

INITIAL STATEMENT OF REASONS

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To provide the meaning of specific words and terms that are essential to these regulations.

Need for the Regulation

It was necessary to define "High Performance Base Incentive Grant" to mean the following:

- the \$150,000 State share portion of the high performance incentive grant provided as part of a New Construction Adjusted Grant for a new school, or
- the \$250,000 State share portion of the high performance incentive grant provided as part of a New Construction Adjusted Grant for an addition to an existing site or a Modernization Adjusted Grant

This definition will assure the uniform application of this grant to applicants under the School Facility Program (SFP).

Section 1859.71.6. New Construction Additional Grant for High Performance Incentive.

Specific Purpose of the Regulation

To stimulate greater participation for High Performance Incentive (HPI) grant funding for new construction projects will facilitate in projects obtaining more "points" and qualifying for HPI grants. HPI grants are achieved by using designs and materials in new construction and modernization projects for efficiencies in the following categories:

- Sustainable Sites
- Energy
- Water
- Materials
- Indoor Environmental Quality

The new "points" added are as follows:

- Indoor and outdoor potable water efficiencies . . . 2
- Various specific energy efficiencies 11
- Indoor lighting and acoustical improvements . . . 3

HPI grant funding is authorized by Education Code (EC) Section 101012(a)(8). The Division of the State Architect (DSA) reviews construction plans and scores the project if high performance building components are included in the project.

Need for the Regulation

Subsection (a)(2)(A)1.a: It was necessary to change equals to "is a" in order to make a non-substantive grammatical clarification.

Subsection (a)(2)(A)1.b: It was necessary to add "Avoiding" and lower case "e" for the next word in order to clarify how to earn the point for this criterion.

Subsection (a)(2)(A)1.c: It was necessary to delete "Greenfields equals one point" because this is essentially the same criterion as (a)(2)(A)1.b in the 2009 Collaboration for High Performance Schools (CHPS) Criteria.

Renumbered Subsection (a)(2)(A)1.c: It was necessary to renumber “d” to “c” because of the deletion of a preceding criterion.

Renumbered Subsection (a)(2)(A)1.d: It was necessary to renumber “e” to “d” because of the deletion of a preceding criterion.

Renumbered Subsection (a)(2)(A)1.e: It was necessary to renumber “f” to “e” because of the deletion of a preceding criterion.

Renumbered Subsection (a)(2)(A)1.f: It was necessary to renumber “g” to “f” because of the deletion of a preceding criterion.

Subsection (a)(2)(A)2.b: It was necessary to add “Human-powered transportation” because “bicycles” is not commonly used in the field and this addition provides clarity to end users.

Subsection (a)(2)(A)3.a: It was necessary to change equals to “is a” in order to make a non-substantive grammatical clarification.

Subsection (a)(2)(A)4: It was necessary to add “and Spaces” because “surfaces” is not commonly used in the field and this addition provides clarity to end users.

Subsection (a)(2)(B)1.a: It was necessary to change equals to “is a” in order to make non-substantive grammatical clarification.

Subsection (a)(2)(B)1.b: It was necessary to add the words “use” and “areas” to make a non-substantive grammatical clarification. It was necessary to add the word “non-recreational” to make the distinction between recreational and non-recreational landscaping as the current 2009 CA-CHPS criteria splits recreational from non-recreational landscaping.

Subsection (a)(2)(B)1.c: It was necessary to add a new credit for reduction of potable water use for recreational area landscaping as it is now bifurcated from reduction of non-recreational landscaping in the 2009 CA-CHPS criteria.

Subsection (a)(2)(B)2.a: It was necessary to add “and urinals” as reduction of sewage conveyance for both toilets and urinals enables an applicant to obtain this credit.

Subsection (a)(2)(B)2.b: It was necessary to change “one to two points” to “one to three points” as one additional possible point was added to this credit pursuant to the collaborative findings of the State Allocation Board (SAB) Implementation Committee and stakeholder workgroup meetings.

Subsection (a)(2)(C)1.a: It was necessary to add a reference to the 2008 California Energy Code to clarify exactly what minimum energy performance meant, and it was necessary to change equals to “is a” in order to make a non-substantive grammatical clarification.

Subsection (a)(2)(C)1.b: It was necessary to add a reference to the 2008 California Energy Code to clarify the starting point for energy performance.

Subsection (a)(2)(C)1.e: It was necessary to add a new credit for plug loads monitored on an energy management system pursuant to the collaborative findings of the SAB Implementation Committee and stakeholder workgroup meetings, as well as being in the 2009 CA-CHPS criteria.

