

**DEPARTMENT OF CONSERVATION
GEOLOGIC ENERGY MANAGEMENT DIVISION**

**“SECTION 100” CHANGE WITHOUT REGULATORY EFFECT
REPEALING ADVISORY THAT SENATE BILL 1137 IMPLEMENTATING REGULATIONS ARE
SUSPENDED**

STATEMENT OF BASIS

The California Department of Conservation (Department), through its Geologic Energy Management Division, proposes to repeal section 1765.11 of 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 was to alert the public that, by operation of law, the regulatory effect of California Code of Regulations, title 14, sections 1765 through 1765.10 had been suspended. On June 27, 2024, however, the referendum proponent withdrew the referendum, and those regulations are no longer suspended, again by operation of law.

The repeal of section 1765.11 constitutes a “Section 100” change without regulatory effect because, as elaborated below, it merely explained a change in the then-status of the authorizing statute. By operation of law, the status of the primary statute is no longer suspended, and its implementing regulations are again in effect. Because existing section 1765.11 is no longer legally or factually correct, its repeal 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).) The Section 100 repeal of section 1765.11 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 to be in effect for two years 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.

The emergency regulations were only in effect for 28 days because an opponent 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 suspended 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 was suspended as of February 3, 2023. Under AB 421 (Bryan, 2023), which was subsequently enacted, the statute that is the subject of a referendum remains suspended until the referendum challenge had been resolved by a vote of the electorate, the referendum is disqualified, or the proponent of the referendum measure withdrew the measure pursuant to Elections Code section 9604. (Elec. Code, § 9033, subd. (d)(2).)

Because Senate Bill 1137’s statutory provisions had been suspended, and because Senate Bill 1137 provided a necessary component of the authorization of the SB 1137 First Emergency Implementation Regulations, those emergency regulations were also suspended as a matter of law and would have remained suspended for as long as the underlying Senate Bill 1137 statutory provisions lacked 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 was to implement the specific requirements and prohibitions of Senate Bill 1137, and for as long as those statutes were suspended, the implementing regulations had no effect or meaning.

On June 27, 2024, the proponent of the referendum withdrew it by sending a signed, written notice of withdrawal to the Secretary of State. (Elec. Code § 9604, subd. (b)(1).) (See attached.) As of that date, therefore, the requirements of SB 1137 are no longer suspended. (Elec. Code § 9604, subd. (b)(2).) The SB 1137 First Emergency Implementation Regulations are consequently back in effect for 701 days, which is the remainder of the two years that Public Resources Code section 3288 authorized the emergency regulations to be effective. This excludes the 28 days the emergency

regulations were in effect in early 2023. The new deadline upon which the emergency regulations will expire is therefore May 28, 2026. The proposed "Section 100" change without regulatory effect would repeal section 1765.11 because it no longer accurately reflects the legal status of Public Resources Code, Division 3, Chapter 1, Article 4.6 (commencing with section 3280) and California Code of Regulations, title 14, sections 1765 through 1765.10.

The repeal of section 1765.11 would not materially alter any regulatory requirement beyond the change already worked by the qualified referendum suspending Senate Bill 1137 and the withdrawal of the referendum. Therefore, the amendment 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).)