

**NOTICE OF CHANGES IN THE REGULATIONS OF**  
**THE DEPARTMENT OF JUSTICE**  
**BUREAU OF NARCOTIC ENFORCEMENT**

Attached is a copy of Chapter 8 of Title 11 of the California Code of Regulations reflecting changes which became effective September 27, 2006.

## Article 1. Controlled Chemical Substance Permitting

### 800. Definitions.

(a) "Controlled Chemical Substance" means any one of the chemical substances listed under Health and Safety Code Section 11100(a).

(b) "Controlled Chemical Substance Permit" means a permit issued by this Department to conduct business using controlled chemical substances as defined under Health and Safety Code Section 11100(a).

(c) "Applicant" means anyone who manufactures, sells, transfers, furnishes or obtains from outside of the state or who is the duly authorized agent of anyone who manufactures, sells, transfers, furnishes or obtains from outside of the state, any substance as listed under Health and Safety Code Section 11100(a) and applies for a Controlled Chemical Substance Permit.

(d) "Manufacturer, retailer or wholesaler" means anyone who owns, or who represents the owner of, an operation or business enterprise dealing in the manufacture, sale, transfer, furnishing, or obtaining from outside of the state of any substance as listed in Health and Safety Code Section 11100(a).

(e) "Duly authorized federal or state official" means the chief of a law enforcement agency or a designated subordinate.

(f) "Department" means the California Department of Justice.

(g) "Duly authorized agent" or "representative" means anyone who is responsible for the disbursement and/or custody of controlled chemical substances listed in Health and Safety Code Section 11100(a).

NOTE: Authority cited: Section 11102, Health and Safety Code. Reference: Sections 11100 and 11106, Health and Safety Code.

### **801. Controlled Chemical Substance Permit Issuance; Application; Fees.**

(a) Except where a permit is not required as specified under Health and Safety Code section 11106(a), an application form must be submitted by any manufacturer, wholesaler, retailer, or any other person or entity in this state that sells, transfers, furnishes or obtains from outside of the state any substance as listed in Health and Safety Code Section 11100(a).

(b) The Department shall provide the Bureau of Narcotic Enforcement form BNE 010 (Rev. 06/06) Application for Controlled Chemical Substance Permit (which is incorporated by reference), which is to be completed, signed and notarized under penalty of perjury to obtain information to identify the person or entity applying for a permit and that person's business. This application must be filed by each person or entity as specified in subsection (a) above. Each application shall also include a personal history statement (part II of the application form) completed by each owner, partner, corporate officer, manager or any representative with management or control of any substance listed on the permit application.

(c) The Department may require an applicant for a permit to supply additional follow-up or clarifying information beyond what is routinely required to be included in the application form; the Department may also require an inspection of the applicant's premises where controlled chemical substances are proposed to be stored and/or handled.

(d) As a condition of obtaining and holding a permit, the Department or any duly authorized federal or state official shall have authority to make any examination of the books, records and/or inventory of any applicant or person granted a permit, and visit and inspect the premises of the aforementioned during normal business hours as deemed necessary to carry out Chapter 3 of Division 10 of the Health and Safety Code.

(e) If any information submitted in the original application changes, the applicant shall notify the Department in writing within 15 calendar days.

(f) The completed permit application shall be accompanied by the following: 1) a completed ten-print fingerprint card or live scan, which can be obtained and printed at any local law enforcement agency, for each individual acting in the capacity of an owner, manager, agent, or representative for the applicant and each individual employee who has direct access, management or control of any substance listed under subdivision (a) of Health and Safety Code Section 11100; 2) a non-refundable application fee which consists of \$1,000 for each application form submitted; and 3) the Department fingerprint processing fee for each ten-print fingerprint card or live scan submitted. The Directors and Officers of publicly held corporations of 50 or more shareholders need not submit a live scan or fingerprint card

(g) Upon completion of the application processing, the Department will either deny or grant the applicant a permit that will be valid for one year from the date of issue unless suspended or revoked.

NOTE: Authority cited: Sections 11102 and 11106, Health and Safety Code. Reference: Section 11106, Health and Safety Code.

**802. Annual Renewal; Permit Issuance.**

(a) The Controlled Chemical Substance Permit must be renewed on an annual basis. The Department will provide current permittees with renewal applications at least sixty days prior to the expiration of the permittees' current Controlled Chemical Substance Permit. This renewal application will require the permittee(s) to complete a Bureau of Narcotic Enforcement form BNE 010 (Rev 06/06) Application for Controlled Chemical Substance Permit (which is incorporated by reference). However, if there is no change from the previous application, a copy of that application with a declaration under penalty of perjury may be accepted as a renewal application. The renewal application will be accompanied by one sets of 10-print fingerprint cards or live scan for anyone not previously fingerprinted. The permittee(s) must submit the provided renewal application, which must be received by the Department on or before the expiration date of the current Controlled Chemical Substance Permit. The current permit renewal fee shall consist of a non-refundable fee of \$500 for the cost of processing the renewal application and the current Department of Justice fingerprint processing fee for each set of ten-print fingerprint cards/scans submitted with the application.

