

STATEMENT OF BASIS
FOR
“SECTION 100” CHANGE WITHOUT REGULATORY EFFECT
ADVISING THAT SENATE BILL 1137 IMPLEMENTING REGULATIONS ARE STAYED

The California Department of Conservation (Department), through its Geologic Energy Management Division (CalGEM), proposes to add a new section, 1765.11, to title 14 of the California Code of Regulations as a change without regulatory effect, pursuant to the process described in California Code of Regulations, title 1, section 100 (“Section 100”). The purpose of Section 1765.11 is to alert the public that, by operation of law, the regulatory effect of California Code of Regulations, title 14, sections 1765 through 1765.10 has been suspended. The addition of section 1765.11 constitutes a “Section 100” change without regulatory effect because, as elaborated below, it is a regulatory statement that reflects a change in the status of the primary statute authorizing sections 1765 through 1765.10, and as such does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision beyond the underlying statutory change. (Gov. Code, §§ 11340.9, subd. (f), and 11343.8; Cal. Code Regs., tit. 1, §100, subd. (a).) Whether or not this article of title 14 is amended, the entire title will be without legal effect unless and until the authorizing statute is approved by voters now that that statute is the subject of a referendum measure that has qualified for the ballot. The Section 100 amendment will support good governance because the California Code of Regulations will reflect the current state of the law.

Senate Bill 1137 (Gonzalez, Chapter 385, Statutes of 2022) added Article 4.6, titled “Health Protection Zones,” to Chapter 1 of Division 3 of the Public Resources Code, spanning sections 3280 through 3291. These statutory provisions expressly authorized the Department to adopt emergency regulations for the specific purpose of implementing their new requirements as a legislatively deemed emergency. (Pub. Resources Code, § 3288.) On January 1, 2023, these new statutory provisions became effective.

On January 6, 2023, the Office of Administrative Law approved the adoption of emergency regulations proposed by the Department for the purpose of implementing certain provisions of the new statutory requirements added by Senate Bill 1137. These emergency regulations, titled the “SB 1137 First Emergency Implementation Regulations,” consist of sections 1765 through 1756.10, located within a newly created Article 2.5, titled “Health Protection Zones,” in Subchapter 2, Chapter 4, Division 2, Title 14 of the California Code of Regulations. The SB 1137 First Emergency Implementation Regulations were filed with the Office of the Secretary of State on January 6, 2023, and became effective that same day.

Opponents of Senate Bill 1137 initiated a referendum challenge to the bill. On February 3, 2023, the Secretary of State certified that a sufficient number of signatures had been

submitted for the referendum to become duly qualified for the ballot. The effectiveness of a statute challenged in its entirety by a duly qualified (or "valid") referendum is stayed until it has been approved by the voters at the required election. (*Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal.3d 638, 656-657; Cal. Const., art. II, §§ 9, 10.) Thus, by operation of law, the implementation of Senate Bill 1137's statutory provisions is stayed as of February 3, 2023, until the referendum challenge has been resolved by a vote of the electorate.

Because Senate Bill 1137's statutory provisions are stayed, and because Senate Bill 1137 provided a necessary component of the authorization of the SB 1137 First Emergency Implementation Regulations, those emergency regulations are suspended as a matter of law, too, and shall remain suspended for as long as the underlying Senate Bill 1137 statutory provisions lack legal effect. (See Gov. Code, § 11342.1; Cal. Code Regs., tit. 1, §§ 14, subd. (c), 100, subd. (a)(5).) The sole function of the SB 1137 First Emergency Implementation Regulations is to implement the specific requirements and prohibitions of Senate Bill 1137, and for as long as those statutes are stayed the implementing regulations have no effect or meaning.

The proposed "Section 100" change without regulatory effect would add a new section to the string of emergency regulations in the Article 2.5, "Health Protection Zones," created by the SB 1137 First Emergency Implementation Regulations. This new section consists of a single sentence that states the legal consequences of the referendum's qualification.

§ 1765.11. Regulations Suspended Pending Referendum Vote.

Because the Secretary of State has certified that a referendum against Senate Bill 1137 (Gonzalez, Chapter 365, Statutes of 2022) has qualified for the ballot, and because the effectiveness of Senate Bill 1137 (enacting Public Resources Code, Division 3, Chapter 1, Article 4.6 (commencing with section 3280) is stayed accordingly, Sections 1765 through 1765.10 are suspended effective February 3, 2023, unless and until a majority of voters approve Senate Bill 1137 at the required election.

Authority: Sections 3013 and 3106, Public Resources Code. Reference: Sections 3011 and 3106, Public Resources Code; Sections 9 and 10, Article II, California Constitution; *Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal.3d 638, 655-657.

This statement informs the public of the status of the emergency implementation regulations in light of the referendum's qualification under Article II of the California Constitution. The addition of this section would not materially alter any regulatory requirement beyond the change already worked by the qualified referendum suspending Senate Bill 1137. Therefore, the addition of this section to the California Code of Regulations is permissible as a "Section 100" change without regulatory effect. (Gov. Code, §§ 11340.9, subd. (f), and 11343.8; Cal. Code Regs., tit. 1, § 100, subd. (a).)

Section 1765 of the emergency implementation regulations states, “The purpose of [the SB 1137 First Emergency Regulations] is to implement and make specific the provisions of [SB 1137].” This purpose is also reflected by the title of the emergency rulemaking action, the title of article in which they appear, and the substantive content of their text. The sole function of these regulations is to implement certain now-stayed provisions of the Public Resources Code added by Senate Bill 1137. While a few statutory provisions of broader scope that exist separate from the Senate Bill 1137 additions were noted among the reference and authority citations for the SB 1137 First Emergency Implementation Regulations for the sake of completeness, these statutory provisions represent the existing framework of authority into which Senate Bill 1137’s various additions were inserted. While CalGEM has broad authority to regulate oil production based on public health, the specific provisions of the Public Resources Code added by Senate Bill 1137 are necessary to authorize the SB 1137 First Emergency Implementation Regulations. Most significantly, only Senate Bill 1137 provided the legislative finding of emergency that provided the basis for the SB 1137 emergency regulations. Additionally, the more general authorities do not use several of the statutory terms that were used in Senate Bill 1137 and further clarified in the now-suspended regulations. Thus, CalGEM lacks discretion to enforce the regulations as written and adopted, unless and until the statute they implement and make specific is approved by voters.

Without the specific Public Resources Code sections added by Senate Bill 1137 that they were crafted to implement, the emergency implementation regulations have no practical regulatory function. Since the implementation of Senate Bill 1137 is stayed by operation of law, CalGEM must suspend enforcement of the implementing emergency regulations until after the vote of the electorate. (*Assembly v. Deukmenjian, supra.*) If SB 1137 is not approved by voters, CalGEM will submit a subsequent Section 100 action to repeal sections 1765 through 1765.11. If a majority of voters approve Senate Bill 1137 in the 2024 general election, CalGEM will submit a subsequent Section 100 action to repeal section 1765.11.