

GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

California Film and Television Tax Credit Program 3.0

Title 10, Chapter 7.75, Sections 5520-5528

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATION

The proposed regulation will establish procedures for allocating tax credits to qualified taxpayers in the motion picture industry. This program shall be named the California Film and Television Tax Credit Program 3.0.

NECESSITY

The state of California has suffered losses in one of its most prominent and economically successful industries, the motion picture industry, because other states in the United States and other regions in the world are aggressively luring motion picture productions by offering attractive financial incentives. These incentive programs have triggered an exodus of film productions from California which, in turn, hurts related California businesses that provide the motion picture industry with specialized services, equipment and facilities.

On September 18, 2014, legislation took effect immediately establishing the California Film and Television Job Retention and Promotion Act, AB-1839 (Chapter 413). The Act provided a qualified taxpayer a tax credit for qualified expenditures in the production of a qualified motion picture in California for taxable years beginning on or after January 1, 2016. The statute mandated the California Film Commission (CFC) begin allocating tax credits to applicants on or after July 1, 2015, and also mandated the CFC to establish a procedure for applicants to file an application for the allocation of the tax credit; provide for computation and ranking of applicants based on the jobs ratio; establish criteria for allocating tax credits; determine and designate applicants who meet the requirements to apply for the tax credit; and issue the credit certificate to the qualified taxpayer upon completion of the qualified motion picture. In response to these mandates, the CFC adopted emergency regulations in April 2015, (California Film and Television Tax Credit Program 2.0) to ensure that the program be implemented in a timely manner. The permanent Program 2.0 regulations were adopted on May 11, 2016.

SB-878 (Chapter 456) was enacted to extend, modify and clarify the requirements and opportunities for the allocation of the credits and was chaptered on September 17, 2018, becoming effective immediately. California's Film & Television Job Retention and Promotion Act continues to target productions that are most likely to leave the state due to incentives being offered in other states and countries. Although the existing California Film and Television Tax Credit Program 2.0 is similar to these proposed regulations, the current legislation makes additions and deletions to the terms of the credit allocations which provide the statutory authorization for this California Film and Television Tax Credit Program 3.0. These regulations will encourage filmmakers to keep their productions in California and make the state more competitive by increasing the number of productions and therefore jobs and dollars spent in state. The proposed rulemaking will provide permanent regulations to ensure the tax credits continue to be available to the film industry in California.

Section 5520. Program 3.0 Definitions

Section 5520 sets forth definitions applicable specifically to Program 3.0. Although many of these terms are also used generally in the film industry, they are defined here for clarity and to avoid any misinterpretation of their use as they relate specifically to Program 3.0.

Most of the definitions are identical to those previously approved and adopted in Program 2.0, but a few have been changed and some definitions have been deleted in order to improve and provide additional clarity to users of the Tax Credit Program. The only changes in the definitions are as follows: “Feature Film” and “Independent Film” no longer delineate distribution markets in the definition. The industry now produces feature length films for multiple distribution outlets. “Force majeure” now includes labor disruption in the listing of events that would qualify because labor disputes leading to strikes or walk-outs are not uncommon in the industry. The definition of “Miniseries” was changed to conform with the statutory requirements. The definition of “Television Project” no longer refers to Movies of the Week (MOW) because, after July 1, 2020, motion pictures previously classified as MOWs will be designated either a Feature Film or Independent Film, which are exhibited in multiple distribution outlets. “Production Facility” no longer requires a definition as principal photography days in a production facility no longer qualifies for additional percentage (“bonus”) points with respect to a project’s jobs ratio.

Section 5520 also includes terms that were not previously defined in Program 2.0. A definition of “Local Hire Labor” was added because reference to the term is made repeatedly in these regulations. A definition of “Recurring Series” is needed to accurately describe it for tax credit eligibility.

Section 5521. Application Process for Tax Credit Allocation - Section 5521 provides for an application process for the California Film and Television Tax Credit Program 3.0. The process and the data required to be submitted by the applicant will be used to determine eligibility to the program and to establish a jobs ratio ranking as required by statute.

Subsection (a) provides for the announcement of time periods, “open allocation periods,” pursuant to Program 3.0, when the production companies can apply for eligible tax credits in each fiscal year. These periods of time will be announced to give production companies sufficient time to plan and prepare the documents required to submit during Phase II of the application process.

Subsection (b) requires the application to be submitted before principal photography begins. This tax credit was enacted to incentivize production companies to film in California. If a production company has begun filming, the tax credits will likely not have been a factor in that company’s decision to locate in California.

Subsection (c) provides that a company that submits duplicate applications shall be disqualified. This requirement will discourage a production company from submitting duplicate applications with different production names, etc., in order to increase the odds of attaining a priority ranking in the jobs ratio ranking process.

Subsection (d) provides that the applicant may submit a new application for the same project during any fiscal year if the production did not receive or retain a tax credit allocation in the same fiscal year. This subsection is included for clarity relating to opportunities for eligibility.

Subsection (e) provides that an applicant, including any affiliated entities, that starts but does not complete principal photography of the production shall not be eligible to reapply for that specific

production. The added reference to affiliated entities is needed to capture any companies affiliated to the applicant to prevent companies related to the original applicant from reapplying once they have been disqualified. This requirement is aimed at preventing credits from being tied up and withheld from otherwise eligible applicants.

Subsection (f) provides that any expenditures for services, wages, or goods incurred prior to application approval shall not be considered qualified expenditures except production facility, office rentals, completions bonds and insurance premiums, which may be prorated to include the expenditures which are incurred on or after the Credit Allocation Letter (CAL) issuance. This section now allows projects with major expenditures incurred prior to acceptance into Program 3.0 to pro-rate specified expenses from the date of acceptance. Expenditures for production facility, office rentals, completions bonds and insurance premiums are allowed because these elements are costly and must be lined up before production can take place. For instance, stage space is highly competitive and must be secured well before full-on pre-production. Applicants are often notified of their acceptance in the program weeks prior to receiving their Credit Allocation Letter and allowing a pro-ration of these expenditures enables these productions to secure these needed elements. Allowing for these expensive costs to qualify increases the competitiveness of California against states who offer incentives (without a competitive application process) in which purchases and rentals qualify immediately.

Subsection (g) provides that a television series shall submit one application for a television season of that television series and that a television series with an order for additional episodes for the same season may apply in a subsequent television allocation period. As numerous TV series have additional episodes ordered mid-season, this now clarifies that the application and subsequent tax credit are issued only for the original number of episodes but that the production may apply for additional episodes in the same season in a future allocation period.

Subsection (h) provides that the application process shall be in two phases. Phase I requires the applicant to complete an online application and select a production category: Feature film, Independent film or television project (e.g., new television series, recurring television series, relocating television series, pilot or mini-series.) Independent films must indicate whether the budget is ten million (\$10,000,000) or less or more than \$10,000,000, a new requirement, pursuant to the statute. Clarification is provided as to what constitutes a television project. The process whereby the applicants input requested information is also more accurately described. The information obtained provides the CFC with the data needed to determine the jobs ratio and rank the applicants as required in statute. The subsection clarifies that Phase II occurs after all applicants have been ranked by jobs ratios and the highest ranked productions in each category are required to submit their documentation.