(b) Permittees submitting a renewal application received by the Department on or before the date of expiration will be permitted to continue their operations under the authority of the previously issued permit. Failure to meet this deadline will cause the permit to expire and the permit application process will have to be started anew by the permittee(s).

NOTE: Authority cited: Section 11102, Health and Safety Code. Reference: Section 11106, Health and Safety Code.

**803. Permittee Information Changes.**

If any information submitted in the original application or subsequent renewal application changes, or in the event of any change in ownership, management, or employment from the original or renewal application, the permittee shall notify the Department in writing within 15 calendar days and shall submit a personal history statement (part II of the application) and one set of 10-print fingerprint cards or live scan for each added individual having management or control of any controlled chemical substance listed under Health and Safety Code section 11100(a). If any change of employment results in an employee not previously fingerprinted having direct access to any controlled chemical substance, that employee must submit one set of 10-print fingerprint cards or live scan.

NOTE: Authority cited: Section 11102, Health and Safety Code. Reference: Section 11106, Health and Safety Code.

#### **804. Permit Denial, Suspension or Revocation.**

(a) A permit shall be denied upon application, and a permit may be suspended or revoked, if the applicant or permittee or their agents, representatives, or employees have committed any acts or failures set forth in Health and Safety Code Section 11106(d) or any of the following:

- (1) obtained a permit by fraud, misrepresentation, concealment, or through inadvertence or mistake.
- (2) made a misrepresentation of, or failed to disclose, a material fact to the Department, or any duly authorized federal or state official.
- (3) failed to comply with the processes and/or reporting requirements set forth by Article 1, Chapter 3 of the Health and Safety Code (Section 11100 et seq).
- (4) failed to take reasonable steps to prevent any dishonest act(s) or illegal activity substantially related to the qualifications, functions, or duties of a permit holder from occurring on the premises used in the manufacture, sale or transfer of controlled chemical substances.

(b) Revocation or suspension of a permit shall preclude the transfer, sale or furnishing of any substance as set forth in Health and Safety Code Section 11100 until such a time as a permit is re-issued or under order of the court.

(c) Suspension or revocation of a permit for any of the reasons specified in subparagraph (a) shall not preclude the Department or local law enforcement agencies from filing criminal charges for any act done which is grounds for suspension or revocation, which act might otherwise constitute a public offense.

NOTE: Authority cited: Section 11102, Health and Safety Code. Reference: Section 11106, Health and Safety Code.

#### **805. Permit Holder Responsibility.**

Any act by any employee or other individual on behalf of the permitted individual or company which constitutes a violation of Chapter 3 of Division 10 of the Health and Safety Code shall constitute grounds for revocation or denial of the permit.

NOTE: Authority cited: Section 11102, Health and Safety Code. Reference: Section 11106(c)(e)(f), Health and Safety Code.

### **806. Permit Denial, Suspension or Revocation Hearings.**

All hearings related to Controlled Chemical Substance Permit denial, suspension, or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

NOTE: Authority cited: Section 11102, Health and Safety Code. Reference: Section 11106, Health and Safety Code.

### **807. Processing Time.**

(a) Within 30 days after the date of receipt of an application, the Department shall either inform the applicant, in writing, that the application is complete and accepted for filing, or return the application as deficient and specify what information is required. Within 180 days from the date of the receipt of a completed application, the Department shall reach a permit decision unless time is waived by the applicant.

(b) Processing time for Controlled Chemical Substance Permits to be issued by the Department is established with a minimum of 90 days and a maximum of 180 days.

NOTE: Authority cited: Section 11102, Health and Safety Code. Reference: 11106, Health and Safety Code.

## **Title 11 Chapter 8 Article 2**

### **Article 2. Controlled Chemical Substance Program Citations**

#### **Section 810. Citations.**

(a) The Program Manager of the Controlled Chemical Substance Program of the Bureau of Narcotic Enforcement of the Department may issue a citation to any permittee holding a Controlled Chemical Substance Permit for a minor violation of a provision of law or a regulation enforced by the Department's program.

(b) The issuance or non-issuance of a citation does not preclude the Department from filing a disciplinary action to revoke or suspend a permit.

Note: Authority cited: Sections 11102 and 11106.7, Health and Safety Code. Reference: Section 11106.7, Health and Safety Code.

