

CALIFORNIA FILM COMMISSION
California Film and Television Tax Credit Program 3.0
California Soundstage Filming Tax Credit Program

Title 10, Chapter 7.75
Article 3, Section 5528; Article 4, Section 5541

NOTICE OF PROPOSED RULEMAKING

March 15, 2024

Notice is hereby given that the California Film Commission (CFC) proposes to amend the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Proposed Regulatory Action

The CFC proposes to amend section 5528 in Article 3 and section 5541 in Article 4 of Chapter 7.75 of Title 10 of the California Code of Regulations in order to implement, interpret and make specific Revenue and Taxation Code sections 17053.98 and 23698 relating to a film and television tax credit program.

No public hearing is scheduled; however, any interested person or their duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

Written Comment Period

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Agency. Written comments will be accepted by the Agency until 5:00 p.m. on April 30, 2024. Submit comments to:

Name: Hedvig Marx
Address: California Film Commission, 7080 Hollywood Boulevard,
Hollywood, CA 90028
Email: Hedvig.Marx@film.ca.gov

Authority and Reference

The proposed regulation will be adopted under the authority of Government Code section 11152, and Revenue and Taxation Code sections 17053.98(e) and 23698(e). The proposed regulation implements, interprets, and makes specific Revenue and Taxation Code sections 17053.98 and 23698.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Film Commission (CFC) proposes to amend section 5528 in Article 3 and section 5541 in Article 4 of Chapter 7.75 of Title 10 of the California Code of Regulations. The sections contain requirements related to motion picture production end credits and the procedure for certifying allocated tax credits to qualified taxpayers in the motion picture industry. The proposed amendments will enable applicants to fulfill Program requirements without risking potential conflict with the terms of their labor agreements.

Summary of Related Existing Laws and Regulations:

In 2018, the Legislature and Administration approved Senate Bill (SB) 878 (Ch. 456, Stat. 2018), which created the third iteration of the California Film and Television Tax Credit Program (Program 3.0), applicable to taxable years beginning on or after January 1, 2020, and before January 1, 2025. Permanent regulations for Program 3.0 were adopted on February 10, 2022. Program 3.0 was preceded by the California Film and Television Tax Credit Program (Program 1.0), 2009 through 2017, and the California Film and Television Tax Credit Program 2.0 (Program 2.0), 2015–2020. Program 1.0 was enacted by SB 15 (Ch. 17, Stat. 2009), and is outlined in sections 17053.85 and 23685 of the Revenue and Taxation Code. Program 2.0 was enacted by Assembly Bill (AB) 1839 (Ch. 413, Stat. 2014), and is outlined in sections 17053.95 and 23695 of the Revenue and Taxation Code.

In 2021, the Legislature and Administration approved SB 144 (Ch. 114, Stat. 2021), as modified by AB 176 (Ch. 256, Stat. 2021), which among other things, created the new California Soundstage Filming Tax Credit Program (Soundstage Filming Program), applicable to taxable years beginning on or after January 1, 2022, and before January 1, 2032. Permanent regulations for the California Soundstage Filming Tax Credit Program were adopted on February 15, 2023.

On July 10, 2023, the Legislature and Administration approved SB 132 (Ch. 56, Stat. 2023), which contained modifications to both Programs. Through the rulemaking process, the permanent regulations of Program 3.0 were amended as of December 22, 2023, and the permanent regulations of the Soundstage Filming Program were amended as Emergency Regulations as of August 18, 2023, and made permanent as of February 8, 2024.

These promulgated regulations provide two programs to the motion picture industry allocating tax credits for qualified motion pictures and incentivizing construction of soundstages in California.

After the adoption of the amended regulations for both Programs, the CFC was made aware that the updated end credits requirements proposed and adopted in the most recent rulemaking process unintentionally created a potential conflict with a collective bargaining agreement for those Program participants that are signatories to guild and union agreements with stipulations related to end credits. This rulemaking action seeks to modify the amendments adopted on August 18, 2023 (made permanent on February 8, 2024), and December 22, 2023, respectively, to rectify the unintentional conflict with that bargaining agreement.

