

**INITIAL STATEMENT OF REASONS
PROPOSITION 65
TITLE 27, CALIFORNIA CODE OF REGULATIONS**

**PROPOSED AMENDMENTS TO:
SECTION 25903, APPENDIX A – A SUMMARY**

SUMMARY

These proposed regulatory amendments would update the required attachment to a notice of violation served on an alleged violator of Proposition 65.¹ These proposed amendments will reconcile the Office of Environmental Health Hazard Assessment's (OEHHA) regulations² with 2013 amendments to Proposition 65.³

BACKGROUND

Proposition 65 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 Governor designated OEHHA as the lead agency for implementation of Proposition 65, including the authority to adopt regulations.⁴

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 Appendix A of the regulations as an attachment.⁵ Appendix A consists of a summary of Proposition 65, its requirements, common exemptions, an explanation of how Proposition 65 is enforced, and a telephone number where the recipient may obtain further information.

In 2013, Proposition 65 was amended to provide certain business owners a limited opportunity to cure violations related to specified exposures:

¹ 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".

² Title 27, Cal. Code of Regs., Section 25903, all further references are to sections of Title 27, Cal. Code of Regs., unless indicated otherwise.

³ AB 227, Gatto, Chapter 581, Statutes of 2013

⁴ Health and Safety Code Section 25249.15 and Executive Order W-15-91

⁵ Section 25903

- A person filing an enforcement action for specified exposures must provide a notice to the alleged violator in a proof of compliance form.⁶
- The person who served the notice is prohibited from filing an enforcement action, and may not recover certain payments or reimbursements, if the notice to the alleged violator alleges a failure to provide a clear and reasonable warning for those specified exposures and, within 14 days after receiving the notice, the alleged violator corrects the alleged violation, pays a civil penalty in the amount of \$500 per facility or premises,⁷ and notifies the person bringing the action that the violation has been corrected using the specified proof of compliance form.
- The alleged violator may correct the violation, pay the civil penalty, and serve a correction notice on the person who served notice of the violation only one time for a violation arising from the same exposure in the same facility or on the same premises.

Appendix A of the regulations is being updated to describe these amendments to Proposition 65 and include the notice of special compliance procedure form created by the 2013 legislation.⁸

PURPOSE

The proposed amendments to the regulation are intended to harmonize the regulation with 2013 amendments to Proposition 65. By adopting the amended regulation, private-party enforcers will have easy access to the forms and timeframes required by the legislative amendments.

PROBLEM BEING ADDRESSED BY THIS PROPOSED RULEMAKING

The regulations do not currently reflect the 2013 amendments to Proposition 65. A business being served a notice of violation may not be fully informed regarding the updates to Proposition 65, and private-party enforcers may not have easy access to the proper forms for the notice.

NECESSITY

The update to the regulatory appendix is necessary to harmonize the regulations with the 2013 amendments to Proposition 65.

BENEFITS OF THE PROPOSED REGULATION:

The amendments to Appendix A will provide important information to a business served with a Proposition 65 notice of violation and will ensure that private-party enforcers will have easy access to the required forms.

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

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

⁶ Health and Safety Code Section 25249.7(k)

⁷ The Judicial Council is to adjust the civil penalty on April 1, 2019 and every 5 years thereafter.

⁸ Health and Safety Code Section 25249.7(l)

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

The proposed amendments provide an update to the existing regulatory appendix. An alternative would be to not make these changes. Businesses could be deprived of critical information if they receive an outdated Appendix A that does not reflect the 2013 changes to Proposition 65 and does not include a notice of special compliance procedure.

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 to Appendix A of Section 25903 to ensure that it conforms to the 2013 changes in the law.

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 beyond those that are already required by the amendments to Proposition 65.

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 update the forms required to be served on alleged violators of Proposition 65 by private persons enforcing the law.

Problem being addressed by this proposed rulemaking:

Appendix A does not currently incorporate the 2013 amendments to Proposition 65. Because the required forms are not easily accessible to private enforcers, a business served with a notice of violation may not be fully informed regarding the opportunity to cure a violation for specified exposures.

How this regulation will address the problem:

These proposed amendments update the regulation to reflect the 2013 amendments to Proposition 65.

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. These amendments will also not affect the creation new businesses or the elimination of existing businesses within the State of California. The proposed amendments simply reconcile the regulations with the 2013 amendments to Proposition 65.

Benefits of the Proposed Regulation

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