Subsection (a)(2)(C)2: It was necessary to change seven to 15 as there was an increase of eight available credits in this category pursuant to the collaborative findings of the SAB Implementation Committee and stakeholder workgroup meetings. It was also necessary to change not to exceed 35 to “up to 40” because the increase in credits available the formula for calculating points also changed. Further, it was necessary to add “and one point ... produced on site” to compensate for the formula changes with the addition of credits available and extend the ceiling of renewable energy produced on site from the previous cap of 35 percent to 100 percent.

Subsection (a)(2)(C)3.a: It was necessary to change equals to “is a” in order to make non-substantive grammatical clarification.

Subsection (a)(2)(C)3.b: It was necessary to change “two points” to “four points” as two additional possible points were added to this credit pursuant to the collaborative findings of the SAB Implementation Committee and stakeholder workgroup meetings.

Subsection (a)(2)(D)1: It was necessary to change equals to “is a” in order to make non-substantive grammatical clarification.

Subsection (a)(2)(D)2.a: It was necessary to add the word “site” to make a non-substantive grammatical clarification. It was necessary to change equals to “is a” in order to make non-substantive grammatical clarification.

Subsection (a)(2)(D)2.b: It was necessary to add the word “site” to make a non-substantive grammatical clarification.

Subsection (a)(2)(D)3.b: It was necessary to change partitions to “non-structural elements” because “partitions” is not commonly used in the field and this addition provides clarity to end users.

Subsection (a)(2)(D)4.b: It was necessary to add “and organically grown materials” as organically grown materials, along with rapidly renewable materials are recognized as qualifying for this credit in the 2009 CA-CHPS criteria.

Subsection (a)(2)(E)2: It was necessary to add “and Thermal Comfort” to clarify exactly what the credits in this subsection are aimed at. The additional language also aligns to the language contained in the 2009 CA-CHPS criteria, which provides clarity for end users.

Subsection (a)(2)(E)2.a: It was necessary to add the words “for minimum HVAC and construction indoor environmental quality” to clarify exactly what this prerequisite is as referenced in code. It was also necessary to change equals to “is a” in order to make a non-substantive grammatical clarification.

Subsection (a)(2)(E)2.b: It was necessary to strike “Thermal displacement ventilation equals two points” and relocate the language to Subsection (a)(2)(E)2.d for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient. It was necessary to add “Minimum requirements for thermal comfort and moisture control is a prerequisite” to comply with current code and because this section was previously contained in Subsection (a)(2)(E)4.a, which is now being relocated and is consistent with the 2009 CA-CHPS criteria and the DSA worksheet for review HPI grant requests.

Subsection (a)(2)(E)2.c: It was necessary to strike “Low emitting materials equals one to four points” and relocate the language to (a)(2)(E)2.f for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient. It was necessary to add “Minimum requirements for minimum filtration is a prerequisite” to comply with current code and to delete the points attached to this credit as it is now a code requirement.

Subsection (a)(2)(E)2.d: It was necessary to strike “Chemical and pollutant source control equals one point” and relocate the language to (a)(2)(E)2.i for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient. It was necessary to add “Thermal displacement ventilation equals two points” for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient.

Subsection (a)(2)(E)2.e: It was necessary to strike “Ducted returns equals one point” and relocate it to Subsection (a)(2)(E)2.g for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient. It was necessary to add “Enhanced filtration equals one point” pursuant to the collaborative findings of the SAB Implementation Committee and stakeholder workgroup meetings, as well as being in the 2009 CA-CHPS criteria.

Subsection (a)(2)(E)2.f: It was necessary to strike “Filtration equals one point” and relocate it to Subsection (a)(2)(E)2.e for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient. It was necessary to relocate “Low-emitting materials equals one to four points” from Subsection (a)(2)(E)2.c for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient.

Subsection (a)(2)(E)2.g: It was necessary to relocate “Ducted returns equals one point” from Subsection (a)(2)(E)2.e for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient.

Subsection (a)(2)(E)2.h: It was necessary to add “Controllability of systems equals one to two points” pursuant to the collaborative findings of the SAB Implementation Committee and stakeholder workgroup meetings, as well as being in the 2009 CA-CHPS criteria.

Subsection (a)(2)(E)2.i: It was necessary to relocate “Chemical and pollutant equals one point” from Subsection (a)(2)(E)2.d for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient.

Subsection (a)(2)(E)2.j: It was necessary to add “Mercury reduction equals one point” pursuant to the collaborative findings of the SAB Implementation Committee and stakeholder workgroup meetings, as well as being in the 2009 CA-CHPS criteria.

Subsection (a)(2)(E)3.a: It was necessary to change equals to “is a” in order to make a non-substantive grammatical clarification. It was necessary to add two points to this prerequisite because of the recognized difficulty and expense involved in meeting this requirement, pursuant to the collaborative findings of the SAB Implementation Committee and stakeholder workgroup meetings.