Broad Objectives and Anticipated Benefits of the Proposed Regulations:

Program 3.0 and the Soundstage Filming Program encourage production companies regardless of distribution outlet to film in California instead of other states, provinces, and countries offering incentives. The Programs are structured to encourage job creation and training opportunities for disadvantaged youth, and to increase and retain motion picture production in California. The proposed amendments to the previously adopted Program 3.0 and Soundstage Filming Program regulations safeguard the compatibility between the Programs and industry guild and union collective bargaining agreements, enabling the state to successfully operate the Program and realize its benefits. The objective of these amendments is to ensure that Program participants can comply with the Program requirements without violating the end credits-related terms of their labor agreements. The CFC is eager to rectify the unintentional consequences of the previously proposed language with retroactive functions in place to ensure that any applicants issued a Credit Allocation Letter between the effective date of the previous amendments (August 18 and December 22, 2023, respectively) and the effective date of these proposed amendments will be able to complete their projects without having to compromise other contractual obligations.

Consistency And Compatibility with Existing State Regulations:

During the process of developing these regulations, the CFC has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations. The CFC has endeavored to ensure that these regulatory amendments comply with the non-duplication standard found in Title 1, California Code of Regulations.

ESTIMATES OF ECONOMIC IMPACT

The California Film Commission has made the following determinations:

- Mandate on local agencies and school districts: None.

- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant effect on housing costs: None.
- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on representative person or businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

The California Film Commission has determined that the proposed regulations will not directly affect small businesses. The businesses that may elect to participate in the Programs and in such cases will be complying with these regulations are film production companies and are as such not small businesses, as defined in section 11342.610 of the Government Code. Small businesses in California may, however, provide goods and services to the businesses electing to comply with these regulations and thus benefit from the additional filming in California.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Pursuant to paragraph (3) of subdivision (e) and clause (iii) of subparagraph (C) of paragraph (10) of subdivision (k) of Sections 17053.98 and 23698 of the Revenue and Taxation Code the CFC is not required to provide an economic impact analysis. Due to the nature of tax credit incentives in relation to economic impact, the CFC has been exempted from the economic impact analysis throughout the existence of the California Film and Television Tax Credit Programs in all iterations; this exemption is consistent with previous practice.

REASONABLE ALTERNATIVES CONSIDERED

The California Film Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the

statutory policy or other provision of law.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

Name: Leah Medrano
Email: Leah.Medrano@film.ca.gov
Phone No.: (323) 860-2960

The backup contact person for these inquiries is:

Name: Hedvig Marx
Email: Hedvig.Marx@film.ca.gov
Phone No.: (323) 817-4115 or (310) 290-6501

Questions on the substance of the proposed regulations may be directed to:

Name: Hedvig Marx
Email: Hedvig.Marx@film.ca.gov
Phone No.: (323) 817-4115 or (310) 290-6501

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the forty-five (45) day public comment period, the CFC may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the CFC regarding this proposal, the CFC may determine that changes to the proposed regulation are appropriate. If the CFC makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the CFC adopts the regulations as revised. The CFC will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held) and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Hedvig Marx at the above email address. The CFC will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF THE PROPOSED REGULATIONS

The CFC has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the California Film Commission, 7080 Hollywood Boulevard, Suite 900, Hollywood, California during

normal business working hours (9 am–5 pm). Please contact Hedvig Marx at the above email address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Contact Person designated in this Notice.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The CFC is required to prepare a Final Statement of Reasons. Once the CFC has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Contact Person identified in this Notice.

OFFICE INTERNET WEBSITE

The Office maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations can be accessed through our website at: www.film.ca.gov

PROPOSED AMENDMENTS TO THE CALIFORNIA CODE OF REGULATIONS

Title 10

Chapter 7.75

CALIFORNIA FILM COMMISSION

Article 3.