Section 1 of the application requires information including the title of production, the applicant entity and taxpayer ID number. The production title and applicant entity will be unique and will identify the project. The taxpayer ID number is required for use by the Franchise Tax Board. The applicant must identify if it is a corporation, limited liability company, individual proprietorship, subchapter S corporation, partnership or other. Although most of the production companies will form a new company for each production, independent films may be a sole proprietorship or other type of corporation. This information was moved to this section from section 3 in the Program 2.0 application to consolidate the business information in one section. A definition of "applicant" as defined in the Regulations is included for clarity.

Section 2 of the application requires contact information including the name, company and address, email address and phone number of the applicant and other key individuals. This information will be used for

corresponding with the applicant and others for the purpose of project correspondence and issuing the Credit Allocation Letter. It enables the CFC to contact the appropriate personnel to obtain information in a timely manner to expedite the review of applications.

This section also requires the primary contact, production company contact, parent company contact along with the “budget and schedule” contact who the CFC can reach with any questions regarding those submitted documents. Requirements for the provision of producer, crew and performer names, information which assists in verifying the legitimacy and readiness of a production, have been moved to another section.

Section 3 requires the applicant to list the financing sources and ownership, including the name of individuals and/or funds, amounts and percentage of funding which, at minimum, must equal 60% of the production budget. A project must be properly funded to be a legitimate production and be considered for this program. Independent films must list all equity investors and/or partners and include the percentage of ownership in the entity. Independent film owners are asked to attest that the entity is not owned by a publicly traded company and that a publicly traded company does not own directly or indirectly more than 25% of the applicant entity in order to demonstrate eligibility for that category.

Section 4 requires the applicant to provide information on the production. They must indicate the type of production to verify that the production company is filming a qualified motion picture allowed by statute. A relocating television series must provide information on how many days in the previous season were filmed inside and outside California to determine whether the new statutory requirements that at least 75 percent of principle photography days in the previous season were filmed outside of California has been met. The production schedule data will provide information on the principal photography days, including the start of principal photography and end of principal photography and filming locations to verify that the filming schedule will meet the criteria in statute and is information which is critical for reporting requirements. The names of the “Key Creatives” - the executive producer(s), the producer(s), writer(s), director, lead actor(s), director of photography and location manager - are required. The payroll service, distributor and CPA categories have been removed as the applicants may not have that information at the time of application and will be asked these questions on the final form required for tax credit certificate. The location manager has been moved into this subsection because of the specific information he or she will have related to location of filming.

This section also requires a synopsis of the screenplay, teleplay or series to be included. The synopsis will give a summary of the plot, the main characters, the beginning and ending and major scene descriptions. This will substantiate the type of production and verify that it meets the criteria in the statute as to the type of production eligible for tax credits. The synopsis also provides a detailed description of the story to verify whether the project that was submitted for tax credit is the same project that was filmed in California and will be applying for a tax credit certificate.

Section 5 is a self-calculating portion of the application to determine the percentage of principal photography days, which is a factor in the bonus point structure. The applicant must provide the days filming will occur in the Los Angeles zone, outside the Los Angeles zone but in California, and outside California. One of the eligibility requirements for the program is that 75% of principal photography days must be shot in California (or, alternatively, 75 % of the production budget is incurred for payment for services performed within the state and the purchase or rental of property used within the state) to qualify for the program. This section also requires the applicant to provide the specific counties inside California and specific state(s) or country outside California where the project will be filming. This information will be used for reporting to the Legislature the areas in California where an increase in filming occurs as a

result of this program. The calculation performed will be used in determining the Jobs Ratio. The information supplied in this section will be included in calculations related to the determination of extra bonus points for out of Los Angeles zone principal photography days. The previous request for “facility days” has also been omitted as they no longer qualify for additional bonus points.

Section 6 requires statistics on the production. The applicant is required to provide the estimated total number of cast members, estimated total number of "base" crew members and estimated total extras/stand-in man-days. This section defines man-days to be the sum of the number of days, full or partial, a person is estimated to work. The applicant is now required to submit Budget information including total production budget, and total California expenditures (qualified and non-qualified expenditures). The addition of the total budget provides precise data for the calculation which determines if seventy-five percent (75%) of the total production budget will be expended in California as is required by statute. The applicant must additionally provide information regarding California Qualified Visual Effects (VFX) indicating both total worldwide VFX budget amount, total California VFX budget amount and total California VFX budget eligible for bonus points. The request for the projected worldwide VFX budget assists in estimating the projected percentage of California VFX expenditures. Independent films with qualified expenditure budgets of less than ten million (\$10,000,000) are not required to provide this information because this category is not eligible for bonus points as their budgets generally do not include large expenditures for visual effects. This section also requests applicants to acknowledge the requirement of reporting diversity and ethnicity statistics, subject to self-reported voluntary information, if and when the applicant applies for a tax credit certificate. These statistics would not be available until the end of the production process.

Section 7 provides additional tax credit calculations which may provide additional tax credits or what is known as “uplifts” in the industry. This subsection has been reworked extensively from the language in Program 2.0 due to changes in the statute. Non-Independent productions may be eligible for out of Los Angeles zone wage and non-wage uplift (excluding Local Hire Labor in this calculation) by providing a calculation showing total expenditures outside the Los Angeles zone, including qualified out of Los Angeles zone wages and non-wages (non-consumables, and consumables). VFX expenditures qualify for both uplifts and /or bonus points. The on-line application will automatically calculate the uplifts and/or additional bonus points. It also clarifies that uplifts are only for expenditures during the applicable period, as provided by statute. “Local Hire Labor” (LHL) has been added as a new category providing eligibility for additional tax credits pursuant to statutory provision. Non-independent productions (excluding relocating TV series) qualify for a 10% augmentation for LHL; independent films and relocating TV series qualify for a 5% augmentation. These augmentations are as provided for in the statute.

This section also asks for information regarding the total California music wages eligible for bonus points. In Program 2.0, music expenditures qualified for uplifts, however in Program 3.0 they only qualify for additional bonus points, consistent with the statute. However, Independent films with qualified expenditure budgets of less than ten million (\$10,000,000) are not required to provide this information because this category of production is not eligible for bonus points for music wages. This is because Independent films typically have budgets in which there is only an allowance for a “composer package” in which the composer creates an electronic score without musicians or with very few musicians. Expenditures to or by composers are not eligible for bonus points, as composers are not qualified individuals per statute. All information requested is needed to calculate the credits accurately. The subsection describes the operations performed by the on-line portal system in calculating the eligible uplifts for transparency.

Section 8 requires information to calculate an estimated credit allocation and now indicates it also determines the jobs ratio. The applicant is required to provide total qualified wages, qualified non-wages, contingency, and total completion bond fee, if applicable. The total of the submitted data will be multiplied by 20 or 25% to determine the credit allocation. The total tax credit will be added to any additional percentage and/or uplift for which there is eligibility. The section now also asks for additional information to correctly calculate the total amount of tax credits, including uplifts, bond and or contingency, and clarifies that the amount of tax credit is limited to statutory caps for both independent and non-independent productions.

The on-line portal automatically calculates a base jobs ratio and an adjusted jobs ratio based on information provided by the applicant in the application. The jobs ratio number for the production will be indicated once the application is complete.

Section 9 is a certification by the applicant that the application is true and accurate to the best of his/her knowledge. This applicant will be alerted that by “clicking” on this section, they are certifying that it is all true information. This is necessary to verify that it is not a fraudulent application and a physical signature is not provided for on the online application. This requirement has not been changed.

