

**INITIAL STATEMENT OF REASONS  
TITLE 27, CALIFORNIA CODE OF REGULATIONS**

**PROPOSED AMENDMENTS TO:**

**SECTION 25903, APPENDIX A - THE SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

**August 3, 2012**

**SUMMARY**

The proposed amendments update and clarify the Appendix “A” of Section 25903. This Appendix is a summary of Proposition 65 that must be included as an attachment to all Notices of Violation that are served upon alleged violators of Proposition 65.

**BACKGROUND**

Proposition 65<sup>1</sup> requires the Governor to maintain a list of chemicals known to cause reproductive toxicity or cancer, and requires businesses to provide a warning when they cause an exposure to a listed chemical. Proposition 65 also prohibits businesses from knowingly discharging or releasing a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. The Office of Environmental Health Hazard Assessment (OEHHA) has been designated by the Governor as the lead agency for implementation of Proposition 65, including the authority to adopt regulations.<sup>2</sup>

Businesses that violate Proposition 65 can be sued by state and local prosecutors or private individuals acting in the public interest. A private action, however, can only be started 60 days after a Notice of Violation has been sent to the Attorney General, district attorney, city attorney in the same jurisdiction, and to the alleged violator by private persons enforcing the law.

Under the current regulation, a Notice of Violation served upon an alleged violator must include as an attachment the Appendix A of Section 25903. The Appendix is a summary of Proposition 65, its requirements, exemptions, an explanation of how

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<sup>1</sup> The Safe Drinking Water and Toxic Enforcement Act of 1986, enacted by voters' initiative on November 4, 1986, codified at Health and Safety Code section 25249.5 et seq. and commonly known as “Proposition 65”.

<sup>2</sup> Health and Safety Code section 25249.15 and Executive Order W-15-91.

Proposition 65 is enforced and a telephone number where the recipient may obtain further information.

## PURPOSE

Appendix “A” has not been updated since 2003. For example, it does not reflect the changes made in 2008 when the Proposition 65 regulations were moved from Title 22 to Title 27 of the California Code of Regulations. The section numbers were also changed from sections 12000 through 14000 to sections 25102 through 27001. The web site address for OEHHA has also since changed.

The proposed amendments will update the Appendix to reflect these changes. They will also clarify a few items in the Summary that might cause the reader some confusion. For example, the sentence “birth defects or other reproductive harm such as damage to female or male reproductive systems” was added to further explain “reproductive toxicity”.

In the discussion of Proposition 65 exemptions, a link was added so the reader can obtain further information on the applicable exemptions from the OEHHA website.

A description of the grace period of 12 months after a chemical is listed under Proposition 65 before an exposure warning is required was included for further clarification<sup>3</sup>.

The current summary states that the warning requirement and the discharge prohibition do not apply to businesses with nine or fewer employees. A common question OEHHA has received is whether this includes employees outside the state of California. The answer to this question has been added to the Appendix for purposes of clarity. Proposition 65’s definition of a “person in the course of doing business” exempts any person employing fewer than 10 employees in his or her business<sup>4</sup>...” The law does not limit employees to only those that are present in the State of California. The regulatory definition of employee<sup>5</sup> similarly includes any employee of a business, whether full or part-time. There is no exclusion for out-of-state employees when determining whether a business is subject to the Act. Therefore, the law applies to businesses that have 10 or more employees, regardless of the employee’s physical location. Amendments were made to the description of “no significant risk” levels and “no observable effect levels” for further clarification<sup>6</sup>.

A section describing an exemption<sup>7</sup> to exposures to naturally occurring chemicals in foods was added because OEHHA receives inquiries about this matter. The proposed amendment will help the recipient of the notice understand this exemption.

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<sup>3</sup> Health and Safety Code section 25249.10(b)

<sup>4</sup> Health and Safety Code section 25249.11(b)

<sup>5</sup> Title 27, Cal. Code of Regulations, section 25102(h)

<sup>6</sup> Health and Safety Code section 25249.10(c)

<sup>7</sup> Title 27 CCR Section 25501

The paragraph that explains the prohibition from discharges was amended to add the language “pass into or probably pass into a source” [of drinking water]. This amendment is proposed to better reflect the statutory language.<sup>8</sup>

In the enforcement section of the summary, the parenthetical “(those in cities with a population exceeding 750,000)” was removed for clarity because cities of this magnitude are few in number and not often involved in Proposition 65 enforcement.

#### PROBLEM BEING ADDRESSED BY THIS PROPOSED RULEMAKING

Appendix A of Section 25903 is outdated. The process of updating this regulatory appendix provided an opportunity to clarify some language that was potentially confusing.

#### NECESSITY

OEHHA is proposing these amendments to update and clarify the existing Appendix A of Section 25903.

#### BENEFITS OF THE PROPOSED REGULATION:

These regulatory amendments will update the Appendix and provide current information concerning Proposition 65 for businesses that have been served with a Proposition 65 Notice of Violation.

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

OEHHA relied on the attached Economic Impact Analysis in developing this proposed regulation.

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

The proposed amendments provide an update and clarification to the existing regulatory appendix. An alternative would be to not make these changes. This would not benefit businesses that receive an outdated Appendix A with a Notice of Violation.

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<sup>8</sup> Health and Safety Code section 25249.5

## REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed regulatory action will not adversely impact small business because it is simply an update and clarification of Section 25903. Further, Proposition 65 is limited by its terms to businesses with 10 or more employees (Health and Safety Code section 25249.11(b)).

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

The proposed regulatory 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 because the proposed amendments to the regulations do not impose any new requirements upon private persons or business. Furthermore, the amendment will help clarify Proposition 65 to the recipients of a Notice of Violation.

## EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS ADDRESSING THE SAME ISSUES

Proposition 65 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.

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

OEHHA finds there will be no economic impact related to these minor proposed regulatory amendments. The amendments do not impose any costs because they are simply a clarification and update of a summary of Proposition 65 that must be included as an attachment to the Notice of Violation sent to alleged violators by private persons enforcing the law.

**Problem being addressed by this proposed rulemaking:**

Appendix A of Section 25903 is outdated and certain provisions need clarification.

**How this regulation will address the problem:**

These proposed amendments update and clarify Appendix A of Section 25903.

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

These minor regulatory amendments will not affect the creation or elimination of jobs within the State of California. The proposed amendments simply update and clarify the summary of Proposition 65.

**Benefits of the Proposed Regulation**

These regulatory amendments will update the Appendix and provide a better understanding of Proposition 65 for businesses that have been served with a Proposition 65 notice of violation.