California Film and Television Tax Credit Program 3.0

§ 5528. On Screen Credit and Promotional Requirements.

(a) (Continued)

(1) (Continued)

~~(A) The acknowledgement must include a five-second long static logo in the end credits before the below-the-line crew crawl for the life of the project.~~

~~(B)~~(A) Such acknowledgement and logo shall appear on every episode of a television series except where prohibited as specified in paragraph (1) above.

~~(C)~~(B) The applicant may choose the wording of the acknowledgement and the placement of the required entities within that wording, but both entities specified in paragraph (1) above must be named.

(C) The requirements of this paragraph shall apply to any project issued a CAL under the California Film and Television Tax Credit Program 3.0 on or after December 22, 2023.

(2) (Continued)

Credits

NOTE: Authority cited: Section 14998.1, Revenue and Taxation Code; and Section 11152, Government Code. Reference: Sections 17053.98(e) and 23698(e), Revenue and Taxation Code; and Section 14998.1, Government Code.

Article 4.

California Soundstage Filming Tax Credit Program

§ 5541. On Screen Credit and Promotional Requirements.

(a) (Continued)

(1) (Continued)

~~(A) The acknowledgement must include a five-second long static logo in the end credits before the below-the-line crew crawl for the life of the project.~~

~~(B)~~(A) Such acknowledgement and logo shall appear on every episode of a television series except where prohibited as specified in paragraph (1) above.

~~(C)~~(B) The applicant may choose the wording of the acknowledgement and the placement of the required entities within that wording, but both entities specified in paragraph (1) above must be named.

(C) The requirements of this paragraph shall apply to any project issued a CAL under the California Soundstage Filming Tax Credit Program on or after August 18, 2023.

(2) (Continued)

Credits

NOTE: Authority cited: Sections 17053.98(k)(10) and 23698(k)(10), Revenue and Taxation Code; and Section 11152, Government Code. Reference: Sections 17053.98(k)(10) and 23698(k)(10), Revenue and Taxation Code; and Section 14998.1, Government Code.

INITIAL STATEMENT OF REASONS

OVERVIEW

In 2018, the Legislature and Administration approved Senate Bill (SB) 878 (Ch. 456, Stat. 2018), which created the third iteration of the California Film and Television Tax Credit Program (Program 3.0), applicable to taxable years beginning on or after January 1, 2020, and before January 1, 2025. Permanent regulations for Program 3.0 were adopted on February 10, 2022. In 2021, the Legislature and Administration approved SB 144 (Ch. 114, Stat. 2021), as modified by AB 176 (Ch. 256, Stat. 2021), which among other things, created the new California Soundstage Filming Tax Credit Program (Soundstage Filming Program), applicable to taxable years beginning on or after January 1, 2022, and before January 1, 2032. Permanent regulations for the California Soundstage Filming Tax Credit Program were adopted on February 15, 2023. On July 10, 2023, the Legislature and Administration approved SB 132 (Ch. 56, Stat. 2023), which contained modifications to both Programs. Through the rulemaking process, the permanent regulations of Program 3.0 were amended as of December 22, 2023, and the permanent regulations of the Soundstage Filming Program were amended as of August 18, 2023. The provisions in the existing Programs provide a process for applicants to file a written application for the allocation of the tax credit and criteria for the CFC to allocate 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 an eligible and approved qualified motion picture.

The California Film and Television Tax Credit Program 3.0 and the California Soundstage Filming Tax Credit Program encourage production companies regardless of distribution outlet to film in California instead of other states, provinces, and countries offering incentives. The Programs are structured to encourage job creation and training opportunities for disadvantaged youth, to expand in-state production infrastructure, and to increase and retain motion picture production in California.

The proposed amendments to the previously adopted California Film and Television Tax Credit Program 3.0 and California Soundstage Filming Tax Credit Program regulations align program requirement with other labor agreement obligations producers of qualified motion picture projects may be under as signatories of collective bargaining agreements, thereby ensuring applicants are able to fulfill program requirements while upholding their other contractual obligations.

