

**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**

**PROPOSED AMENDMENTS TO ARTICLE 6  
CLEAR AND REASONABLE WARNINGS**

**JULY 21, 2017**

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend certain sections of Article 6 of Title 27 of the California Code of Regulations<sup>1</sup>. Subsequent to the August 30, 2016 repeal and adoption of Article 6 of Title 27, California Code of Regs, OEHHA noted that further clarification of and corrections to certain sections of Article 6 would be beneficial to the regulated community in advance of the August 30, 2018 operative date of the new Article 6 regulations. This proposed rulemaking would modify the following sections of Article 6:

- Section 25600.1. Definitions: subsections (b), (i), (j), and (m)
- Section 25600.2. Responsibility to Provide Consumer Product Exposure Warnings: subsections (b), (b)(4), (c), and (c)(1)
- Section 25601. Safe Harbor Clear and Reasonable Warnings – Methods and Content: subsection (c)
- Section 25602. Consumer Product Exposure Warnings – Methods of Transmission: subsections (a)(3), (a)(4), (b), (c), and (d)
- Section 25603. Consumer Product Exposure Warnings – Content: subsections (a)(2)(E), (b), (b)(2)(A-C), and (c)
- Section 25607. Specific Product, Chemical and Area Exposure Warnings: subsections (a) and (b)
- Section 25607.2. Food Exposure Warnings – Content: subsection (a)(6)

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

- Section 25607.5. Food and Beverage Exposure Warnings for Restaurants – Methods of Transmission: caption title and subsections (a) and (c)
- Section 25607.6. Food and Beverage Exposure Warnings for Restaurants – Content: caption title and subsection (a)
- Section 25607.7. Prescription Drug Exposure and Emergency Medical or Dental Care Exposure Warnings: subsection (a)
- Section 25607.12. Furniture Product Exposure Warnings – Methods of Transmission: subsections (a)(1) and (a)(1)(A-B)
- Section 25607.13. Furniture Product Exposure Warnings – Content: subsections (a)(1), (a)(2) and (a)(2)(B)
- Section 25607.14. Diesel Engine Exposure Warnings (Except Passenger Vehicle, Pickup Truck, or Van Engines) – Methods of Transmission: caption title and subsection (a)
- Section 25607.15. Diesel Engine Exposure Warnings (Except Passenger Vehicle, Pickup Truck, or Van Engines) – Content: caption title and subsection (a)
- Section 25607.16. Vehicle Exposure Warnings – Methods of Transmission: subsections (a) and (a)(1-2)
- Section 25607.17. Vehicle Exposure Warnings – Content: subsections (a) and (a)(3)

## **PUBLIC PROCEEDINGS**

Any written comments concerning this proposed regulatory action, regardless of the form or method of transmission, must be received by OEHHA by **5:00 p.m. on September 7, 2017**, the designated close of the written comment period. All comments 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 “Article 6 Amendments” in the subject line. Hard-copy comments may be mailed, faxed, or delivered in person to the appropriate address below.

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P. O. Box 4010  
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Telephone: 916-323-2517

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E-mail: [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov)

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. If you provide comments, please be aware that your name, address and e-mail may be available to third parties.

A public hearing on these proposed regulatory amendments 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 **August 23, 2017**, which is at least 15 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 the California Relay Service: 1-800-735-2929 (TTY), 1-800-735-2922 (Voice) TTY which is a Telecommunications Device for the Deaf, and is reachable only from phones equipped with a TTY Device.

## **CONTACT**

Please direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela at (916) 323-2517, or by e-mail to [monet.vela@oehha.ca.gov](mailto:monet.vela@oehha.ca.gov). Mario Fernandez is a back-up contact person for inquiries concerning processing of this action and is available at (916) 323-2635 or [mario.fernandez@oehha.ca.gov](mailto:mario.fernandez@oehha.ca.gov).

## **AUTHORITY**

Health and Safety Code section 25249.12 and Health and Safety Code section 25249.8(a).