Subsection (i) of this section provides that the applicants shall be selected for Phase 2 based on the jobs ratio ranking assigned in the on-line application. This is provided for clarity and is consistent with the specifications in statute.

Subsection (j) provides that the top ranked projects in each category will be notified by the CFC and that they will be required to submit additional supporting information as stated on the notification. Applicants will be required to submit said information within 3 days, but no later than 7 business days. This will prevent the CFC from requiring additional information from Phase I applicants whose jobs ratios are too low to be competitive. The wording has changed from stating that the “project” must provide the information to requiring that it is “the applicant” which must do so. This change more accurately describes who is required to provide additional materials and the deadlines for submissions were made clearer. It also substitutes “no less than” 3 business days to “within” 3 business days, which more accurately describes the requirement, as well as clarifies that the CFC may extend the 3 day deadline to no more than 7 business days if there is a compelling, legitimate business reason why the documentation is not yet available, e.g., the pick order issued by the network has not yet been received by the applicant or an investor is out of the country and time is needed to secure back-up financial records.

Subsection (k)(1) requires projects that have qualified for the next phase of the application process to upload an electronic copy of the qualified expenditure budget to the online application portal (“portal” is added for clarity). This is necessary to verify that the company meets the statutory financial requirements. The budget will be accepted in any industry standard budgeting program. The CFC needs the budgets to be submitted in consistent formats to be able to effectively review them.

Subsection (k)(1)(A) requires the budget to include qualified wage expenditures and qualified non-wage expenditures. If applicable, applicants must also indicate costs which will be incurred outside the Los Angeles zone during the applicable period. This information is required to verify that the costs are qualified and to determine the amount of wage and non-wage qualified expenditures. If the proposed budget does not show wage and non-wage expenditures in the state, the jobs ratio will not be able to be determined. This subsection clarifies that the budget should indicate “out of Los Angeles zone” costs.

Subsection (k)(1)(B), for non-independent productions (excluding Relocating Series in their first season in California), requires an indication of those accounts for which an additional five percent (5%) in tax credits is allowed for qualified expenditures such as items (purchased or rented and used outside the Los Angeles zone during preproduction through strike on location; qualified visual effects (VFX) if at least ten million dollars (\$10,000,000), or seventy-five percent (75%), of VFX will be paid or incurred in the state; and qualified wages for services performed outside the Los Angeles zone during preproduction through strike by individuals who reside within the Los Angeles Zone. These additional 5% tax credits are only awarded to non-independent productions (excluding Relocating TV Series) as required by statute. Non-independent productions shall also now indicate those accounts for which an additional ten percent (10%) tax credit is allowed for local hire labor. This is consistent with the Program 3.0 statute. Music track recording and scoring costs are no longer mentioned as they no longer qualify for uplifts in the statute and therefore do not need to be indicated in specific accounts. The subsection also now clarifies that budgets must indicate work out of the Los Angeles zone and separately indicate out-of-zone work performed by “local hire labor” (LHL).

Subsection (k)(1)(C) requires a television series to submit a qualified expenditure budget including all pattern and amortization costs or separate amortization and pattern budgets. The budget shall be in an industry standard budgeting program uploaded to the online application. The Production Budget shall indicate, as applicable, the information required in Subsection (k)(1)(A) and (B). Television series separate costs into distinct budgets and therefore are allowed to submit qualified expenditure budgets to the CFC in a manner consistent with industry standards.

Subsection (k)(1)(D) requires independent firms and relocating television series in their first season in California to indicate those accounts for which an additional five percent (5%) tax credit is allowed for LHL. Independent firms and relocating television series must report LHL to be eligible for the additional tax credits. This subsection is new to Program 3.0, consistent with statutory authority.

Subsection (k)(2) requires the preparation of a Fringe Matrix, which provides a detailed breakdown of qualified fringe benefit rates in the submitted qualified expenditure budget in the following categories, as applicable: union and non-union extras; union and non-union crew; and Director’s Guild of America (DGA) crew. As applicable, fringe rates may also include state unemployment tax; payroll/handling fees; pension, health, welfare, vacation and holiday expenditures; DGA fringes; workers’ compensation; and/or non-union health insurance. Due to the competitive nature of the program, budgets must accurately reflect industry-wide costs, such as fringe rates. Many projects aggregate fringes so it is difficult to ascertain the accuracy of the fringe rates. The new requirement of a Fringe Matrix provides a detailed breakdown of individual fringe rates to prevent overstatement of fringe rates.

Subsection (k)(3) requires the submittal of a one-line shooting schedule, which will verify that the information in the filming schedule is consistent with the information in the synopsis, screenplay and qualified expenditure budget. The schedule must include scene descriptions, scene numbers, and cast numbers, and indicate which days are scheduled outside the Los Angeles zone. The schedule is now required to include holidays so the CFC can more accurately analyze the number of production days and weeks. The schedule does not need to indicate production facility days as the statute no longer mandates the “utilization of production facilities” as a jobs ratio bonus factor.

Subsection (k)(3)(A) provides that a television series shall submit in PDF or equivalent format, a production calendar, including the start and end dates of the season, the number of in-state and out-of-state principal photography days, holidays, and the total number of episodes in lieu of a one-line shooting schedule. The production calendar must indicate which days are scheduled for filming outside the Los

Angeles zone. This varies from the requirements for other productions because television has multiple periods of preparation, principal photography and post-production for each episode. The production calendar is an industry standard document for providing this information. A new requirement that the number of holidays in production must be included is needed to analyze the schedules and budgets accurately. A reference to production facility days in Program 2.0 has been omitted because it is no longer relevant with respect to bonus points.

Subsection (k)(4) requires the applicant to submit a screenplay of the production including scene numbers that match the submitted schedule, except in the case of a recurring television series or a pilot that does not have a script, for which the requirement is waived. This is required to verify that the production meets the criteria in statute as to the type of production eligible and that the application submitted is for that specific screenplay. The requirement of scene numbers when submitting a screenplay is added to enable the CFC to more accurately analyze the schedule which will include the scene numbers. The provision clarifies its inapplicability to pilots which do not yet have finished screenplays and recurring series which have already submitted scripts in previous allocation periods.

Subsection (k)(5) requires a financing sources report to list the entities or persons funding the production. The program requires proof of a minimum of 60% financing in order to have more certainty that the project will be produced and completed and therefore utilize the tax credits. Supporting financial documentation provides more conclusive evidence of such financing.

Subsection (k)(6) requires that a pilot, new television series or relocating television series submit evidence that the series is scheduled for photography, known in the industry as a Pick-up Order. This is to verify that the filming for this production is secured and that it is a legitimate production. A Recurring Television Series may submit an application without a Pick-up Order but will be removed from the queue if the Pick-up Order is not provided within 140 days of the CAL date for the application period for which an application is submitted. The addition of a 140-day deadline for a Pick-up Order submission is to prevent premature applications and the reservation of credits for the next season's episodes when the next season's episodes may not be ordered in a timely manner. This is to encourage TV series without a Pick-up order to wait and apply closer in time to when a Pick-up Order will be available, given the CFC has multiple allocation periods throughout the fiscal year. The length of the deadline was determined by analyzing length of time between application and pick-up order submittal for recurring TV series in Program 2.0. The data indicated that over 80% of series submitted a Pick-up Order within 100 days of the application submission and thus this deadline is easily achievable while preventing series from tying up credits – as some did - for over 200 days from application. This requirement will avoid tying up credits which may not be used and freeing them for the use of other applicants.

