ADDENDUM TO
FINAL STATEMENT OF REASONS

ADOPT SECTION 12903*, NOTICES OF VIOLATION*
TITLE 22, DIVISION 2, CALIFORNIA CODE OF REGULATIONS

Add to page 1, paragraph 4, "Procedural Background":

Revisions were made to the proposed regulatory text in response to the comments received during the 45-day public comment period which closed on August 23, 1996. A 15-day availability and comment period notice and copies of the full regulatory text as revised was sent on February 26, 1997 pursuant to Title 1, California Code of Regulations, sections 44 and 45. The 15-day availability and comment period was initiated on February 28, 1997 and closed on March 17, 1997. No comments were received during the 15-day availability and comment period.

Insert on page 10 after the first paragraph:

One commenter (C-5) suggested that "it is important that the notice include information on how people are being exposed and to what levels." As noted above, the regulation requires identification of the route of exposure, i.e., dermal, inhalation, or ingestion, which accomplishes part of this goal. (See section 12903 (b)(2)(C)). Once the products are adequately defined as required by the other parts of the regulation, further explanation in the notice should not be necessary because the alleged violator has sufficient knowledge of the manner of use of its products that it can determine the nature of the exposure.

The agency has also determined not to require that the level of exposure to the chemical be included in the notice. Indeed, the level of exposure is included in the information that does not need to be in the notice. (See section 12903(b)(4)(B)). Under Proposition 65, a claim that the exposure or discharge is exempt from the statute on the grounds that exposure at the level in question is less than the "no significant risk" level is specifically made an affirmative defense upon which the alleged violator bears the burden of proof. (Health and Safety Code Sections 25249.9 and 25249.10). The agency has concluded that it is not appropriate to require the initial notice to provide information that negates affirmative defenses. Moreover, once the product and chemical are properly identified, the alleged violator is likely to be aware of the likely level of exposure.