

**TITLE 4. BUSINESS REGULATIONS**  
**DIVISION 1. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**  
**ARTICLE 24. Department of Alcoholic Beverage Control – Conflict of Interest Code**  
**Section 150. General Provisions**

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATION (Amendment to Section 150)

The Department of Alcoholic Beverage Control (ABC) proposes amending Section 150 to remove two classifications from the list of designated employees required to file statements of economic interests that are no longer used by ABC, to add one new classification of employee to the list that makes and participates in the making of decisions which may foreseeably have a material effect on economic interests, and to reflect the Department of Personnel Administration's (DPA) and the State Personnel Board's (SPB) recent consolidation of ABC's Investigator Trainee classification into the servicewide Investigator Assistant classification and ABC's Investigator I and II classifications into the servicewide Investigator classification.

NECESSITY

Two ABC job classifications currently required to file statements of economic interests pursuant to Section 150 of Title 4 of the California Code of Regulations (CCR) no longer exist (Chief, Business Practices and Fiscal Officer I). An amendment is needed to delete them from Section 150.

One job classification/position was added to ABC's roster in 2008 that makes and participates in the making of decisions which may foreseeably have a material effect on economic interests. It is not currently listed in Section 150 as a designated employee required to file a statement of economic interests. An amendment is needed to add this job classification/position to the list and to assign it Category B as a disclosure category. Category B is appropriate as it is the same disclosure category assigned to the Chief Counsel position.

A new General Counsel position was created at ABC beginning with the 2008-09 fiscal year in response to a California Supreme Court decision cited in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board, Daniel Becerril Quintanar, real party in interest*, (2006) 40 Cal. 4<sup>th</sup> 1. The need for this position was driven by the judicial interpretation of the administrative adjudication provisions of the Administrative Procedure Act (APA) as it applies to ABC's Director in his quasi-judicial functions. As a unitary agency, the Director through his delegated authority acts as an investigator, prosecutor and decision-maker in enforcement actions. As a result of the *Quintanar* decision, the Director is required to have a "firewall" from all Department attorneys with any prosecutorial responsibility when exercising his decision-making authority.

As stated in the ruling from the California Supreme Court cited in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board, Daniel Becerril Quintanar, real*

The General Counsel is responsible for reviewing and analyzing all proposed decisions prepared following administrative hearing by Administrative Law Judges and submitted to the Director for his final decision. The General Counsel analyzes the sufficiency of the evidence, the correctness of the legal determination and the appropriateness of the penalty in enforcement cases or the issuance/denial of the application in licensing cases. The General Counsel is responsible for recommending the correct disposition of cases and drafting and serving the appropriate orders implementing the Director's decisions.

Effective November 2, 2010, DPA and SPB consolidated several department-specific Investigator classifications including ABC's Investigator Trainee into a single servicewide Investigator Assistant classification and Investigator I and Investigator II classifications into a single servicewide Investigator classification. An amendment to Section 150 is needed to reflect this consolidation. Although the job titles have changed, the duties/job descriptions of ABC's Investigator classifications have not.

#### TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

In proposing the adoption of this amendment, ABC relied on the Supreme Court's decision (case number S133331), ABC's current organizational chart, the General Counsel duty statement, the Investigator and Investigator Assistant duty statements, Attachment 4 from the minutes from SPB's November 2, 2010 board meeting where the board adopted the Investigator class consolidation, and DPA Pay Letter 10-24A which includes changes in the classification and compensation plan made at the November 2, 2010 SPB board meeting.

#### REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented to or considered by ABC.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT  
WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

No other reasonable alternatives were presented to or considered by ABC.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT  
ON ANY BUSINESS

The proposed amendment will not have a significant impact on businesses. Updating ABC's Conflict of Interest Code will help ensure that ABC employees perform their duties in an impartial manner which will help ABC to serve the business community with the utmost integrity.