Subsection (k)(7) requires a Narrative statement, as required by the statute, which provides that if not for the tax credits, the production would either not be able to go into production or would need to film in a jurisdiction where tax credits were available. This is to confirm the need for tax credits to enable productions to produce their films and television projects in California.

Subsection (k)(8) requires a Relocation Statement, which certifies that at least 75 percent of principal photography days of its most recent season was filmed outside of California, from any television series seeking to qualify for the tax credit that is based on relocating its production to California. The statement that at least 75 percent of the last season was filmed outside California is a new statutory requirement to disallow productions already filming more than 25% of principal photography in California to apply. This is to verify that the tax credit is the primary reason to relocate. This is also necessary because this is the only way a television series, less than 40 minutes in length, exclusive of commercials, can qualify for

Program 3.0. A relocating TV series submitting this statement is not required to submit a narrative statement.

Subsection (k)(9) requires the applicant to submit the company's written policy against unlawful harassment policy to the CFC as now required pursuant to section 17053.98(g)(2)(xi) of the Revenue and Taxation Code.

Subsection (k)(10) requires an applicant to provide to the CFC a summary of their programs to increase the representation of women and minorities, as well as information about how the programs are publicized to interested parties, as are now required pursuant to section 17053.98(g)(2)(xiii) of the Revenue and Taxation Code. This requirement is waived for the lowest category of Independent films as per the statute.

Subsection (k)(11) requires an applicant to submit company and financial information pursuant to section 17053.98(g)(2)(A)(v-vii) of the Revenue and Taxation Code.

Subsection (l) provides that within thirty (30) business days of receipt of the completed application and all requested supporting documents, the Director of the CFC, or his or her designee, will notify the applicant whether the application is accepted or disqualified. The thirty days time provision enables the CFC adequate time to review applications. A Credit Allocation Letter (CAL) shall be issued to the applicant indicating the amount of tax credits allocated in the newly developed form D3, effective June 25, 2019, and will serve to notify the production company the maximum amount of credits on reserve for the project.

Subsection (m) provides that not less than four (4) weeks prior to the start of principal photography, the production accountant is required to attend an orientation meeting with the Director of the CFC or his or her designee, along with any or all of the following staff members: a primary producer, unit production manager, or other appropriate personnel as determined by the applicant. Applicants and staff members shall not be required to attend more than one (1) orientation meeting for a motion picture in the program. Due to the complexity of the program, it is necessary to provide program information directly to primary staff members to ensure compliance with the statute and regulations.

Subsection (n) provides that any television series, relocated television series and any television series based on a pilot that has been approved and issued a Credit Allocation Letter, shall be given first priority for a credit allocation during an open allocation period in each subsequent year in the life of that series whenever credits are allocated and available within a fiscal year. The program cannot guarantee that credits will always be available for every series in future allocations and therefore "and available" has been added. The subsection also sets forth classifications of priorities for recurring television series based on the fiscal year of the original credit allocation, then job ratios. A new series needs assurance that they will receive priority for tax credits in subsequent years before committing to film the series in California. A company filming in a state with a tax credit may not be inclined to relocate the production in this state if they are not confident that the tax credits would extend beyond the first shooting season. Although the applicant is required to submit an application each year to verify that they are continuing production, the subsection eliminates the need for recurring TV series to continually submit a narrative statement because the requirement was met in the initial submission for tax credits.

Subsection (o) provides that Principal Photography shall commence no later than one hundred eighty (180) calendar days after the credit allocation letter is issued; however, a qualified motion picture with qualified expenditures of at least one hundred million dollars (\$100,000,000) must begin principle

photography no later than two hundred forty (240) days after the Credit Allocation Letter is issued. If the production does not begin principal photography prior to the 180 or 240 day deadline, the tax credit allocation shall be revoked, unless a Force Majeure event has occurred which directly prevented the production from commencing within the applicable deadline. With submission of documentation verifying such event, the CFC may grant an extension. Larger productions require more preparation time and thus may require as much as 240 days of pre-production after acceptance into the program so the statute now provides the additional time. If a production implements a hiatus during the principal photography period, any and all hiatus period(s) may be no longer than one hundred twenty (120) calendar days in aggregate for the entire duration of the production. This requirement is provided for in the statute but is repeated here for clarity and to assist the reader in locating all pertinent time-sensitive laws relating to this tax credit.

Section 5522. Eligibility Determination

Section 5522 identifies the eligibility requirements for the California Film and Television Tax Credit Program 3.0.

Subsection (a) requires that the applicant produce a Qualified Motion Picture that is consistent with the requirements in the Revenue and Taxation Code that 75% of principal photography days are wholly in California or 75% of the production budget shall be incurred in California. This is included for clarity.

Subsection (b) requires a new television series to produce episodes with a running time longer than forty (40) minutes, exclusive of commercials, and with a minimum production budget of one million dollars (\$1,000,000.00) per episode to qualify as a new series. This is consistent with the statutory exclusion of one-half hour television series shows. This subsection specifies a 40-minute running time, because that is consistent with standard television programming. This 40-minute specification will prevent a 30-minute television show from intentionally extending their program length to just over 30 minutes to qualify. The requirement that the series have originated from a pilot is now omitted because new a television series may not necessarily have shot a pilot.

Subsection (c) states that to qualify as a television series that has relocated to California, the following specific criteria must be met. The applicant shall provide a certification that the tax credit provided pursuant to this section is the primary reason for relocating to California and also have filmed its most recent season with at least 75% of principal photography outside of California. Episodes may be of any program length but have a minimum production budget of one million dollars (\$1,000,000.00) per episode. The taxpayer must certify that they relocated to California for the tax credit and this section allows the program to be any length for relocating series. This varies from a regular qualified TV series that must be at least 40 program minutes in length. The requirement that the applicant must have filmed its most recent season with at least 75% of principal photography outside of California is consistent with a new statutory requirement and is provided for clarity.

Subsection (d) requires a pilot episode for a new television series to have a running time longer than forty (40) minutes, exclusive of commercials, be produced in California with a minimum budget of one million dollars (\$1,000,000), and to be the initial episode in a proposed television series. This is also consistent with the statute and is provided for clarity.

Subsection (e) provides that an animated production is not considered a qualified motion picture and shall not be eligible for a tax credit. An animated production does not engage in principal photography and

therefore does not meet the conditions for eligibility set forth in sections 17053.98 (b)(13) and (18) and 23698(b)(13) and (18) of the Revenue and Taxation Code.

Subsection (f) provides that tax credits and any augmentations for a “feature film,” “television series,” “pilot” or “mini-series” will be applied to a maximum of one hundred million dollars (\$100,000,000.00) of the qualified expenditure budget. The statute does not limit the maximum amount of the production budget. This is consistent with the provision in section 17053.98(a)(3)(B) and 23698 (a)(3)(AB) of the Revenue and Taxation Code and is provided here for consistency and clarity as the \$100,000,000 cap is no longer limited to just feature films. Subsections (1)-(3) clarify that the uplifts are limited to the same overall budget caps.

