

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

**NOTICE OF PROPOSED RULEMAKING  
TITLE 27, CALIFORNIA CODE OF REGULATIONS**

**AMENDMENT TO SECTION 25204(f)  
SAFE USE DETERMINATION**

**PUBLIC HEARINGS**

**October 14, 2016**

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes amending Section 25204(f) of Title 27 of the California Code of Regulations<sup>1</sup> to provide for an optional public hearing concerning an accepted Safe Use Determination (SUD) request.

**PUBLIC PROCEEDINGS**

Any written comments concerning this proposed action, regardless of the form or method of transmission, must be received by OEHHA by 5:00 p.m. on **November 28, 2016**, the designated close of the written comment period. All comments received will be posted on the OEHHA website at the close of the public comment period.

The public is encouraged to submit written information via e-mail, rather than in paper form. Send e-mail comments to [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov). Please include "Section 25204(f) SUD Hearings" in the subject line. Hard-copy comments may be mailed, faxed, or delivered in person to the appropriate address below.

**Mailing Address:** Ms. Monet Vela  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS-23B  
Sacramento, California 95812-4010  
Fax: (916) 323-2610  
Street Address: 1001 I Street  
Sacramento, California 95814

Please be aware that OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. Comments on all regulatory and other actions are routinely posted on our website. By sending us your comments you are waiving any right to privacy you may have in the information you

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<sup>1</sup> All further references are to sections of Title 27, Cal. Code of Regs., unless otherwise indicated.

provide. Individual commenters should advise OEHHA when submitting documents to request redaction of home address or personal telephone numbers. Names of commenters will not be redacted.

A public hearing on this proposed regulatory amendment will be scheduled on request. To request a hearing send an e-mail to Monet Vela at [monet.vela@oehha.ca.gov](mailto:monet.vela@oehha.ca.gov) or to the address listed above by no later than **November 14, 2016**, which is 14 days before the close of the comment period. OEHHA will mail a notice of the hearing to the requester and interested parties on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA web site at least ten days before the public hearing date. The notice will provide the date, time, and location of the hearing.

If a hearing is scheduled and you have special accommodation or language needs, please contact Monet Vela at (916) 323-2517 or [monet.vela@oehha.ca.gov](mailto:monet.vela@oehha.ca.gov) at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

## **CONTACT**

Please direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela, in writing at the address given above, via e-mail to [monet.vela@oehha.ca.gov](mailto:monet.vela@oehha.ca.gov) or (916) 323-2517. Carl DeNigris will be a back-up contact. He can be contacted at (916) 322-5624 or [carl.denigris@oehha.ca.gov](mailto:carl.denigris@oehha.ca.gov).

## **AUTHORITY**

Health and Safety Code Section 25249.12.

## **REFERENCE**

Health and Safety Code Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Proposition 65 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<sup>2</sup>. The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water<sup>3</sup>. Warnings are not required and the discharge prohibition does not apply when exposures are

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<sup>2</sup> Health and Safety Code section 25249.6.

<sup>3</sup> Health and Safety Code section 25249.5.

insignificant<sup>4</sup>. SUDs represent OEHHA's best judgment concerning the application of the Act to a particular exposure represented in a SUD request.

Section 25204 of the California Code of Regulations, Title 27, sets out the procedures and criteria for requesting that OEHHA issue a formal written opinion known as a SUD. Currently, section 25204(f) states that interested persons will be advised that they may comment on an accepted SUD request "in writing or in person at a public hearing which shall be held on a date not less than 30 days after the notice is published." Under this language, OEHHA is required to hold a public hearing even if one is not necessary. SUD hearings often are not well attended and members of the public seldom make comments at the hearing. Committing the agency to hold a public hearing in all instances is neither necessary nor prudent in establishing an efficient SUD process.