SPECIFIC PURPOSE FOR EACH REGULATION AND FACTUAL BASIS FOR DETERMINING THAT EACH REGULATION IS NECESSARY

5528

Section 5528, subparagraphs (a)(1)(A), (B), and (C)

Specific purpose:

The requirements of paragraph 5528(a)(1), inclusive, serve to inform the general public and the overall film and television industry of which projects have been supported through allocation of tax credits under the California Film and Television Tax Credit Program 3.0. After the approval of amendments to this section through regular rulemaking, effective December 22, 2023, it was brought to the attention of the CFC that the new provisions caused an unintentional conflict between Program requirements and certain collective bargaining agreements with industry unions and guilds that many of the CFC's stakeholders and applicants are signatories to. The CFC is eager to ensure that applicants can participate in the Program with no risk of violating potential collective bargaining agreements and is therefore pursuing modifications to the prior amendments.

Current subparagraph 5528(a)(1)(A) has been removed, as the required placement of the acknowledgement and logo in relation to below-the-line crewmembers has been found to potentially conflict with the Directors Guild of America collective bargaining agreement, which specifies end credit requirements.

Former subparagraph 5528(a)(1)(B) has been renumbered 5528(a)(1)(A); this is a change without regulatory effect.

Former subparagraph 5528(a)(1)(C) has been renumbered 5528(a)(1)(B); this is a change without regulatory effect.

New subparagraph 5528(a)(1)(C) has been added to clarify that these proposed amendments are retroactive to include any applicants that were issued a Credit Allocation Letter during the time the current, conflicting provision is in effect.

Factual basis:

To implement the California Film and Television Tax Credit Program 3.0, the CFC has put procedures in place consistent with the authority provided in sections 17053.98(e) and 23698(e), and sections 17053.98(g)(3)(A) and 23698(g)(3)(A) of the Revenue and Taxation Code to clarify details and terms of tax credit certification. Because the statute does not include specifics regarding how an applicant is required to announce their successful participation in the Program, subdivision 5528(a), inclusive, includes on screen and promotional requirements that support implementation of the statutory objectives. The amendments to subparagraphs 5528(a)(1)(A), (B), and (C) are necessary to ensure that the requirements designed to provide Program visibility and awareness are reasonable for participants and do not conflict with applicants' collective bargaining agreement obligations, specifically section 13-209 of the Directors Guild of America Basic Agreement of 2020.

The amended regulations meet the "necessity," "clarity," and "consistency" standards of the APA, Section 11349 of the Government Code, subsections (a), (c), and (d). The regulation is also consistent with the requirements of style pursuant to Section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

5541

Section 5541, subparagraphs (a)(1)(A), (B), and (C)

Specific purpose:

The requirements of paragraph 5541(a)(1), inclusive, serve to inform the general public and the overall film and television industry of which projects have been supported through allocation of tax credits under the Soundstage Filming Tax Credit Program. After the approval of amendments to this section through emergency regulations effective on August 18, 2023, and the subsequent certificate of compliance, effective February 8, 2024, it was brought to the attention of the CFC that the new provisions caused an unintentional conflict between Program requirements and certain collective bargaining agreements with industry unions and guilds that many of the CFC's stakeholders and applicants are signatories to. The CFC is eager to ensure that applicants can participate in the Program with no risk of violating potential collective bargaining agreements and is therefore pursuing modifications to the prior amendments.

Current subparagraph 5541(a)(1)(A) has been removed, as the required placement of the acknowledgement and logo in relation to below-the-line crewmembers has been found to potentially conflict with the Directors Guild of America collective bargaining agreement, which specifies end credit requirements.

Former subparagraph 5541(a)(1)(B) has been renumbered 5541(a)(1)(A); this is a change without regulatory effect.

Former subparagraph 5541(a)(1)(C) has been renumbered 5541(a)(1)(B); this is a change without regulatory effect.