Subsection (g) provides that tax credits and augmentations for an independent film shall be applied to a maximum of ten million dollars (\$10,000,000.00) of the qualified expenditure budget but that there shall be no maximum on the production budget. This is consistent with statute and is provided here for consistency and clarity. Subsections 1 is added to clarify that the uplift for independent films on the augmentation is limited to the overall budget cap.

Subsection (h) provides that revocation of the tax credit allocation is final and shall not be subject to administrative appeal or review. The statute does not provide for appeals or administrative hearings.

Section 5523. Qualified Expenditures

Subsection (a) identifies the provisions in the statute for Qualified Expenditures for clarity.

Subsection (a)(1) clarifies that Qualified Wages includes payments made to a qualified entity, to the extent its services are performed in California, because the intent of this regulation is to increase employment and revenues in California. This section also states that the CFC shall post charts identifying qualified expenditures by type on the website. These charts are only provided as a tool for the applicant and are not regulatory.

Subsection (b)(1) through (b)(4) identifies non-qualified expenditures including State and Federal income taxes, CPA fees, expenditures for services performed outside of California and expenditures for exhibition of the completed film or television production. These expenditures are listed for clarity to better define exclusions cited in the statute.

Subsection (b)(5) defines the time in the production period that expenditures will no longer qualify. The program allows an additional 30 days to perform final post-production duties after which incurred expenditures will not qualify. The statute provides that a motion picture is complete when the process of post-production has been finished. This provision ties qualified costs to the completion of post-production. This subsection also states that creation of additional versions for foreign distribution and archival purposes are not considered final elements. This clarifies that the expenditures associated with producing those versions are non-qualifying expenditures.

Subsection (b)(6) is added to clarify that financial contribution expenditures related to the pilot career pathways training program are not expenditures qualified for a tax credit. This is a new statutory requirement which does not include the hiring of qualified individuals and/or rental or purchase and use of tangible personal property in the state; therefore, it does not qualify for a tax credit.

Section 5524. Tax Credit Allocation

Subsection (a) provides for the procedures in allocating the tax credits. The Revenue and Taxation Code provisions are cited for clarity and to assist the reader in attaining all relevant information.

Subsection (b) provides a formula for the allocation of unused credits attributable to Sections 17053.85, 17053.95, 23685 or 23695 consistent with the applicable statute and is added to provide an explanation of how unused credits from previous tax credit programs shall be allocated each year.

Subsection (c) provides that after all tax credits have been allocated for the fiscal year, any applications still in the queue will remain in the queue in the order of their jobs ratio ranking, until credits become available, the applicant withdraws the application or it is the end of the allocation period. This system will allow the program to ensure all tax credits are assigned in a given allocation period based on the jobs ratio ranking and prevent the company from having to resubmit an application if credits become available.

Subsection (d) provides that if the applicant is producing a series of feature films that will be filmed concurrently and the series of films continues the narrative of the original work and financing is confirmed, then the CFC shall have the authority to divide the allocation over multiple fiscal years if it is determined that the production schedule occurs over more than one fiscal year. This continues to enable large franchise films to be assured tax credits for a series of films being produced with similar narratives.

Subsection (e) provides a five percent (5%) augmentation to the tax credit allocation by the CFC for non-independent films. The subsection now provides clarification that a 5% uplift is not applicable for independent films and relocating TV series. The augmentation will be determined based on whether the applicant meets one or more of the following several qualifying actions:

1) pays or incurs qualified visual effects (VFX) work totaling a minimum of ten million dollars (\$10,000,000) in California or at least seventy-five percent (75%) of the qualified expenditures for qualified VFX were incurred in California. VFX expenditures, which are often paid out to contractors overseas, will benefit California's employment and revenue. The augmentation to the tax credit allocation, which is provided in the statute, will provide incentive to keep more VFX work in the state.

2) pays or incurs qualified wages for services performed outside the Los Angeles zone during the applicable period relating to original photography outside the Los Angeles zone by individuals who reside within the Los Angeles zone. The augmentation for outside the Los Angeles zone will help defray the higher costs to film outside the Los Angeles zone and encourage productions to take advantage of the variety of locations in the state. Clarification is also made that wages out of the Los Angeles zone must relate to individuals who reside within the Los Angeles zone. Clarification was necessary as the new statute allows for additional tax credits for individuals (LHL) who do not reside within the Los Angeles zone and work outside the Los Angeles zone. Proper documentation is required for this uplift.

3) purchases or leases tangible personal property outside the Los Angeles zone during the applicable period and the personal property is used or consumed outside the Los Angeles zone. If some such tangible personal property is utilized within the Los Angeles zone, there may be apportionment for that portion utilized outside the Los Angeles zone. The subsection now clarifies that the production company must substantiate with records if all tangible personal property is consumed solely or in part outside the Los Angeles zone if they wish to claim credit for such consumption.

Subsection (f) provides that a non-independent applicant (excluding relocating TV series) is eligible for a ten percent (10%) augmentation if the production company pays or incurs qualified wages for services performed by local hire labor (LHL) outside the Los Angeles Zone during the applicable period relating to original photography outside the Los Angeles zone. The documentation listed must be provided to

CFC and/or the CPA performing the Agreed Upon Procedures to determine if the individuals qualify for this uplift. Statute now provides for a 10 percent uplift if non-independent productions utilize LHL. A previous provision relating to music expenditures was eliminated because uplifts for such expenditures have been eliminated; music wages are now eligible for bonus points, which is a new statutory requirement.

Subsection (g) provides that the maximum amount of tax credits allowed for independent films and/or relocating television series for their initial season in California is twenty-five percent (25%) and therefore the five percent (5%) augmentation is not applicable to such productions except an additional five percent (5%) may be available for local hire labor. The 5% augmentation for LHL is a new statutory provision and must be substantiated with production company payroll records.

Section 5525. Approved Applicant Responsibility – Phase III

Section 5525 establishes reporting requirements for an applicant during the filming of the Qualified Motion Picture, Phase III. These documents will demonstrate that the company is meeting the requirements of these regulations and statute.

Subsection 5525(a)(1) requires the production to submit a Daily Call Sheet on the first day of production and after a hiatus period, if applicable. This will document that principal photography started at a maximum of 180 or 240 days and/or with the recommencement of principal photography. The reference to the hiatus period is added for clarification. The call sheet must be signed by the production manager or, as now clarified, by someone in an equivalent position of authority who can provide equally accurate information because of their position and knowledge.

Subsection 5525(a)(2) requires final daily productions report during the period of Principal Photography. “As available” was added to enable productions to have time to finalize these reports prior to submission. These documents will enable the CFC to verify the number of principal photography days for the production in California. The production reports must be signed by the production manager, or, as now clarified, by someone in an equivalent position of authority who can provide equally accurate information because of their position and knowledge.

Subsection 5525(a)(3) requires, if necessary, an emailed report indicating significant changes to qualified expenditures, production schedule, shooting location and number of episodes. In addition, this section now requests notice for any changes in financing or key personnel. Significant changes to any of these elements could change the production’s start and finish dates, budget amount or ability to produce the project, all of which could impact the use or amount of the tax credits. The program needs this information to be able to allocate anticipated unused credits to other qualified applicants.

