

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on rev 3)

For use by Secretary of State only

NONSUBSTANTIVE

STD. 400 (REV. 01/2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2016-0630-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AUG 11 2016

1:49PM

2016 JUN 30 A 11:53
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

AGENCY FILE NUMBER (if any)
DPH-16-014

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) 2016 STAKE Act Regulations - Section 100	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 6901, 6902, and 6903
TITLE(S) 17	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Dawn Basciano	TELEPHONE NUMBER (916) 440-7367	FAX NUMBER (Optional) (916) 440-5747	E-MAIL ADDRESS (Optional) dawn.basciano@cdph.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 6/22/16
TYPED NAME AND TITLE OF SIGNATORY Karin S. Schwartz, Deputy Director and Chief Counsel	

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ENDORSED APPROVED

AUG 11 2016

Office of Administrative Law

Justification for Changes without Regulatory Effect:

Sections affected: 6901, 6902, and 6903.

The California Department of Public Health (Department) proposes amendments to Cal. Code Regs, tit. 17, §§ 6901, 6902, and 6903 to bring them into compliance with Bus. & Prof. Code, §§ 22950.5, 22952, and 22958. A nonsubstantial change is also being made to reflect the correct name of the Department pursuant to Health & Saf. Code §§ 131050 and 131051.

These amendments satisfy the criteria under Cal. Code Regs. tit. 1, § 100 because the above mentioned regulations are currently inconsistent with Bus & Prof Code §§ 17537.3, 22950.5, 22951, 22952, 22956, and 22958 and the Department has no discretion to contravene the statutes.

Amend Sections 6901, 6902, and 6903 of the California Code of Regulations to read:

§ 6901. Definitions.

(a) "Decoy" means ~~a 15 or 16-year-old individual~~ a person under 21 years of age participating in an inspection carried out by the Department to determine compliance with California law prohibiting the sale of a tobacco product to ~~a minor~~ a person under 21 years of age.

(b) "Department" means the ~~Department of Health Services~~ California Department of Public Health or a local law enforcement agency that has entered into an enforcement delegation contract with the ~~Department of Health Services~~ California Department of Public Health.

(c) No change to text.

~~(d) "Minor" means any individual under 18 years of age.~~

~~(e)~~(d) "Person" means any individual, partnership, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within the state, and any representative agent, or agency of any of the foregoing.

~~(f)~~(e) "Retail site" means any outlet that provides tobacco products for sale to consumers including, but not limited to, an establishment, vending machine, vehicle, mobile unit, stationary mobile unit, booth, stand, or concession.

~~(g)~~(f) "Sale" means the transfer or exchange for consideration or otherwise furnishing of a tobacco product to a consumer for the purpose of consumption or use, and not for resale.

~~(h)~~(g) "Seller" means the owner of any retail business or any employee of the retail business authorized to make sales of tobacco products to consumers.

~~(i)~~(h) "Tobacco product" ~~means any substance containing tobacco leaf, including, but~~

~~not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco~~ shall read as defined by Section 22950.5 of the Business and Professions Code.

~~(j)~~(i) "Valid identification" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and photograph of the individual.

~~(k)~~(i) "Vending machine" means any mechanical device, the operation of which depends upon the insertion of money, trade checks, tokens or other things representative of value and which dispenses or vends tobacco products.

Note: Authority cited: Sections 22950.5(a), 22950.5(d), 22952(b), and 22952(d), Business and Professions Code; and Section 208, Health and Safety Code. Reference: Sections 22950.5(a), 22950.5(d), 22951, 22952(b), 22952(c), 22952(d)(1)-(7), 22954, 22956, 22957 and 22958 Business and Professions Code.

Amend Section 6902 to read:

§ 6902. Warning Sign; Identification.

(a) No change to text.

(1) Contain the following words with initial letters capitalized in the following manner: The Sale of Tobacco Products to Persons Under 1821 Years of Age Is Prohibited by Law and Subject to Penalties. U.S. Armed Forces active duty personnel with military ID must be at least 18 years of age. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5ASK-4-ID. Business and Professions Code Section 22952.

(2) No change to text.

(3) No change to text.

(4) Located at least one-third inch from the top and sides, the following required words shall be no smaller than 20 point medium or bold Helvetica or Futura type face: "The Sale of Tobacco Products to Persons Under 1821 Years of Age Is Prohibited by Law and Subject to Penalties. U.S. Armed Forces active duty personnel with military ID must be at least 18 years of age. Valid Identification May Be Required." Located at least one-third inch from the sides, the following required words shall be no smaller than 30 point medium or bold Helvetica or Futura type face and in all cases 6 point size larger than all other text: "To Report an Unlawful Tobacco Sale Call 1-800-5ASK-4-ID." Located at least one-quarter inch from the sides and bottom, the required legal citation "Business and Professions Code Section 22952" shall be no smaller than 12 point medium or bold Helvetica or Futura type face.

(b) The seller shall request valid identification from any individual who attempts to purchase a tobacco product if that individual reasonably appears to the seller to be under 1821 years of age.

Note: Authority cited: Section 22952(b), Business and Professions Code. Reference: Sections 22952(b), 22956, and 22958, Business and Professions Code.

Amend Section 6903 to read:

§ 6903. Inspections; Decoys.

(a) The Department shall conduct inspections using decoys who shall present the appearance of an individual under ~~48~~21 years of age. For purposes of verifying that a decoy appears to be under ~~48~~21 years of age at the time of the inspection, a photograph or video recording of the decoy shall be taken prior to and on the same day as the inspection and shall be retained by the Department.

(b) No change to text.

(c) No change to text.

(d) No change to text.

(e) No change to text.

(f) No change to text.

Note: Authority cited: Section 22952(d), Business and Professions Code. Reference: Sections 22952(b), 22952(c), 22952(d)(1)-(7) and 22958, Business and Professions Code; and Section 308, Penal Code.