**Section 810.1. Citation Format.**

Each citation:

- (a) shall be in writing;
- (b) shall describe with particularity the nature of the violation, including specific reference to the provision of law or specific regulation determined to have been violated;
- (c) may contain an administrative fine, an order of abatement affixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement;
- (d) shall inform the cited person that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the Department within 30 days of the issuance of the citation.

Note: Authority cited: Section 11102 and 11106.7, Health and Safety Code. Reference: Section 11106.7, Health and Safety Code.

**Section 810.2. Order of Abatement.**

- (a) An order of abatement may include an order to correct a deficiency; to require the introduction of, or compliance with, an approved procedure or action; or to cease and desist from a specific action.
- (b) The abatement order shall contain a reasonable time in which the cited permittee must comply.
- (c) The abatement order may be modified with the approval of the Program Manager if the alternative compliance appears to be a reasonable solution to the correction of the violation.

Note: Authority cited: Section 11102 and 11106.7, Health and Safety Code. Reference: Section 11106.7, Health and Safety Code.

**Section 810.3. Administrative Fine.**

- (a) The fine for an initial violation shall be a maximum of \$1,000 per individual violation.
- (b) The fine for a subsequent violation shall be a maximum of \$2,500 per individual violation.
- (c) A third violation may result in the filing of an administrative disciplinary action seeking to suspend or revoke the permit.

Note: Authority cited: Section 11102 and 11106.7, Health and Safety Code. Reference: Section 11106.7, Health and Safety Code.

**Section 810.4. Administrative Fine Assessment.**

In assessing the administrative fine, the Program Manager shall consider the following factors at minimum:

- (a) The nature and severity of the violation.
- (b) History of violations of the same or similar nature.

- (c) The good or bad faith exhibited by the cited permittee.
- (d) Evidence that the violation was willful.
- (e) The extent to which the cited permittee has cooperated with the Department.

Note: Authority cited: Section 11102 and 11106.7, Health and Safety Code. Reference: Section 11106.7, Health and Safety Code.

#### **Section 810.5. Citation Service.**

- (a) A citation shall be served either personally or by certified mail, return receipt requested, to the permittee's address. Upon the date of personal service or upon the date of receipt of certified mail, the citation shall be considered to have been issued and service shall be considered to be complete.
- (b) The time to comply with the citation shall commence upon service.

Note: Authority cited: Section 11102 and 11106.7, Health and Safety Code. Reference: Section 11106.7, Health and Safety Code.

#### **Section 810.6. Contest of Citations.**

- (a) A cited permittee who desires a hearing to contest the finding of the violation or the order of abatement or fine assessment may request the hearing by written notice to the Department within 30 days of the date of issuance of the citation or assessment. This hearing will be conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (b) In addition to requesting a hearing, the permittee cited may, within ten days after service of the citation, notify the Program Manager in writing of his or her request for an informal conference with the Program Manager regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served.
- (c) The Program Manager shall, within 30 days from receipt of a request for an informal conference, hold an informal conference with the permittee cited and with or without his or her legal counsel or authorized representative. At the conclusion of the informal conference, the Program Manager may affirm, modify, or dismiss the citation, including any administrative fine levied or order of abatement issued. The Program Manager shall state in writing the reasons for his or her action and serve or mail a copy of his or her findings and decision to the permittee cited within ten days from the date of the informal conference. The decision shall be deemed to be a final order with regard to the citation issued, including the administrative fine levied and the order of abatement.
- (d) The permittee cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the Program Manager. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any administrative fine levied or order of abatement, is modified, the originally issued citation shall be considered

withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subsection (a).

Note: Authority cited: Section 11102 and 11106.7, Health and Safety Code. Reference: Section 11106.7, Health and Safety Code.

**Section 810.7. Failure to Comply with Citation Order.**

- (a) The time allowed for abatement of a violation shall begin the first day after the order of abatement has been served. If a cited permittee who has been issued an order of abatement is unable to complete the abatement within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the permittee cited may request an extension of time from the Program Manager in which to complete the abatement. Such a request shall be in writing and shall be made within the time set forth for abatement.
- (b) The time allowed for the payment of the administrative fine shall be 30 days from the receipt of service of the citation, unless a longer period of time is authorized by the Program Manager.
- (c) When an order of abatement or administrative fine is not contested or if the order is appealed and the permittee cited does not prevail, failure to abate the violation charged within the time specified in the citation or failure to pay an administrative fine within the required time shall constitute grounds for disciplinary action.

Note: Authority cited: Section 11102 and 11106.7, Health and Safety Code. Reference: Section 11106.7, Health and Safety Code.