Subsection 5525(a)(4) requires participation in career-based learning and training programs and public service opportunities. Specifically it requires each applicant to do one of the following: provide three (3) paid internship positions for a minimum of 100 hours each or a combination of internships or internship with a minimum of 100 hours per student and a total 300 hours provided to students enrolled in an accredited California high school or post high school educational institution; or provide classroom workshops, panels or demonstrations on aspects of the film industry, including, but not limited to set operations, post-production, and specific technical crafts conducted by entertainment industry professionals to students enrolled in an accredited California high school or post high school educational institution; or provide a minimum of eight (8) hours of professional skills tours, which may include visits to observe set operations, set construction, wardrobe department, art department and editorial department

to students enrolled in an accredited California high school or post high school educational institution; or provide a minimum of eight (8) hours of continuing education for educators and/or faculty to observe the set operations, post-production and other specialized departments in the film industry; or provide a financial contribution to a specific local or state educational agency or higher education institution specializing in arts, media, and entertainment career oriented programs (the contribution shall be based on 0.25 percent of the estimated tax credit reservation with a minimum financial contribution of \$5,000.00 and a maximum required financial contribution of \$12,000.00); or provide a learning opportunity or financial contribution of equal time or value through other arts, media, and entertainment programs, workforce programs, etc. which are not affiliated with CCCCCO or CDE and is approved by the CFC.

The requirement for 100 hours of internship has been increased from 75 hours because surveys from participants and educators involved in the Program 2.0 career readiness program overwhelmingly noted that the internships were too brief. It is now required that the interns must be eighteen years of age to participate to help ensure the maturity of the students. The requirement that workshops, panels and demonstrations be for a minimum of eight hours was deleted because it proved to be unrealistic and unnecessary to provide a specific time limit for these learning experiences and it proved a barrier to those film makers who wished to provide a workshop or panel but did not have the ability to spend an entire day participating. These programs will assist in helping students gain an understanding of the high-skill, high-wage jobs available in the film industry.

Subsection 5525(a)(5) is a new statutory requirement that a financial contribution must be made to fund a pilot Career Pathways Training Program to a non-profit fiscal agent as determined by CFC. The contribution shall be based on 0.25 percent of the estimated tax credit reservation and must be submitted to CFC no later than ten business days after issuance of the CAL. This requirement is for the purpose of funding technical skills training to individuals from underserved communities for entry into the film and television industry. The sum of .025 percent of the estimated tax credit reservation was arrived at by calculating the cost of implementing and administering the program. Ten business days for submission was chosen because it is important to obtain the funds early in the process to enable the pilot skills program to function. Failure to submit the contribution may result in revocation of the CAL. However, the contribution may be refundable in whole or part if the project does not receive a tax credit certificate or the tax credit is significantly reduced. The requirements in this section are consistent with the provisions in section 17053.98(e) and 23698(e) of the Revenue and Taxation Code.

Section 5526. Credit Certificate Issuance Process

Section 5526 provides for the issuance of the Credit Certificate, which is the document issued to the qualified taxpayer upon completion of the Qualified Motion Picture. This is the official document that the taxpayer will need to submit to the State Franchise Tax Board when filing for the tax credit.

Subsection 5526(a)(1) requires the applicant to provide proof of copyright registration of the screenplay, teleplay, motion picture, television series or pilot. Pilots are now included because they are considered qualified motion pictures pursuant to statute. The statute requires copyright registration of the "motion picture" for a film to be considered "qualified." A motion picture is normally in release by the time it obtains a certified copyright certificate. In order not to unduly delay issuing the tax certificate or make release of the picture a requirement (which is not stipulated in the legislation), "screenplay" is included, as a screenplay can be copyrighted prior to completion of the project and verifies ownership of the material.

Subsection 5526(a)(2) requires documentation that verifies date of completion of post-production. The program needs this information to verify that the applicant has complied with the 30-month time frame for completion as required by the statutory provision.

Subsection 5526(a)(3) requires a list of all cast and crew. This information will be utilized by the CFC in fulfilling Legislative reporting requirements. The requirement for a vendor listing has been eliminated as the CFC collects the number of vendors utilized and that is adequate for reporting purposes.

Subsection 5526(a)(4) requires the applicant to submit a copy of the script supervisor's lined script or continuity/spotting log of the project and for a television series to submit this requirement for episodes one and five. This will assist the CFC in verifying that the submitted screenplay for which the tax credits were reserved was the project that was filmed. The addition of the continuity/spotting log is because the log is a notated screenplay with camera moves, sounds and action, serving the same purpose with respect to verifying content.

Subsection 5526(a)(5) requires an Expenditure Summary Report, which is now filled in on-line, as set forth on the CFC website. The applicant shall revise any contact information as necessary including the CPA firm performing the Agreed Upon Procedures (AUP.) The CFC will utilize data from this report to fulfill Legislative reporting requirements. Section (a)(5) (A-K) sets forth the information to be included in the Expenditure Summary Report. Applicants with seller's permit numbers must list the number, which will be reported to the Franchise Tax Board and then the California Department of Tax and Fee Administration. Contact information will be auto-populated but must be updated. Exact calendar dates must be provided to evaluate whether statutory time limits have been met. Specific information regarding shooting dates in locations are now required, including counties in California as well as other states and countries to calculate what is out of the Los Angeles zone for reporting purposes. The Local Community Expenditure Report (Form LE3, new. June 25, 2019, incorporated by reference) must be filled out once all the work outside the Los Angeles zone has been completed and spending ceased. Self-reported, voluntary information about gender and ethnicity shall be compiled for both individuals receiving qualified and non-qualified wages as required by the statute. Total worldwide as compared to California VFX expenditures are needed to calculate appropriate uplift and bonus points qualification (excluding lowest budget category of independent films). Applicants (excluding lowest budget category of independent films) are required to state the verified music scoring and track recording wages spend in the state eligible for bonus points. Verification of a Career Readiness must be provided through forms CR1, CR2, CR3, CR4, and CR5 (new. June 25, 2019) which are incorporated by reference into this regulation. Evidence of financial contribution for career readiness, if applicable, and the pilot skills training program is required. All information which would provide uplifts and additional information must be entered to substantiate eligibility. The signed application will be submitted to the CPA performing an AUP evaluation. By signing the Expenditure Summary Report, the applicant certifies that the information submitted is true to the best of his or her knowledge or what would be expected of a reasonable person in the same capacity. The subsection calculates the uplifts and additional bonus points based upon verified spend data from the AUP, as well as any adjustments for overstatement.

Subsection 5526(a)(6) requires an Agreed Upon Procedures Program 3.0 report from a certified public accountant (CPA) verifying the expenses reported. The Agreed Upon Procedures Report for Program 3.0 is incorporated by reference. It is a technical document developed with the assistance of certified public accountants familiar with accounting practices in the film and television industry and specifically for the tax credit program. The statute requires the CFC to establish audit procedures that must be satisfied before a credit certificate may be issued. The procedures outlined in the Agreed Upon Procedures

document will ensure that the applicant has complied with all requirements as indicated in the program regulations and statute.

This section also requires the certified public accountant have an active license or proof of a valid out-of-state account firm registration for the firm to practice attest services in California. In addition, the firm must provide evidence that they completed a Peer Review with a Pass rating in their state within the past three years. A Pass on the Peer Review will confirm that the firm's system of quality control for the accounting and auditing practice has been suitably designed and complied with to provide reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The CPA is also required to attend an orientation meeting specifically for CPAs at the CFC to qualify to perform procedures for the tax credit program. This training will be offered by the CFC on an as needed basis as determined by the CFC.

