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Director

State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

ACTION: Notice of Proposed Rulemaking
Title 17, California Code of Regulations

SUBJECT: Childhood Lead Poisoning Prevention Fees, DPH-07-007

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Public Health will conduct a public hearing commencing on September 26, 2008, at 10 a.m., in the Auditorium, 1500 Capitol Avenue, Sacramento, CA, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: To fund activities under the Childhood Lead Poisoning Prevention Act of 1991 (CLPP Act; Health and Safety Code Sections 105275 *et seq.*), a fee is imposed upon "*manufacturers and other persons ...that were formerly and/or are presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead...*" The Act directs the Department¹ to adopt regulations establishing the mechanism and formula for collecting the fees from the industries responsible for current and/or historic environmental lead contamination in the State.

This regulatory action would amend Title 17, CCR, Division 1, Chapter 6, Section 33001 *et seq.*, governing assessment of fees upon persons that were formerly and/or are presently engaged in the stream of commerce of lead or products containing lead in order to provide necessary clarification to the existing regulations. This regulatory action is in part in response to statements contained in a Decision and Recommendation issued 10/6/06 by the State Board of Equalization Appeals Division, which concluded that certain practices and conclusions of the Department of Health Services² in connection with fees assessed under the CLPP Act are interpretations of regulations that should be specifically included in the codified regulations.³

¹ Effective July 1, 2007, the California Department of Health Services was split into two separate agencies, the Department of Health Care Services, and the Department of Public Health. This split was effected by the passage of S.B. 162, Chapter 241, Statutes of 2006. The subject of this proposed regulatory package was assigned in that legislation to the Department of Public Health .

² Predecessor to the Department of Public Health.

³ The copy of this decision cannot be further identified, because of the restrictions imposed pursuant to Rev. & Tax. Code section 43651, which states that:

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This regulatory action clarifies the current long-standing practice of the Department with regard to fee liability in instances where the business assets associated with environmental lead contamination have been transferred from one business entity to another. This regulatory action in no way alters the current long-standing method by which the Department determines who is assessed a fee under the CLPP Act, and how the fee is calculated. This regulation does not increase or decrease the total amount of fees to be assessed, and therefore it is revenue neutral.

The adopted changes are explained as follows:

Section 33010 is amended to clarify the definition of “historically associated” to include that acquisition of significant operating assets, such as a trademark, a factory or a refinery, can establish a significant relationship between business entities.

Section 33020 is amended to clarify that the amount of the total gallons of architectural coatings is based on products distributed in 1978 from any and all business operations for which the distributor is currently responsible.

Section 33025 is amended to clarify that the amount of motor vehicle fuel distributed in 1991 is based on fuel distributed from any and all business operations for which the distributor is currently responsible.

Section 33030 is amended to clarify that fees attributable to releases of lead into ambient air are based on the sum of releases lead and lead compounds, as reported to the United States Environmental Protection Agency. It would specify that facilities will be assessed fees for all reported releases of lead into ambient air, including in instances where the facility has recently halted operations. It would also correct a typographical error in the current regulations, correcting "Superfunds" to read "Superfund".

Section 33040 is amended to make technical changes reducing the burden on fee payers seeking exemption from the fees. The requirement that an applicant for exemption provide information as to what lead ingredients were purchased from whom would be removed, and the requirement that a business entity granted an exemption must re-apply for exemption annually would be removed. The amendment would also change an obsolete address where applications are to be filed.

“[i]t shall be unlawful for the board, the department, or any person having administrative duty under this part to make known, in any manner whatever, the business affairs, operations, or any other information pertaining to a taxpayer which is submitted to the board in a report or return required by this part...”

As a result, the copy of that decision included in the rule-making file, has been redacted to remove the identity of the feepayer, and other account and dollar information that cannot by law be disclosed.

New Section 33060 is adopted to identify the process that a fee payer can use to request a determination that another business entity is currently responsible for the business operations that historically contributed to environmental lead contamination. The new regulation clarifies that the Department makes this determination based on the best available information, even in instances where no application has been filed seeking a determination. This regulation identifies the documentation that a fee payer seeking a determination under this section shall submit to the Department. The new section also sets forth the ability of an affected party to seek reconsideration of such a transfer of fee liability.

AUTHORITY: Sections 105300, 105310, 124165 and 131200, Health and Safety Code; Ch. 799, Stats. 1991, Sec. 11.

REFERENCE: Sections 105250, 105310, 124160, 124165, 1131050, 131051 and 131052, Health and Safety Code.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations and Hearings by 5 p.m. on September 29, 2008, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations and Hearings, California Department of Public Health, MS 0507, 1501 Capitol Avenue, P.O. Box 997377, Sacramento, CA 95899-7377. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-5747; or
3. By email to regulations@cdph.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DPH -07-007" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Tim Ford, of Office of Legal Services, at (916) 440-7822.

All other inquiries concerning the action described in this notice may be directed to Barbara Gallaway, of the Office of Regulations and Hearings, at (916) 440-7689, or to the designated backup contact person, Miko Sawamura, at (916) 440-7690.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-07-007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations and Hearings, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations and Hearings.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@cdph.ca.gov, or write to the Office of Regulations and Hearings at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations and Hearings at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: None.
- C. Fiscal Effect on Federal Funding of State Programs: None.

- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: 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.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS: The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would affect small business.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Other regulation changes may be scheduled for hearing at the same time appointed for public hearing on the action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

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For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Miko Sawamura, Office of Regulations and Hearings, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, voice (916) 440-7690 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

DPH -07-007



Date:

Mark Horton, M.D., M.S.P.H.
Director