FINAL STATEMENT OF REASONS
22 CALIFORNIA CODE OF REGULATIONS

AMENDMENT TO PREAMBLE TO DIVISION 2, CHAPTER 3, ARTICLE 1 AND SECTIONS 12102 – 12302, 12304 – 12504, 12601, 12701, 12705, 12709, 12711, 12721 – 14000

Update of Initial Statement of Reasons

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

No other technical, theoretical or empirical material was relied upon by Office of Environmental Health Hazard Assessment (OEHHA) in proposing the adoption of these regulations.

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

No alternatives to the proposed regulatory amendments were identified by OEHHA or suggested to OEHHA. The amendments are essentially non-substantive or clarifying changes to existing regulations.

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

The proposed regulatory action will not adversely impact small business. The amendments are non-substantive or clarifying changes to existing regulations. The proposed regulatory amendments do not impose any additional requirements upon any business, including small business.

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

No costs or expenses are incurred by businesses to comply with the proposed regulatory amendments. There is no significant adverse economic impact on any business.

AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

Proposition 65, formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986, 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.

BACKGROUND

On February 1, 2001, OEHHA issued a Notice of Proposed Rulemaking (hereafter referred to as Notice) announcing that OEHHA was proposing changes to the Proposition 65 regulations, namely; Title 22, California Code of Regulations, Preamble to Division 2, Chapter 3, Article 1, and Sections

12102 – 12302, 12304 – 12504,12601, 12701, 12705, 12709, 12711, 12721 – 14000. A public hearing was held on March 18, 2001 to receive comment on the proposed changes. Comments were received orally at the public hearing and in writing during the 45-day public comment period. Summaries and responses to the comments received are provided later in this document. Since the issuance of the Notice, several other OEHHA regulatory filings have been approved by the Office of Administrative Law (OAL), filed with the Secretary of State, and became effective during the intervening time. The final regulatory text of this package reflects these recent amendments to conform with the current text of the regulations. In addition, several cross reference citations were updated as noted below. These latest changes are all made without regulatory effect.

Regulatory Action File # 02-0115-02 P adopted "print only" changes to Title 22, California Code of Regulations, (22 CCR) Section 14000. The adoption of these changes are exempt from the Administrative Procedure Act pursuant to Health and Safety Code Section 25249.8(e). OAL approved the package on March 1, 2002, and the changes were effective on March 1, 2002.

Regulatory Action File # 02-0605-03 SR adopted 19 new no significant risk levels (NSRLs) in 22 CCR Section 12705(b) and (d) and three new maximum allowable dose levels (MADLs) in 22 CCR Section 12805(b). New NSRLs were adopted for chloroethane; di(2-ethylhexyl)phthalate (DEHP); lead; lead acetate; lead phosphate; lead subacetate; methylhydrazine; methylhydrazine sulfate; 5-morpholinomethyl-3-[(5-nitrofurfurylidene)-amino]-2-oxazolidinone; MX (3-chloro-4-(dichloromethyl)-5-hydroxy-2(5*H*)-furanone); phenylhydrazine; phenylhydrazine hydrochloride; polygeenan; carbazole; MeIQ (2-amino-3,4-dimethylimidazo[4,5-*f*]quinoline); MeIQx(2-amino-3,8-dimethylimidazo[4,5-*f*]quinoxaline); methyl carbamate; 4-(N-nitrosomethylamino)-1-(3-pyridyl)-1-butanone; and trimethyl phosphate. New MADLs were adopted for benzene, cadmium, and quizalofop-ethyl. OAL approved the package on July 18, 2002, and the new levels were effective on August 19, 2002.

Regulatory Action File # 02-0716-07 S adopted amendments to 22 CCR Section 12601(b)(2) concerning warnings provided during specific emergency circumstances and added several new definitional terms to 22 CCR Section 12201. OAL approved the package on August 27, 2002, and the changes were effective on September 26, 2002.

<u>Section 12102</u>

Four new definitions were adopted in 22 CCR Section 12201 as part of Regulatory Action File # 02-0716-07 S. New definitions were adopted for "certified emergency medical personnel," "dental personnel," "emergency or urgent medical or dental care," and "medical personnel." With the repeal of 22 CCR Section 12201 and the relocation of its definitions into 22 CCR Section 12102, it was necessary to re-alphabetize and renumber the definitions to incorporate these new terms.

