

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

TITLE 22, CALIFORNIA CODE OF REGULATIONS,
AMENDMENTS TO SECTION 12705:
SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Title 22, California Code of Regulations, section 12705 to add a new subsection providing an alternative risk level for the chemical acrylamide in breads and cereals.

PUBLIC PROCEEDINGS

A public hearing will be held on **Tuesday, May 24, 2005**, 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 10:00 a.m. in the Byron Sher Auditorium, California Environmental Protection Agency Building, 1001 I Street, 2nd Floor, Sacramento, California, and will last until all business has been conducted, or until 5:00 p.m.

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA at the following address by 5:00 p.m. on **Tuesday, May 24, 2005**, 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 and should be addressed to:

Susan Luong
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:

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

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Comments may also be transmitted via email (sluong@oehha.ca.gov).

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

If you have special accommodation or language needs, please contact Susan Luong at (916) 445-6900 or sluong@oehha.ca.gov by May 10, 2005. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Inquiries concerning the substance and processing of the action described in this notice may be directed to Susan Luong, in writing at the address given above, or by telephone at (916) 445-6900. Ms. Cynthia Oshita is a back-up 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 1986¹, commonly known as Proposition 65 (hereinafter referred to as 'the Act'), prohibits a person in the course of doing business from knowingly and intentionally exposing an individual to a chemical that has been listed as known to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual (Health and Safety Code Section 25249.6). The Act also prohibits such persons from knowingly discharging a listed chemical into water or onto or into land where such chemicals pass or probably will pass into a source of drinking water (Health and Safety Code Section 25249.5).

For chemicals known to the State to cause cancer, an exemption is provided by the Act when a person in the course of doing business is able to demonstrate that an exposure for which he or she is responsible poses no significant risk, or that a discharge to drinking water which otherwise complies with all applicable laws and requirements would result in an exposure through drinking water at a level which poses no significant risk (Health and Safety Code Sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk of cancer may be made by referencing Title 22, California Code of Regulations sections 12701 to 12721. Section 12703(b) provides for the use of an alternative risk level in certain situations.

This proposed regulation sets forth an alternative risk level for acrylamide in breads and cereals by adopting subsection (e) to section 12705. The proposed alternative risk level is a level calculated to result in one excess case of cancer in an exposed population of 10,000, assuming lifetime exposure at the level in question, or a concentration of acrylamide in breads and cereals that is less than 200 parts per billion.

¹ Health and Safety Code section 25249.5 et seq.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Section 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

Because the Act does not apply to 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. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action because Proposition 65 does not impose any duty on local agencies or school districts.

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 on directly affected businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation is intended to assist regulated businesses in determining whether a warning is required for acrylamide in certain specified foods.

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

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existing businesses, or the expansion of businesses currently doing business with 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

While the Act does not apply at all to very small businesses employing less than ten people, OEHHA has determined that the proposed regulation will not impose any new requirements on small business. Rather, the proposed regulatory action will assist small businesses subject to the Act in determining whether a warning is necessary for acrylamide in certain specified foods.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by the Office, or that has otherwise been identified and brought to the attention of the Office 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 regulation, all the information upon which the regulation is based, and the text of the regulation. A copy of the initial statement of reasons and a copy of the text of the regulation is 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 are also 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 is also available at the OEHHA's Web site at www.oehha.ca.gov.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

JOAN E. DENTON, Ph.D.
Director

Dated: April 8, 2005