## **REFERENCE**

Health and Safety Code sections 25249.5, 25249.6, 25249.8(a), 25249.10, 25249.11 and 25249.12

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

### **BACKGROUND**

OEHHA is the lead agency that implements Proposition 65<sup>2</sup> and has the authority to promulgate and amend regulations to further the purposes of the Act. The Act requires businesses to provide a clear and reasonable warning before they cause an exposure to a chemical listed as known to the state to cause cancer or reproductive toxicity<sup>3</sup>. The Act also prohibits the discharge of listed chemicals to sources of drinking water<sup>4</sup>. These proposed amendments to the new clear and reasonable warning regulations would clarify the guidance and criteria OEHHA provides to businesses and the public concerning the warning requirements under Proposition 65.

### **SPECIFIC BENEFITS OF THE PROPOSED REGULATIONS**

The proposed regulatory action will facilitate businesses' compliance with the Act by clarifying guidance concerning the provision of safe harbor warnings under Proposition 65. The health and welfare of California residents will likely benefit by increasing the public's ability to understand the warnings they receive for the various products they may choose to purchase.

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

OEHHA has conducted an evaluation and has determined that Article 6 is the only regulation concerning Proposition 65 warnings. Therefore, the proposed regulatory action is neither inconsistent nor incompatible with any other existing state regulations. The action does not change the existing mandatory requirements on businesses subject to Proposition 65, state or local agencies and does not address compliance with any other law or regulation.

### **LOCAL MANDATE/FISCAL IMPACT**

Because Proposition 65 by its terms<sup>5</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. There are also no costs to any local agency or school district requiring reimbursement under 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

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<sup>2</sup> Health and Safety Code section 25249.5 et seq., The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65". Hereafter referred to as "Proposition 65" or "the Act".

<sup>3</sup> Health and Safety Code section 25249.6

<sup>4</sup> Health and Safety Code section 25249.5

<sup>5</sup> See Health and Safety Code section 25249.11(b).

from the proposed regulatory action, nor will there be any costs or savings to the state because of the proposed regulatory action. There are also no costs or savings in federal funding to the state.

## **EFFECT ON HOUSING COSTS**

OEHHA has initially determined that the proposed regulatory action will have no effect on housing costs because it does not impose any new mandatory requirements on any business.

## **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE**

The proposed regulatory action provides compliance assistance to businesses subject to the Act by clarifying an existing regulation and does not impose any mandatory requirements on those businesses. OEHHA has therefore made an initial determination that the adoption of this action 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.

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

### **Creation or Elimination of Jobs within the State of California**

The proposed regulatory action will not impact the creation or elimination of jobs within California. The action simply clarifies or adds specificity to the existing regulations.

### **Creation of New Businesses or Elimination of Existing Businesses within the State of California**

The proposed regulatory action will not impact the creation of new businesses or the elimination of existing businesses within California. The action simply clarifies or adds specificity to the existing regulations.

### **The Expansion of Businesses Currently Doing Business within the State**

OEHHA does not anticipate any major impact on the expansion of businesses currently doing business within the state. The action simply clarifies or adds specificity to the existing regulations.

### **Benefits of the Proposed Regulation**

Affected businesses will likely benefit from the proposed regulatory action because the amendments clarify guidance concerning the provision of safe harbor warnings under

Proposition 65. The health and welfare of California residents will likely benefit by increasing the public's ability to understand the warnings they receive for the various products they may choose to purchase.

### **COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS**

OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action. The action does not impose any new requirements upon private persons or businesses.

### **EFFECT ON SMALL BUSINESSES**

The proposed regulatory action will not adversely impact very small businesses because Proposition 65 is limited by its terms to businesses with 10 or more employees<sup>6</sup>.

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

Pursuant to Government Code section 11346.5(a)(13), 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 Proposition 65 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.

### **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 proposed regulation, all the information upon which the regulation is based, and the text of the proposed regulation. These documents are available 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 proposed regulation that 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 the

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

revised proposed regulation 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 anyone who requests notification from OEHHA of the availability of such change. 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 OF THE FINAL STATEMENT OF REASONS**

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from Monet Vela at the e-mail or telephone number indicated above. The Final Statement of Reasons will also be available on OEHHA's web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT

Allan Hirsch  
Chief Deputy Director

Dated: July 21, 2017