The proposed regulation would adopt the following underlined language:

*(f) In the case of a request for safe use determination that appears to comply with these procedures, the lead agency shall issue a written acceptance of the request. At the same time, a public notice of the acceptance of the request will be submitted for publication in the California Regulatory Notice Register and sent to interested persons. The public notice will include the text or a summary of the request as appropriate. It will advise interested persons that they may comment on the request in writing or in person if a public hearing is requested. Any interested person may request ~~at~~ a public hearing no later than 15 days prior to the close of the written comment period. If requested, the hearing which shall be held on a date not less than 30 days after the notice is published.*

Further details on the basis for the proposed amendment to Section 25204(f) are provided in the Initial Statement of Reasons for this regulatory amendment, which is available on request from Monet Vela and is posted on the OEHHA web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

## **ANTICIPATED BENEFITS OF THE PROPOSED REGULATION**

The agency, the public, and the business community will benefit from the proposed amendment because it will save the time and resources necessary for holding a public hearing in many instances where no hearing is needed, and potentially streamline the SUD request process. The voluntary SUD process provides a way for affected businesses to determine whether a warning is required for a specific exposure, or whether a specific discharge of a listed chemical to a source of drinking water is prohibited. This amendment is likely to make that process less burdensome on the businesses that use it while maintaining the openness and transparency in the Safe Use Determination process.

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<sup>4</sup> Health and Safety Code sections 25249.9 and 25249.10.

## **NO INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS**

OEHHA has determined that the proposed amendment is neither inconsistent nor incompatible with existing state regulations because it does not address compliance with any other law or regulation. On the contrary, it is consistent with the hearing process of the California Administrative Procedure Act which allows an agency not to hold a rulemaking hearing if there are no requests for one.<sup>5</sup>

## **LOCAL MANDATE/FISCAL IMPACT**

Because Proposition 65 expressly<sup>6</sup> 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.

## **COSTS OR SAVINGS TO STATE AGENCIES**

Because this regulatory amendment will reduce the number of public hearings that OEHHA is required to hold, this action is likely to result in significant cost savings to OEHHA. No other savings or increased costs to any other State agency will result from the proposed regulatory action.

## **EFFECT ON FEDERAL FUNDING TO THE STATE**

Because Proposition 65 expressly<sup>7</sup> does not apply to any federal agency, 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**

Because the proposed regulatory amendment does not impose any mandatory requirements on businesses subject to the Act, OEHHA has made an initial determination that this amendment will not have a significant statewide adverse

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<sup>5</sup> See Government Code sections 11346.5(a)(17) and 11346.8.

<sup>6</sup> See Health and Safety Code section 25249.11(b).

<sup>7</sup> See Health and Safety Code section 25249.11(b).

economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

## **RESULTS OF ECONOMIC IMPACT ANALYSIS (Gov. Code section 11346.3(b))**

### **Impact on the Creation, Elimination, or Expansion of Jobs/Businesses in California**

This regulatory proposal will not affect the creation or elimination of jobs or businesses within the State of California, nor will it impact the expansion of existing businesses in the State. Proposition 65 requires businesses with ten or more employees to provide warnings when they expose people to chemicals that are known to cause cancer or reproductive harm. The law also prohibits the discharge of listed chemicals into sources of drinking water. The voluntary SUD process provides a way for affected businesses to determine whether a warning is required for a specific exposure, or whether a specific discharge of a listed chemical to a source of drinking water is prohibited.

This regulatory proposal does not create additional compliance requirements, but instead removes a requirement that a public hearing be held after the acceptance of any SUD request. This amendment is likely to make that process less burdensome on businesses that choose to make use of the process.

## **CONSIDERATION OF ALTERNATIVES**

Government Code section 11346.5(a)(13) requires that OEHHA must determine 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

## **EFFECT ON SMALL BUSINESSES**

OEHHA has determined that the proposed amendment will not impose any mandatory requirements on small business. Rather, the amendment will benefit small businesses subject to the Act because it will simplify a process that helps determine whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition of the Act.

## **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.

## **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, which contains the text of the regulation, and all the information upon which the regulation is based (rulemaking file). A copy of the Initial Statement of Reasons and the text of the regulation, as well as the complete rulemaking file, are available upon request from OEHHA at the address, e-mail address and telephone number indicated above. These documents are also posted on OEHHA's Web site at [www.oehha.ca.gov](http://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 this 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 written comments at the public hearing, if held, or whose comments were received by OEHHA during the public comment period, and anyone who requests notification from OEHHA of the availability of such changes. Copies of the notice and the changed regulation will also be available on the OEHHA Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

## **AVAILABILITY FINAL STATEMENT OF REASONS**

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from OEHHA at the address, e-mail address and telephone number indicated above, and on the OEHHA website at [www.oehha.ca.gov](http://www.oehha.ca.gov).

OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT

Allan Hirsch  
Chief Deputy Director

Dated: October 14, 2016