

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

**NOTICE OF ADDITIONAL MODIFICATIONS TO
TEXT OF PROPOSED REGULATION**

**TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 12900
OAL NOTICE FILE No. Z-05-0208-03**

December 16, 2005

As required by Government Code section 11346.8(c), and Title 1, Section 44 of the California Code of Regulations, the Office of Environmental Health Hazard Assessment (OEHHA) is providing notice of additional changes made to the proposed regulation: Title 22, California Code of Regulations, Section 12900. This proposed regulation was originally the subject of a Notice of Proposed Rulemaking issued on February 18, 2005 and published in the California Regulatory Notice Register (Register 2005, No. 7-Z). A public hearing on this regulatory proposal was held on April 4, 2005. Written and oral testimony was accepted at the hearing. In addition, written comments were received during three public comment periods, closing on April 15, 2005, July 8, 2005 and November 14, 2005.

OEHHA has reviewed the comments it received regarding its most recently proposed amendments to the regulatory proposal and is once again proposing to revise the proposed regulation. A summary of the comments received during the most recent 15-day public comment period, along with OEHHA's responses to those comments is available on the OEHHA website at www.oehha.ca.gov or may be requested from the Proposition 65 Implementation Office at (916) 445-6900.

A copy of the text of the most recently amended proposed regulation is attached. Deletions are designated in diagonal slash marks, and additions are designated in double underline in the proposed text. A clear copy of the most recent amended text is also attached for ease of readability. In summary, the only changes made to the proposed text that are the subject of this notice are as follows:

1. The word "affirmative" was deleted from the title of the proposed regulation to clarify that OEHHA does not intend to affect the pleading provisions of Code of Civil Procedure, section 431.30. The word "affirmative" was used by OEHHA in reference to the fact that the person asserting the defense would have the burden of asserting and proving the defense if he or she chooses to take advantage of this regulatory provision.
2. In Subsection (b) of the proposed regulation, the federal Consumer Products Safety Commission was added to the list of federal, state and local agencies that may "require or sanction" a method of detection and analysis that could be used by a business to test its products for exposures to listed chemicals that might require a warning under Proposition 65.

3. The words “that person’s” were added to subsection (c) to make it clear that the method of detection and analysis being used would need to be specified in a permit issued to the person asserting the defense.

OEHHA will accept written comments on these amendments to the proposed regulation between December 16, 2005 and January 9, 2006. All written comments must be submitted to OEHHA by mail, fax, courier, e-mail or hand-delivery, no later than 5:00 p.m. on **January 9, 2006**, and addressed to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Mailing address: P.O. Box 4010
Sacramento, California 95812-4010
Street address: 1001 I Street, 19th Floor
Sacramento, California 95814
Or via e-mail to coshita@oehha.ca.gov
Fax No.: (916) 323-8803

Inquiries concerning 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.