<u>Section 12401</u>

In paragraph (1)(a), "1997" is inserted to reflect the year in which the cross referenced section was recodified.

<u>Section 12403</u>

In subsection (a), a cross reference to Public Resources Code Section 40191 was included in error in the originally proposed text made available on February 1, 2002. The definition for "disposal facility" has been recodified in Section 40121 of the Public Resources Code. In addition, "1990" is inserted to reflect the year in which the cross referenced section was recodified.

Section 12405

Section 12753 of the Food and Agricultural Code provides the direct definition for the term "pesticide." Section 13142 within the Pesticide Contamination Prevention Act of 1985 of the Food and Agricultural Code provides a cross reference to Section 12753. For ease of reference, a citation to the direct definition, Section 12753, is used rather than the indirect reference through Section 13142. In addition, the year, "1996" is inserted to reflect the latest version of the specific cross references within the Food and Agricultural Code.

Section 12501

In paragraph (a)(4), the publication year, "2001," is amended to reflect the latest version.

Section 12502

In paragraph (1)(a), "1997" is inserted to reflect the year in which the cross referenced section was recodified.

Section 12601

Amendments were adopted in Section 12601(b)(2) as part of Regulatory Action File # 02-0716-07 S. The amendments identified specific emergency circumstances for which the accepted practice of obtaining informed consent from patients would satisfy the Proposition 65 warning requirement.

In subparagraph (c)(1)(C), the dates are updated to reflect the latest amendment dates of the referenced regulations and statute.

In subparagraph (d)(1)(B), "Section 6776(e)(1)" is amended to "Section 6776(d)" to reflect its recodification in Title 3 of the California Code of Regulations. In addition, "May 10, 1999" is inserted to reflect the latest amendment date of the cross reference.

Summary and Response to Comments Received During the Notice Period of February 1, 2002 through March 18, 2002

COMMENT 1a: Kahn, Soares & Conway on behalf of the Agricultural Proposition 65 Reform Task Force in writing (See Comment 1, pg. 1) and through oral testimony at the public hearing on March 18, 2002 (See Transcript, pg. 7) strongly supports the regulatory reform package brought forth by OEHHA. The changes address some internal inconsistencies and eliminate confusion and mirror the suggestions for change that the Agricultural Task Force has advocated to OEHHA.

RESPONSE: OEHHA accepts the comment. No further response is needed.

COMMENT 1b: Kahn, Soares & Conway on behalf of the Agricultural Proposition 65 Reform Task Force in writing (See Comment 1, pg. 2) and through oral testimony at the public hearing on March 18, 2002 (See Transcript, pg. 7) expressed a need for additional reform in the regulations and urged OEHHA to expedite the process in several delineated areas.

RESPONSE: The suggested changes are outside the scope of this rulemaking package. OEHHA acknowledges the need for other clarifying amendments to the regulations. OEHHA plans to introduce other targeted rulemaking packages as a series of regulatory amendments during the next several years. OEHHA has already begun with a couple of other rulemaking packages that are in various stages of the rulemaking process. OEHHA began with minor changes of a less complex nature in this rulemaking package and will progress to more significant regulatory amendments.

COMMENT 2: Technology Sciences Group in oral testimony provided at the public hearing on March 18, 2002 (See Transcript, pg. 10) asked that as part of the process under Proposition 65, the scientific decisions that have been made historically under Proposition 65 be made publicly available to help guide people in making their own scientific determinations.

RESPONSE: The comment is outside the scope of this rulemaking package. However, OEHHA takes note of the suggestion, which may be addressed in a future rulemaking package.

ALTERNATIVES DETERMINATION

OEHHA has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

Pursuant to Health and Safety Code Section 25249.11(b), the provisions of Proposition 65 do not apply to local, state or federal agencies. The proposed regulations do not impose any mandate on local agencies or school districts.

PROPOSED ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives to the proposed regulatory amendments were identified by OEHHA or suggested to OEHHA. The proposed regulatory action will not cause an adverse economic impact on small business. The amendments are non-substantive or clarifying changes to existing regulations. The proposed regulatory amendments do not impose any additional requirements upon any business, including small business.