New subparagraph 5541(a)(1)(C) has been added to clarify that these proposed amendments are retroactive to include any applicants that were issued a Credit Allocation Letter during the time the current, conflicting provision is in effect.

Factual basis:

To implement the Soundstage Filming Tax Credit Program, the CFC is putting procedures in place to verify that a qualified motion picture project has met the requirements of the Program, consistent with the authority provided in Revenue and Taxation Code sections 17053.98(k)(10)(B) and 23698(k)(10)(B). Because the statute does not include specifics regarding how an applicant is required to announce their successful participation in the Program, subdivision 5541(a), inclusive, includes on screen and promotional requirements that support implementation of the statutory objectives. The amendments to subparagraphs 5541(a)(1)(A), (B), and (C) are necessary to ensure that the requirements designed to provide Program visibility and awareness are reasonable for participants and do not conflict with applicants' collective bargaining agreement obligations, specifically section 13-209 of the Directors Guild of America Basic Agreement of 2020.

The amended regulations meet the "necessity," "clarity," and "consistency" standards of the APA, Section 11349 of the Government Code, subsections (a), (c), and (d). The regulation is also consistent with the requirements of style pursuant to Section 11343.1 of the Government Code and the principles of "plain English" rule drafting.

FORMS INCORPORATED BY REFERENCE

None.

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

The CFC relied upon the DIRECTORS GUILD OF AMERICA BASIC AGREEMENT OF 2020 in the development of these regulations, specifically section 13-209.

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

No other alternatives were presented to or considered by the CFC. These regulations implement 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 CFC has not identified any alternatives that would lessen any adverse impact on small business. The California Film and Television Tax Credit Program 3.0 and the California Soundstage Filming Tax Credit Program provide more opportunities for small business as it affords more production companies the opportunity to film in California, and the proposed amendments to Program regulations will make the Programs easier to comply with for applicants.

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

The CFC has determined that the proposed regulations would not have a significant adverse economic impact on businesses. The California Film and Television Tax Credit Program 3.0 provides for an increase in revenues and employment in California by bringing more filming business

into California. The proposed amendments to Program regulations will make the Program easier to navigate for applicants.

SPECIFIC TECHNOLOGY OR EQUIPMENT

These proposed regulations do not mandate the use of specific technologies or equipment.

CONSULTATION WITH THE GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT (GO-Biz)

The CFC has worked in close consultation with GO-Biz in the development of the proposed amendments to these regulations, as required pursuant to Section 17053.98(e) and 23698(e) of the Revenue and Taxation Code. GO-Biz has reviewed and approved the regulations in their entirety prior to public notice.

JOINTLY PRESCRIBED APPLICATION WITH THE FRANCHISE TAX BOARD (FTB)

The CFC is required to jointly prescribe the application for tax credit allocation under the California Film and Television Tax Credit Program 3.0 and the California Soundstage Filming Tax Credit Program with the FTB, pursuant to Section 17053.98(g)(2)(A) and 23698(g)(2)(A) of the Revenue and Taxation Code. As the amendments in this rulemaking action do not affect the application content or process for either Program and is solely concerned with the end-stage audit process for participants, FTB input and approval is therefore not required and has not been sought.

STATEMENT OF GOOD CAUSE FOR IMMEDIATE EFFECTIVE DATE

The amendments proposed through this rulemaking action are intended to ensure the requirements and processes of the California Film and Television Tax Credit Program 3.0 and the California Soundstage Filming Tax Credit Program are unambiguous and consistent; they were designed to aid applicants in the Program in complying with the Program requirements and thereby being able to gain access to the benefits this Program offers. These amendments do not place any additional burden on applicants, rather, they will enable more potential applicants to be in compliance with the program regulations without violating existing labor agreements and provide more clarity for all stakeholders and entities affected by the regulations. Delaying the effective date of these amendments to the next quarterly date would prevent certain entities from complying fully with program requirements or existing labor agreements and may prevent productions from applying to the Programs. The delay would provide no benefit to applicants, rather it would be a barrier to Program participation.