Subsection 5526(a)(7) requires the applicant to submit the actual layout of the main and end titles produced by a title house or other postproduction facility. This is needed to verify on-screen credit provisions have been met.

Subsection 5526(a)(8) requires documentation verifying any contracted work in the areas of visual effects, titles, post sound and digital effects were performed in the state of California. The statute mandates that the service must be performed in the state in order qualify for tax credits.

Subsection 5526(a)(9) requires documentation from the designated representative of the California Community Colleges Chancellor's office and/or the California Department of Education or the CFC, verifying participation in a career-based learning and training program as required in Section 5525(a)(4). Participation in these programs is required in statute.

Subsection 5526(a)(10) requires a Miniseries to submit documentation to verify its initial distribution consists of two or more episodes longer than forty (40) minutes each exclusive of commercials. This requirement will provide verification of qualification for the tax credits. The forty (40) minute requirement was added to conform to statute. A requirement relating to a "movie of the week" previously in this subsection has been omitted for Program 3.0 because that category is now captured under the definition of feature films.

Subsection 5526(a)(11) requires the applicant to submit a listing of other jurisdictions in which any member of the applicant's combined reporting group has produced a qualified motion picture. This is consistent with the statute. Updated company and financial documentation as required by statute is also required. This requirement was renumbered from Program 2.0.

Subsection 5526(a) (12) requires an applicant to provide documentation verifying that the applicable fee was paid by the qualified taxpayer to fund a pilot Career Pathways Technical Skills Training Program. This provision is new to Program 3.0 pursuant to a statutory provision.

Subsection 5526(b) specifies that the production shall be completed within thirty (30) months from the date of issuance of the CAL as required in the relevant Revenue and Taxation Code section.

Subsection 5526(c) provides that the Qualified Motion Picture shall be considered complete when the process of post-production has been finished and the complete and final elements of the production have been created. The subsection lists the elements that are created at the end of the post-production process.

The statute mandates that the production be completed within 30 months of acceptance into the tax credit program.

Subsection 5526(d) provides that the CFC will review all the documents submitted and determine if the application meets all the criteria for the program. This provision provides that the CFC may reject insufficient documentation and may request additional documentation to verify qualified expenditures. The CFC is the entity responsible for the final review and this subsection is added for clarity.

Section 5526(e) provides that if the request is disapproved, the CFC shall provide the reasons for the disapproval. The decision is final and not subject to administrative appeal or review. The statute does not provide for appeals or administrative hearings.

Subsection 5526(f) provides that a qualified taxpayer whose request for the Tax Credit Certificate is approved shall be issued a Tax Credit Certificate, CFC Form M3 (new. June 25, 2019), the official document required to be submitted to the Franchise Tax Board or the Board of Equalization in California for the tax credit. This section also specifies that the document will not be issued prior to July 1, 2020, as that is the initial date after which the qualified taxpayer may utilize the tax credits as provided for in statute.

Section 5527. Jobs Ratio Ranking Process

The statute provides for ranking of the applicants by a jobs ratio. For each allocation and for each category, the CFC is required to list each applicant from highest to lowest according to the jobs ratio. The CFC will then allocate the credit to each applicant according to the highest jobs ratio, until all credit amount is exhausted. The intent is to provide the tax credit to the projects that generate the most employment in the state.

Subsection 5527(a) clarifies that in determining the base jobs ratio the CFC shall use both qualified wages which are directly paid by the applicant or its payroll service plus thirty-five percent (35%) of all qualified non-wage expenditures, including contracted services in which the qualified wages are not directly paid by the applicant but by a vendor. Based on economic data, the CFC determined that an average of 35% of non-wage expenditures consist of labor-related costs. The subsection, as provided in the statute, also now provides that Qualified VFX expenditures may be apportioned as seventy per cent (70%) qualified wages and thirty percent (30%) non-wage for visual effects work performed by third party California vendors. This apportionment is a reflection of the labor intensive nature of VFX and more accurately defines the division of labor versus materials.

Subsection 5527(b) allows for an increase of the jobs ratio if the qualified motion picture demonstrates an increase in economic activity in the state in specific areas as provided for in the statute. The intent of this program is to stimulate economic activity in the state. The CFC and the Legislature have determined that increasing visual effects, employment of musicians, and principal photography outside the LA Zone will directly impact and improve California's economics. The utilization of production facilities has been removed from this section, as it is no longer mandated by the statute and is no longer needed to encourage filming in a production facility. The increase allowable can be up to twenty-five percent (25%) pursuant to specified conditions set forth in the subsection.

Subsection (b)(1) allows the applicant to demonstrate that they are spending dollars on (VFX) visual effects in the state. Bonus points are based on the VFX expenditures in the state per project category, e.g., independent film, non-independent feature, television project. Independent films with qualified

expenditure budget of \$10,000,000 or less are excluded because the budgets associated with such projects generally do not include large expenditures for visual effects. The Program 3.0 on-line portal will calculate the benefit of dollars spent and give one to seven percentage (“bonus”) points for the spend. The percentage amounts are now smaller because the large amount of bonus points previously allowed was to offset the negative effects on the jobs ratio when VFX was completely a non-wage expenditure.

Subsection (b)(2) allows one to ten bonus points based on the percentage of principal photography days outside the Los Angeles Zone in relation to the qualified motion picture’s total principal photography days in the state. The program will give one to ten bonus points based on the percentage of principal photography days. The minimum requirement that at least the first scene of each day must be shot outside the zone attempts to prevent a situation in which most of the day is shot inside the zone but the production shoots just an establishing shot outside the zone in order to qualify.

Subsection (b)(3) provides that one to five bonus points based on the wages paid to scoring musicians, including the following positions: instrumental musicians, vocalists, music arrangers, orchestrators, Musical Instrument Digital Interface (MIDI) transcribers, music copyists, music librarians, conductors (unless also composer) and musician and choral contractors employed solely for the purpose of recording music for the qualified motion picture. Statute mandates consideration of musician wages as a bonus point factor, so it has been added. Independent films with qualified expenditures of ten million dollars (\$10,000,000) or less typically use a “composer package” and infrequently utilize scoring musicians; therefore, bonus points for this category do not apply.

Subsection (c). This subsection provides that CFC is required to post on their website a chart with the ranges to establish bonus points prior to any application period. This chart will allow the applicant to determine how many points they will receive based on their project during that allocation period. This chart may be revised in future allocation periods based on the continued gathering of data by the program.

The method the CFC shall use to establish the ranges for principal photography days in a production facility and outside the LA Zone is by applying percentage points on a linear proportionate scale. Starting with 10% of principal photography days, the applicants will receive one point for every ten percent increase of out of zone principal photography days (10% or more but less than 20% of the above days = 1 point, 20% or more but less than 30% of the above days = 2 points, etc.) until the maximum cap of points is received. This formula includes “but less than” statements for clarity. The percentages for each are determined by dividing the out of zone principal photography days by the total principal photography days.

If the maximum number of points is not achieved by any project in a given year’s applicant pool, the CFC may decrease the step size (for example from 10% to 5% incremental steps) needed to gain an additional point in subsequent allocations but maintain the linear proportionate structure.

