

NOTICE OF PROPOSED RULEMAKING

**TITLE 2, DIVISION 10: CALIFORNIA CODE OF REGULATIONS
ADOPT SECTIONS 61200 TO 61240, INCLUSIVE,
REGARDING
CALIFORNIA HEALTHCARE, RESEARCH AND PREVENTION TOBACCO TAX
ACT OF 2016**

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the California State Auditor (State Auditor or office, as appropriate) is proposing to adopt the following sections in Title 2, Division 10 of the California Code of Regulations: 61200 to 61240.

A public hearing has been scheduled for August 21, 2017. The hearing will be held at the California State Auditor's Office located at 621 Capitol Mall, 10th Floor, Sacramento, California, beginning at 10 a.m. and ending at 2 p.m.

Notice is also given that any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to:

Brianna Carlson
California State Auditor's Office
Office of Legal Services
621 Capitol Mall, Suite 1200
Sacramento, CA 95814
Fax: (916) 323-0913
E-mail: regulations@auditor.ca.gov

All written comments must be received by the office no later than August 21, 2017, the final day of the written comment period, in order for the comments to be considered by the State Auditor.

Following the written comment period, the State Auditor may adopt the proposed regulations substantially as described in this notice. If modifications are made that are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the State Auditor adopts the resulting regulations. A request for copies of any modified regulations should be made to the contact person named above. The State Auditor will accept written comments on any modified regulations for 15 days after the date on which they are first made available to the public.

AUTHORITY AND REFERENCE

Pursuant to the authority vested in it by Revenue and Taxation Code section 30130.57, and to implement, interpret, or make more specific Revenue and Taxation Code sections 30130.56 and

30130.57, the office proposes to adopt the regulations identified under the heading Nature of Proceeding above.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Revenue and Taxation Code sections 30130.56 and 30130.57 (as added to the Revenue and Taxation Code as a result of the approval of initiative Proposition 56 by the voters on November 8, 2016 at the statewide general election) contain provisions that do the following:

- Require the State Auditor to define administrative costs for purposes of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (the “Act”). The Act was added as Article 2.5 (commencing with section 30130.50) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code as a result of the approval of initiative Proposition 56 by the voters on November 8, 2016 at the statewide general election.
- Require the State Auditor, when defining administrative costs, to take into account the differing nature of the agencies or departments receiving funds pursuant to the Act.
- Require the State Auditor to conduct at least biennially an independent financial audit of the state and local agencies receiving funds pursuant to the Act; review (at a minimum) the administrative costs expended by the state agencies that administer the fund; provide public transparency with respect to revenues generated by the Act; ensure that revenues generated by the Act are used for healthcare, tobacco use prevention, and research; and make recommendations for improvements.

Proposed Regulations

To implement Revenue and Taxation Code sections 30130.56 and 30130.57 in a manner that furthers the intent of the voters and that informs state and local government agencies and the general public regarding how administrative costs and audits will be defined with respect to the Act, the proposed regulations will relate to the following subject areas:

- Clarify which expenditures by a state or local government agency constitute an administrative cost with respect to the Act.
- Clarify the audits that the State Auditor shall conduct as required by the Act.

The proposed regulations are not inconsistent or incompatible with existing state regulations.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to part 7 (commencing with § 17500) of division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

This proposed regulatory action will not affect housing costs.

COST OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated. The State Auditor is required to promulgate regulations to define administrative costs with respect to the funds state or local government agencies receive pursuant to the Act. However, these regulations do not affect the total amount of funds the state or local government agencies receive pursuant to the Act. This proposed regulatory action merely defines administrative costs and does not impose any additional responsibilities or costs on state or local government agencies.

ECONOMIC IMPACT AFFECTING BUSINESS

The State Auditor has made an initial determination that this proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by Government Code section 11342.610.

ECONOMIC IMPACT ASSESSMENT

The State Auditor has made an initial determination that this proposed regulatory action will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. The State Auditor has made an initial determination that this proposed regulatory action will not impact the health and welfare of California residents, worker safety, or the state's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

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

IMPACT ON SMALL BUSINESS

The determination that this proposal would not affect small business is based upon the fact that the proposed regulations implement provisions of Revenue and Taxation Code section 30130.57, and to implement, interpret, or make more specific Revenue and Taxation Code sections 30130.56 and 30130.57. These regulations only impact state and local government agencies. Based on the

limited scope of these regulations, the State Auditor determined that none of the proposed regulations have a significant adverse economic impact on business.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

From April 2017 to June 2017 the State Auditor engaged in pre-rulemaking discussions via telephone with various stakeholders, including the California Department of Education, California Department of Finance, California Department of Health Care Services, California Department of Justice, California Department of Public Health, California State Board of Equalization, University of California, and proponents of Proposition 56.

ALTERNATIVES CONSIDERED

The State Auditor has determined that no reasonable alternative considered by the State Auditor or that has otherwise been identified and brought to the attention of the State Auditor would be more effective in carrying out the purpose 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 provisions of law.

CONTACT PERSON

Inquiries relating to this proposed action and written comments may be directed to:

Brianna Carlson
California State Auditor's Office
621 Capitol Mall, Suite 1200
Sacramento, CA 95814
Telephone: (916) 445-0255
Fax: (916) 323-0913
E-mail: regulations@auditor.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

The State Auditor has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based, including the express terms. The rulemaking file is available for public inspection on the State Auditor's website at www.auditor.ca.gov or by making a request to the contact person listed above.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations may be obtained by making a request to the contact person listed above. These proposed regulations may also be viewed and downloaded from the State Auditor's website at www.auditor.ca.gov.

If there are substantial changes to the originally proposed regulations, these change(s) will be available for public inspection 15 days prior to adoption by the State Auditor. You will be able to obtain a copy of the change(s) by making a written request to the contact person listed above. The change(s) will also be available for public inspection on the State Auditor's website at www.auditor.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

The express terms, the final statement of reasons, and all the information upon which the proposed regulations are based will be contained in the final rulemaking file located at 621 Capitol Mall, Suite 1200, Sacramento, California 95814. The final rulemaking file will be available for public inspection on the State Auditor's website at www.auditor.ca.gov or by making a request to the contact person listed above. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person listed above.

WEB SITE ACCESS

Materials regarding this proposal can be found at www.auditor.ca.gov.