DRAFT
INITIAL STATEMENT OF REASONS
TITLE 27, CALIFORNIA CODE OF REGULATIONS

PROPOSEDAMENDMENT TO SECTION 25903
NOTICES OF VIOLATION

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
PROPOSITION 65

PURPOSE

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65 [1], was enacted as a voters' initiative on November 4, 1986, and codified at Health and Safety Code section 25249.5 et seq. The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is the state entity responsible for the implementation of the Act. OEHHA has the authority to promulgate and amend regulations to further the purposes of the Act.[2] The Act requires businesses to provide a warning when they cause an exposure to a chemical listed as known to cause cancer or reproductive toxicity. The Act also prohibits the discharge of listed chemicals to sources of drinking water.

The Act requires a private person who brings an action in the public interest for violation of Proposition 65 to first give notice of the alleged violation to the alleged violator, the Attorney General, district attorney, and certain city attorneys in whose jurisdiction the violation occurred, 60 days prior to filing an enforcement action. Regulations concerning the Notice of Violation are found in Title 27, Cal. Code of Regulations, section 25903.[3]

Currently, the regulation requires a 60-Day Notice of Violation to be served via U.S. Mail on all public prosecutors in the state. This notification process can be expensive and time-consuming for both the person providing the notice and the district attorneys and city attorneys throughout the state who have to sort through a significant volume of mail to determine whether any specific notice affects their jurisdictions.

The proposed amendments to Section 25903(c)(1) would establish an alternative procedure for serving the notices on prosecutors via electronic mail, if the prosecutor has

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[1] Codified at Health and Safety Code section 25249.5 et. seq., hereafter referred to as "Proposition 65" or "The Act"
[2] Health and Safety Code section 25249.12(a)
[3] All further references are to sections of Title 27, of the California Code of Regulations, unless otherwise noted.

consented to that method of service. The proposed regulatory amendments are set out below in underline/strikeout format.

Regulatory Amendment

25903. Notice of Violation

(c) Service of Notice.

(1) Notices shall be served by first class mail or in any manner that would be sufficient for service of a summons and complaint under the California Code of Civil Procedure. In lieu of service as prescribed in the California Code of Civil Procedure, a notice may be served on a district attorney or city attorney by electronic mail if:

(a) the District Attorney or City Attorney has specifically authorized such service and the authorization appears on the Attorney General's website;

(b) the documents are sent to the electronic mail address specified, and in the format (e.g. Word, Adobe Acrobat) specified.

(c) Service by this method is not effective until the documents are actually received.

(d) Where a document is served electronically, time shall be computed as it would be for service by mail within the State of California.

(2) A certificate of service shall be attached to each notice listing the time, place, and manner of service and each of the parties upon which the notice was served.

(3) Notices shall be served upon each alleged violator, the Attorney General, the district attorney of every county in which a violation is alleged to have occurred, and upon the city attorneys of any cities with populations according to the most recent decennial census of over 750,000 and in which the violation is alleged to have occurred.

(4) Where the alleged violator has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel of the corporation, the notice shall be addressed to one of those persons.

These proposed amendments to Section 25903(c)(1) would not affect the existing requirement in the regulation that notices of violation be served on the alleged violator in a manner consistent with the California Code of Civil Procedure.

NECESSITY

Proposition 65 is enforced by the California Attorney General's office or any district attorney or certain city attorneys or by **any individual acting in the public interest**. Proposition 65 requires that an individual acting in the public interest, to enforce the Act give notice of the impending action to the person alleged to be committing the violation,

along with the Attorney General, district attorneys and certain city attorneys in which the violation is alleged to have occurred. The notice must be sent to these parties no less than 60 days before commencing the action; thus this notice is commonly referred to as the "60-day Notice of Violation".

Section 25903 of the California Code of Regulations describes the requirements for the notification, including the content of the notice and manner of service. Subsection (c)(1) states that the notices must be served by first class mail or in any manner that would be sufficient for service of a summons and complaint under the California Code of Civil Procedure. Subsection (c)(2) further states that a certificate of service must be attached to each notice listing the time, place, and manner of service and each of the parties upon whom the notice was served.

Currently, the California Code of Civil Procedure allows summons and complaints to be served in person, by leaving a copy during business hours at the office of the recipient (and later mailing a copy to that same office address), or by first class mail to the recipient's listed address. Normally, the Proposition 65 "60-day notice of violation" is several pages long, and often is sent to every district attorney and qualifying city prosecutors in the state. This process requires a significant amount of paper, and creates additional, and often unnecessary, mail work at these offices. Often the alleged violations did not take place in the counties or cities that have been notified, and thus are disregarded. Therefore, the current notification process is not efficient for all parties involved and an amendment to the existing regulation is necessary.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

OEHHA reviewed but did not rely on summaries of a November 2, 2007, public workshop at which this regulatory concept was discussed. OEHHA did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

In 2007, OEHHA initiated a renewed effort to review and update its regulations dealing with Proposition 65. During the process of prioritizing potential regulatory actions, comments were solicited and received from interested parties by way of written and oral comments at a public workshop held November 2, 2007. This workshop was attended by many stakeholders affected by Proposition 65 and the OEHHA implementing regulations, including manufacturers, retailers, agriculture, environmental non-profit organizations, and enforcement groups. At the request of affected stakeholders, OEHHA has developed a proposed regulatory amendment to Title 27, Cal. Code of Regulations, section 25903(c)(1), that would allow notices of violation to be sent to public prosecutors via electronic mail, if the prosecutor has consented to such service.

Prior to proposing these amendments, OEHHA requested comments or suggestions from the district attorneys in all 58 California counties. OEHHA received generally favorable responses. Since a few offices were uncomfortable with the electronic notice, the proposed regulatory amendments provide that electronic service may only be used where the public prosecutor has consented to such service.

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

The proposed regulatory action will not adversely impact small business and may reduce the costs associated with service of 60-day notices of violation by allowing such notices to be served via electronic mail. In addition Proposition 65 is limited by its terms to businesses with 10 or more employees (Health and Safety Code §§ 25249.5, 25249.6, and 25249.11(b)) so it has no effect on very small businesses.

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

The proposed amendment 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. The proposed amendment does not impose any new requirements upon private persons or business and may, in fact, reduce the costs of providing 60-day notices of violation to public prosecutors.

EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS ADDRESSING THE SAME ISSUES.

Proposition 65 is a California law that has no federal counterpart. There are no federal regulations addressing the same issues and thus, there is no duplication or conflict with federal regulations.