The CFC shall use a different method to determine the ranges for visual effects. All visual effects spending shall be sorted from lowest to highest value. The CFC shall then use the National Institute of Standards and Technology formula to create cut-off values that sort an equal number of projects into each point range as further described below.

Following the *National Institute of Standards and Technology (NIST)* "Engineering Statistics Handbook: Percentile" formula, the applicant pool is first ranked from lowest to highest value in each of the three categories, where 1 corresponds to the first lowest rank. The formula then finds the rank n associated with each percentile cut-off as follows:

$$n = P/100 \times (N + 1)$$

P is the percentile of interest. If there are ten possible point ranges for example, then P = 10 would correspond to the 10th percentile, P = 20 to the 20th percentile, and so forth, until the 100th percentile has been calculated. N is the total number of applicants in the current applicant pool.

The formula then uses a standard rounding and conversion procedure to turn the rank *n* into a monetary cut-off value. The Excel function *PERCENTILE* automatically does this calculation according to the same NIST formula (see citation:<http://www.itl.nist.gov/div898/handbook/prc/section2/prc262.htm>).

The CFC shall use this Excel function to determine initial cut-offs, and then choose final cut-offs within +/- 10 percent of what the formula produces, such that the ranges can be rounded. Ranges may be adjusted for future application periods based on the data collected from previous application periods.

The formula was chosen for three principle reasons. First, using a percentile formula insures that VFX bonus points are distributed evenly and equitably across projects while maintaining an incentive to invest more in VFX across all cut-off values. Second, it is also the simplest formula available that guarantees that at least *some* films receive the maximum allotment of bonus points rather than most films receiving, for example, less than half of the total available bonus points. That is, it helps the CFC make sure that it does not leave any extra incentive points unallocated. Third, because the percentile formula ranks applicants relative to other projects in the current applicant pool, the formula prevents manipulation on application forms such that projects *always* retain an incentive to reach for more points.

This section sets forth a different process for determining bonus points for music wages, a new addition. By utilizing wage data from submitted budgets in tax credit programs and from music contractors, the CFC utilizes the data to determine the highest to lowest qualified wage figures per type of production to determine bonus points.

This section also specifies that the jobs ratio calculation shall not include any increase to the tax credit amount from work outside the Los Angeles zone or qualified visual effects (“uplifts”) incurred in California as set forth in Section 5524(e). It also shall not include any increase to the tax credit from expenditures relating to a contingency or completion bond.

Upon completion of assignment of the additional bonus points, the jobs ratio number shall be determined. The adjusted job ratio number is derived by multiplying the (total points [acquired in (b)(1)-(3) as applicable] x 1/100) + 1.

The regulation indicates that this process shall be automatically calculated on the online application, based on the information provided by the applicant.

If the applicant overstates any information on the application, the applicant will be penalized as provided in statute. The overstatement penalty for both non-independent projects and independent films is now the same, pursuant to the statute, as opposed to Program 2.0, which allowed a greater overstatement amount for independent films.

Section 5528. On Screen Credit and Promotional Requirements.

Section 5528 requires the holder of the Credit Certificate to comply with promotional requirements. The inclusion of an on-screen credit is mandated by most state film commissions in an effort to market its

incentive program, locations and local work force. Therefore, it is in the best interests of the State to have a similar requirement, as well as request promotional materials for use in marketing the state as a filming location. These promotional requirements are as follows: An on-screen acknowledgement to State of California and the CFC; the California Film Commission Logo; and for the production company to supply five production stills for promotional use by the CFC, now for the specific purpose of illustrating the diversity of California locations and/or job creation. This will encourage the submission of photographs that may be able to better illustrate California's location diversity and provide increased evidence of the thousands of individuals employed as the result of the tax credit program.

Credit Allocation Letter, CFC Form DD3 (New. June 25, 2019)

The CFC shall issue a Credit Allocation Letter, CFC Form DD3 which provides the approval of the applicant and identifies the number of tax credits for which the applicant is eligible. This form will include for identification purposes the Credit Allocation Number, the Qualified Taxpayer Identification Number, the Title of the Production, the Production Company Name and the Type of Production. The form will also include the Start of Production, and End of Production dates to verify the time frame for filming this production. The Tax Credits allocated will be stated on the form. This number will be calculated from the application and in supporting data that is submitted. It may differ from the number originally indicated by the applicant on the Application Form due to wages or expenditures that may not meet the criteria in statute. The Applicant Name, Company and Contact Name are included on the form for identification of the actual taxpayer receiving the credits. The verified jobs ratio is also included on the form. The form is required to be signed by the Director of the CFC or his or her designee to be valid. This is to avoid draft documents, or counterfeit documents being considered a legal notification of tax credits.

Career Readiness, CFC Forms CR1-5 (New. June 25, 2019)

The career readiness forms provide information needed to verify that the production fulfilled the requirement. The information requested on CR1, paid internship, asks for contact information for the production company, dates, total number of hours, and duties involved in the internship, verification that the intern was at least 18 years old, from an approved organization and that the payroll records were reviewed. It also requires an acknowledgement from the organization and the intern, name of the school or career-based learning organization, areas of focus during the internship, name of production, supervisor's name and signature. The information requested on CR2, professional skills tour, includes contact information for the production company, dates, location, and brief description of the tour, and acknowledgement by the tour organizer. CR3, faculty externships, requests similar production company contact information, as well externship dates, hours, and description of externship duties; an extern acknowledgement is also required. CR4, classroom workshop/panel, asks for production company information, the names and titles of all presenters, presentation date and number of hours, and primary contact signature. An acknowledgement from the participating organization, including the number of students participating, is also required. CR5, financial contribution, requests production company information, the name of the organization/fund and dollar amount of the contribution, and any specific use of funds.

Local Community Expenditure Report, CFC Form LE3. (New. June 25, 2019)

The Local Community Expenditure Report requests the following information from applicants whose expenditures exceed \$100,000 in any one county: production title, queue number, county, shoot dates in the county, total shoot days for project and in the county, total number of hotel room nights in the county. It also requests statistics on local hired cast, crew, and extras (number and payroll), and local vendors (costs for hotel, permits/fees, other local expenditures) and total local vendor spend. In the event the production provided any other types of community support, events, or sponsorships, the production may

include that on the form. This information enables the CFC to have statistics on the impact of the tax credit program on counties throughout the state.

The Tax Credit Certificate, CFC Form M3 (New. June 25, 2019)

The Tax Credit Certificate is the actual tax credit certificate that will be issued by the CFC and is the document that will be submitted to the Franchise Tax Board or the Board of Equalization. The information on this form is obtained from the most current information received on the Request for a Tax Credit Certificate and includes a seller's permit #, if applicable, a new requirement of the California Department of Taxes and Fee Administration. The actual tax credit allocation will be based on review of all the Qualified Wages and Expenditures and may differ from the number requested, if any of the wages or expenditures submitted did not meet the program criteria.

TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Office did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE OFFICE'S REASON FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by the Office. This regulation implements Revenue and Taxation Code sections 17053.98 and 23698.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Office has not identified any alternatives that would lessen any adverse impact on small business. This proposal will, in fact, provide more opportunities for small business as more production companies decide to film in California.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The office has determined that the proposed regulations would not have a significant adverse economic impact on businesses. These regulations will provide for an increase in revenues and employment in California by bringing more filming business into California.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.