

## Memorandum

To: Ms. Cynthia Bridges  
Executive Director, MIC:73

Date: September 4, 2014

From: Randy Ferris, Chief Counsel *RMF*  
Legal Department, MIC:83

Subject: **Board Meeting, September 23-24, 2014**  
**Item J - Chief Counsel's Rulemaking Calendar**  
**Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors**  
**Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers**

We request your approval to place proposed changes to two Cigarette and Tobacco Products Licensing Act (Act) regulations on the Chief Counsel's Rulemaking Calendar for the September 23-24, 2014, Board meeting in order to request the Board's authorization to complete the changes. The changes correct statutory references in both regulations and update a reference to a regulation in one of the regulations.

Proposed Changes to Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors

Regulation 4604, subdivision (a) lists provisions of the Act and provides that a first offense for the violation of any of the listed provisions will result in the issuance of a Warning Notice. Currently, Regulation 4604, subdivision (a)(2) references Business and Professions Code (BPC) section 22978.4, subdivision (c), which is a penalty provision. It should instead reference BPC section 22978.4, subdivisions (a) and (b), which are provisions imposing invoicing requirements. As a result, the proposed non-substantive changes to Regulation 4604 replace the reference to BPC section 22978.4, subdivision "(c)" with a reference to BPC section 22978.4, subdivision "(a) or (b)," in subdivision (a)(2) of the regulation, and add references to BPC section 22978.4, subdivisions (a) and (b) to the regulation's reference note.

Currently, Regulation 4604, subdivision (a)(3) references BPC section 22978.5, subdivision (b), which is also a penalty provision. It should instead reference BPC section 22978.5, subdivision (a), which is a provision imposing record-keeping requirements. As a result, the proposed non-substantive changes to Regulation 4604 replace the references to BPC section 22978.5, subdivision "(b)" with references to BPC section 22978.5, subdivision "(a)" in subdivision (a)(3) of the regulation and the regulation's reference note.

Currently, Regulation 4604, subdivision (c) refers to Regulation 4607, *Determination of Fine*, as "Regulation 4607." Regulation 4604, subdivision (d)(4) refers to Regulation 4607 as "section 4607." The proposed non-substantive change to Regulation 4604, subdivision (d)(4) replaces the reference to "section" 4607 with a reference to "Regulation" 4607 to make subdivisions (c) and (d)(4) consistent.

Proposed Changes to Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers

Regulation 4605, subdivision (a) lists provisions of the Act and provides that a first offense for the violation of any of the listed provisions will result in the issuance of a Warning Notice. Currently, Regulation 4605, subdivision (a)(3) references BPC section 22979.5, subdivision (b), which is a penalty provision. It should instead reference BPC section 22979.5, subdivision (a), which is a provision imposing record-keeping requirements. The proposed non-substantive changes to Regulation 4605 replace the references to BPC section 22979.5, subdivision "(b)" with references to BPC section 22979.5, subdivision "(a)" in subdivision (a)(3) of the regulation and the regulation's reference note.

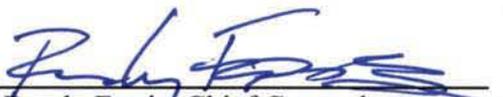
Currently, Regulation 4605, subdivision (a)(6) references BPC section 22979.6, subdivision (c), which is a penalty provision. It should instead reference BPC section 22979.6, subdivisions (a) and (b), which are provisions imposing invoicing requirements. The proposed non-substantive changes to Regulation 4605 replace the reference to BPC section 22979.6, subdivision "(c)" with a reference to BPC section 22979.6, subdivision "(a) or (b)," in subdivision (a)(6) of the regulation, and replace the reference to BPC section 22979.6, subdivision "(c)" with a reference to BPC section 22979.6, subdivisions "(a) and (b)" in the regulation's reference note.

We will request the Board's authorization to make the changes under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The changes are appropriate for processing under Rule 100 without the normal notice and public hearing process because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

Attached are ~~strikeout~~ and underlined versions of Regulations 4604 and 4605 illustrating the proposed changes.

If you have any questions regarding this request, please let me know or contact Ms. Pamela Mash at (916) 323-3248.

Recommendation by:

  
Randy Ferris, Chief Counsel

Approved:

  
Cynthia Bridges, Executive Director

Approved:



Lynn Bartolo, Acting Deputy Director  
Special Taxes Department

BOARD APPROVED

At the 9/23/14 Board Meeting



Joann Richmond, Chief  
Board Proceedings Division

RF:PAM:yg

Attachments

cc:	Ms. Debbie Kalfsbeek	MIC: 62
	Ms. Joann Richmond	MIC: 80
	Mr. Robert Tucker	MIC: 82
	Mr. Stephen Smith	MIC: 82
	Mr. Bradley M. Heller	MIC: 82
	Mr. Robert Zivkovich	MIC: 31

Text of Proposed Rule 100 Changes to  
California Code of Regulations, Title 18, Section 4604

**4604. Penalties for Licensed or Unlicensed Wholesalers and Distributors.**

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a wholesaler or distributor has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22978.1 (distributor's or wholesaler's failure to retain purchase invoices).

(2) Business and Professions Code section 22978.4, subdivision ~~(e)~~(a) or (b) (distributor's or wholesaler's failure to comply with invoice requirements).

(3) Business and Professions Code section 22978.5, subdivision ~~(b)~~(a) (distributor's or wholesaler's failure to retain sales records).

(4) Business and Professions Code section 22980.1, subdivision (b), (c), (d), (e) (sales to or purchases from unlicensed person or person with suspended or revoked license) or (f) (sales of cigarettes or tobacco products to retailer or wholesaler revoked or suspended until debts are clear).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions will result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22977, subdivision (a)(5) (distributor's or wholesaler's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation, and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22978.2 (possession of counterfeit stamped cigarettes by distributors, unstamped cigarettes by wholesalers or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee or unlicensed person has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during the month.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine will be determined in accordance with ~~section~~Regulation 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22978.2, subdivision (a)(2) or subdivision (a)(4), 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22977(a)(5), 22978.1, 22978.2, 22978.4(a) and (b), ~~22978.5(b)(a)~~, 22978.7, 22979.7, 22980(b), 22980.1(b), (c), (d), (e), (f) and (g), 22980.2(a) and 22980.3(a)(2) and (d), Business and Professions Code.

Text of Proposed Rule 100 Changes to  
California Code of Regulations, Title 18, Section 4605

**4605. Penalties for Licensed or Unlicensed Manufacturers and Importers.**

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a manufacturer or importer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22979.4 (importer's failure to retain purchase invoices on premises).

(2) Business and Professions Code section 22979, subdivision (b)(1) (participating manufacturer's false statement on certification to the Board).

(3) Business and Professions Code section 22979.5, subdivision ~~(b)~~(a) (manufacturer's or importer's failure to retain sales records on premises).

(4) Business and Professions Code section 22980.1, subdivision (a), (e) or (f) (purchases or sales from or to an unlicensed person or person with suspended or revoked license).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(6) Business and Professions Code section 22979.6, subdivision ~~(e)~~(a) or (b) (manufacturer's or importer's failure to comply with invoice requirements).

(b) A first offense of a violation of Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)) shall result in a 20-day suspension.

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation and a fine.

(d) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22980.3, subdivision (a)(2) or subdivision (d).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22979(b)(1), 22979.4, 22979.5~~(b)~~(a), 22979.6~~(e)~~(a) and (b), 22979.7, 22980.1(a), (e) and (f), and 22980.2(a), and 22980.3(a)(2) and (d), Business and Professions Code.