CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

TITLE 22, CALIFORNIA CODE OF REGULATIONS

AMENDMENT TO SECTION 12601
CLEAR AND REASONABLE WARNINGS
AND
AMENDMENT TO SECTION 12201
DEFINITIONS

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment proposes to amend Title 22, California Code of Regulations, Sections 12201(l), 12201(m), 12201(n), 12201(o), and 12601(b) to adopt several new definitions and to provide an exemption from the clear and reasonable warning requirement specified in Health and Safety Code Section 25249.6 under certain limited situations as specified in this proposed regulatory action.

PUBLIC PROCEEDINGS

A public hearing will be held on **Monday, September 10, 2001**, at which time any person may present statements or arguments orally or in writing relevant to the action described in this notice. The public hearing will commence at 1:00 p.m. in the Coastal Hearing Room, California Environmental Protection Agency Building, 1001 I Street, 2nd Floor, Sacramento, California and will last until all business has been conducted, or until 4:00 p.m.

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA by 5:00 p.m. on **Monday, September 10, 2001** which is hereby designated as the close of the written comment period.

Written comments regarding this proposed action may be sent by mail or by facsimile addressed to:

Cynthia Oshita
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation Program
P. O. Box 4010
Sacramento, California 95812-4010
FAX: (916) 323-8803
Telephone: (916) 445-6900

Comments sent by courier should be delivered to:

Cynthia Oshita
Office of Environmental Health Hazard Assessment
1001 I Street, 19th Floor
Sacramento, California 95814

Comments may also be transmitted via email addressed to: (coshita@oehha.ca.gov).

It is requested, but not required, that written statements or arguments be submitted in triplicate.

CONTACT

Inquiries concerning the substance and processing of the action described in this notice may be directed to Cynthia Oshita, in writing at the address given above, or by telephone at (916) 445-6900. Ms. Susan Luong is a back-up contact person for inquiries concerning processing of this action and is available at the same telephone number.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65 (hereinafter referred to as "Proposition 65" or "the Act"), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual (Health and Safety Code Section 25249.6.) Implementing regulations were adopted in Title 22, California Code of Regulations, Section 12601 to interpret and make specific the "clear and reasonable" warning requirement.

The existing regulation establishes the language and methods of transmitting a warning which are deemed to be in compliance with the clear and reasonable warning requirement specified in the Act. Currently, the regulations establish "safe harbor" language for consumer product exposures, occupational exposures, and environmental exposures. A warning is considered "clear" if it clearly communicates that the chemical in question is known to the state to cause cancer, or birth defects or other reproductive harm and is "reasonable" if the method employed to transmit the message is reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure.

Warnings of exposures to chemicals listed under the Act are required to be given before the exposure occurs above specified risk levels without qualification. In practice, there are emergency situations in which prior notification by the person responsible for the exposure is not possible. The proposed amendment to the regulation specifies certain limited situations under which a clear and reasonable warning is not required. OEHHA also proposes to adopt several new definitions regarding these emergency situations. The

proposed amendment to Section 12601 identifies the circumstances during emergency or urgent medical or dental care in which a warning pursuant to Health and Safety Code Section 25249.6 is not required. In addition, definitions are proposed in Section 12201 for "emergency or urgent medical or dental care," "medical personnel," "dental personnel," and "certified emergency medical personnel."

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Sections 25249.6 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The Office of Environmental Health Hazard Assessment has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

## IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

## COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulation does not affect small business as the term is defined by Government Code Section 11342.610 since Proposition 65 does not apply to businesses with fewer than ten employees.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA has determined that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the proposed regulations, all the critical information upon which the regulation is based, and the text of the proposed regulations. A copy of the Initial Statement of Reasons and a copy of the text of the proposed regulations are available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at www.oehha.ca.gov.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of

availability of such change. Copies of the notice and the changed regulation will also be available at the OEHHA's Web site at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The Final Statement of Reasons will also be available at the OEHHA's Web site at www.oehha.ca.gov.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

VAL F. SIEBAL

Chief Deputy Director

Dated: July 27, 2001