined that it is necessary to include many provisions from the Battery Recycling Act in proposed Regulations 3210, 3220, 3230, and 3240 so that readers will not need to refer to the underlying statutes and to make it easier to clarify the meaning of those provisions as they are used in the regulations.

DOCUMENTS RELIED UPON

The Department relied upon Department staff's understanding of the Battery Recycling Act and Sales and Use Tax Law in proposing to adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240. The Department did not rely upon any technical, theoretical, or empirical study, report or similar document.

ALTERNATIVES CONSIDERED

The Department considered whether to begin the regular rulemaking process to adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 at this time or, alternatively, whether to take no action at this time. The Department decided to begin the regular rulemaking process to adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 because the Department determined that the provisions of Regulations 3210, 3220, 3230, and 3240 are reasonably necessary for the reasons set forth above.

The Department did not reject any reasonable alternative to Regulations 3210, 3220, 3230, and 3240, including any reasonable alternative that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative to Regulations 3210, 3220, 3230, and 3240 has been identified and brought to the Department's attention that would lessen any adverse impact the proposed 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 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 action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of adopting Regulations 3210, 3220, 3230, and 3240 on California businesses and individuals. The Department determined that business and individuals will not incur any costs to comply with Regulations 3210, 3220, 3230, and 3240 that they would not otherwise incur to comply with the Battery Recycling Act. The Department also determined that businesses that manufacture, import, buy, or sell lead-acid batteries and

individual consumers that purchase lead-acid batteries will benefit from the clarifications made by Regulations 3210, 3220, 3230, and 3240, but they will not receive a monetary benefit.

As a result, the Department determined that 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. The Department also prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and the Department determined in the economic impact assessment that the adoption of Regulations 3210, 3220, 3230, and 3240 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California.

Furthermore, Regulations 3210, 3220, 3230, and 3240 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Department determined that the adoption of Regulations 3210, 3220, 3230, and 3240 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Department's initial determination that the adoption of Regulations 3210, 3220, 3230, and 3240 will not have a significant adverse economic impact on business.