Subsection (a)(2)(E)4: It was necessary to delete “Thermal Comfort” because it was relocated to Subsection (a)(2)(E)2.b as it is consistent with the 2009 CA-CHPS criteria and the DSA worksheet for reviewing HPI grant requests.

Subsection (a)(2)(E)4.a: It was necessary to delete this criterion because it was relocated to Subsection (a)(2)(E)2.a as it is consistent with the 2009 CA-CHPS criteria and the DSA worksheet for review HPI grant requests.

Subsection (a)(2)(E)4.b: It was necessary to relocate “Controllability of systems equals one to two points” to Subsection (a)(2)(E)2.h for ordering changes that align with the DSA worksheet for reviewing HPI grant requests, thus making the reviews more efficient.

Subsection (a)(7): It was necessary to change “CHPS Best Practices Manual Volume III 2002 Edition” to “2002 CA-CHPS Criteria” because CHPS changed the way they reference easy year’s edition of the CHPS criteria to be State specific.

Subsection (a)(7): It was necessary to change “CHPS Best Practices Manual Volume III 2002 Edition” to “2002 CA-CHPS Criteria” because CHPS changed the way they reference easy year’s edition of the CHPS criteria to be State specific.

Subsection (b)(2): It was necessary to change “CHPS Best Practices Manual Volume III 2006 Edition” to “2006 CA-CHPS Criteria” because CHPS changed the way they reference easy year’s edition of the CHPS criteria to be State specific.

Subsection (c): The following paragraph was added to the proposed regulatory text:

- “(3) For those projects accepted by the DSA utilizing the *2009 CA-CHPS Criteria*, in which the level of high performance attained as concurred by the DSA is a minimum of 27 points, the Board shall provide \$150,000 one time per school site as a High Performance Base Incentive Grant. In addition, the New Construction Grant will be multiplied by:
- (A) 2.35 percent at 27 points; or
 - (B) 2.59 percent at 28 points plus 0.24 percent for each point attained from 29 through 33 points; or
 - (C) Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or
 - (D) 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 90 points.”

It was necessary to add this paragraph in order to revise the method for deriving the percentage increase to a project requesting HPI grants since it was decided in preceding SAB Implementation Committee meetings and stakeholder workgroup meetings where an analysis was conducted to determine the best way to increase the grants associated with HPI grant requests.

New concluding sentence: It was necessary to add “Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC.)” because there was concern that with elevated levels in funding for HPI grants, some of the excess funds (if any) would be used for other non-HPI related project costs. This sentence is also necessary to ensure that any HPI funds apportioned are spent only on HPI-related costs.

Section 1859.77.4. Addition to a Site and Modernization Grant for High Performance Incentive.

Specific Purpose of the Regulation

To stimulate greater participation for HPI grant funding for additions to a site and modernization projects.

Need for the Regulation

Subsection (a)(7): It was necessary to change “CHPS Best Practices Manual Volume III 2002 Edition” to “2002 CA-CHPS Criteria” because CHPS changed the way they reference easy year’s edition of the CHPS criteria to be State specific.

Subsection (b)(2): It was necessary to change “CHPS Best Practices Manual Volume III 2006 Edition” to “2006 CA-CHPS Criteria” because CHPS changed the way they reference easy year’s edition of the CHPS criteria to be State specific.

Subsection (c): The following paragraph was added to the proposed regulatory text:

“(3) For those projects accepted by the DSA utilizing the *2009 CA-CHPS Criteria*, in which the level of high performance attained as concurred by the DSA is a minimum of 20 points, the Board shall provide \$250,000 one time per school site as a High Performance Base Incentive Grant. In addition, the New Construction or Modernization Grant, as appropriate will be multiplied by:

- (A) 2.18 percent at 20 points plus 0.025 percent for each point attained from 21 through 26 points; or
- (B) 2.35 percent at 27 points plus 0.24 percent for each point attained from 28 through 33 points; or
- (C) Four percent at 34 points plus 0.36 percent for each point attained from 35 through 47 points; or
- (D) 9.05 percent at 48 points plus 0.060 percent for each point attained from 49 through 84.”

It was necessary to add this paragraph in order to revise the method for deriving the percentage increase to a project requesting HPI grants since it was decided in preceding SAB Implementation Committee meetings and stakeholder workgroup meetings where an analysis was conducted to determine the best way to increase the grants associated with HPI grant requests.

New concluding sentence: It was necessary to add “Any funds apportioned pursuant to this Section shall be expended only on high performance related costs (and components as approved by the OPSC.)” because there was concern that with elevated levels in funding for HPI grants, some of the excess funds (if any) would be used for other non-HPI related project costs. This sentence is also necessary to ensure that any HPI funds apportioned are spent only on HPI-related costs.

Section 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

Specific Purpose of the Regulation

To stimulate greater participation for HPI grant funding for new construction and modernization projects by increasing the HPI grant amounts.

Need for the Regulation

Subsection (e): It was necessary to provide financial hardship applicants the ability to receive the High Performance Base Incentive Grant portion of the HPI grant in order to begin the planning and design process for the HPI components in the project. Many of these components require feasibility studies and up-front costs not provided in the standard design-only funding grant.

Subsection (e)(2): It was necessary to provide financial hardship applicants the ability to receive the High Performance Base Incentive Grant portion of the HPI grant in order to begin the planning and design process for the HPI components in the project. Many of these components require feasibility studies and up-front costs not provided in the standard design-only funding grant.

Third unnumbered paragraph following Subsection (e)(2): It was necessary to add “1859.71.6, 1859.77.4,” to a listing of School Facility Program Regulation sections because it makes reference to the High Performance Base Incentive Grant portion of the HPI grants.

Section 1859.104. Program Reporting Requirements.

Specific Purpose of the Regulation

To clarify reporting requirements for school districts receiving apportionments for HPI grants.

Need for the Regulation

New Subsection (g): The following paragraph was added to the proposed regulatory text:

“A School District receiving an Apportionment for high performance incentive grants pursuant to Section 1859.71.6 or 1859.77.4 shall submit a completed Project Information Worksheet to the OPSC for all expenditures related to the additional design and construction costs of the high performance building components. In addition, the School District shall provide information related to resulting energy savings and efficiency, as well as other resulting benefits. The Project Information Worksheet shall be submitted with the Form SAB 50-05 and the District’s first and final Forms SAB 50-06 pursuant to (a)(1) and (2) above.”

It was necessary to add this paragraph to clarify reporting requirements for school districts receiving apportionments for HPI grants because currently there is a lack of data related to differential costs for high performance components versus standard components. This regulation change provides a vehicle to obtain that information for projects receiving HPI grants via additions to the Project Information Worksheet, a worksheet that has been in use for some time to capture school construction data.

SCHOOL FACILITY PROGRAM FORM

Application for Funding, Form SAB 50-04 (Revised 05/10).

Specific Purpose of the Form

To add project categories to this Form to accommodate applications for HPI grants, and to make clarifications to the certifications which must be signed by the architect or design professional and the school district representative in order to submit the Form.

Need for the Form

Page 6, first column, No. 1, “Separate Apportionment:” It was necessary to add data fields for the project categories of “Design Only – New Construction with High Performance” and “Design Only – Modernization with High Performance” to differentiate these types of applications for the HPI grant funding established in these regulatory amendments.

Page 8, first column, No. 22, first bullet:

- It was necessary to clarify that a New Construction Grant request does not include the Overcrowding Relief Grant.
- It was also necessary to clarify that the High Performance Base Incentive Grant is not part of the “total grant amount” when determining whether the work in a submitted project is at least 60 percent of the total grant amount

Page 8, first column, No. 22, second bullet: It was necessary to clarify that the High Performance Base Incentive Grant is not part of the “total grant amount” when determining whether the work in a submitted project is at least 60 percent of the total grant amount

Page 9, 2nd column, last bullet item: It was necessary to add this certification requirement in order to place school districts on notice that their school district governing board must have a resolution on file that demonstrates support for the HPI grant and intent to incorporate HPI features in their projects.

Project Information Worksheet (Rev. 05/10)

This worksheet is incorporated by reference and not an official SAB form.

Specific Purpose of the Worksheet

To provide direction to school districts for completing specific areas of this form when requests have been submitted for HPI grant funding

Need for the Worksheet

Page 4: It was necessary to provide specific direction to school districts for purposes of filling out the HPI portion of this worksheet (page 9).

Page 9: It was necessary to create this page relating to only HPI information in order for school districts to provide the HPI-related costs and for the Office of Public School Construction to collect this data to ensure that the HPI grant funds are being expended on HPI-related components in SFP new construction projects. This maintains the integrity and accountability of State bond funds, specifically those bond funds set aside in Proposition 1D for High Performance (up to \$100 million). This worksheet is submitted by school districts to report their new construction project costs at the times of requesting SFP fund releases (Form SAB 50-05) and upon submitting their Expenditure Report (Form SAB 50-06).

Technical Documents Relied Upon

The State Allocation Board's Action item, dated May 26, 2010, entitled "High Performance Incentive Grant Funding."

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulations do not affect small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the regulations will not affect businesses, including small businesses, because they are not required to comply with or enforce the regulations, nor will they benefit from or be disadvantaged by the regulations.

Impact on Local Agencies or School Districts

The SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.