

FINAL STATEMENT OF REASONS
TITLE 22 CALIFORNIA CODE OF REGULATIONS

SECTION 12705(b). SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK

This is the Final Statement of Reasons for specific regulatory levels for one chemical, nitromethane, listed as known to the State to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986 (hereinafter “the Act” or Proposition 65; Health and Safety Code, section 25249.5 *et seq.*). On December 7, 2007, the Office of Environmental Health Hazard Assessment (OEHHA) issued a Notice of Proposed Rulemaking to adopt the proposed regulatory level for one chemical listed as known to cause cancer (nitromethane) for adoption in Title 22, Cal. Code of Regs., §12705(b). The Initial Statement of Reasons set forth the grounds for the proposed regulations. Pursuant to the Notice of Proposed Rulemaking, a public comment period was provided from publication of the Notice until January 22, 2008. The Notice of Proposed Rulemaking stated that a public hearing would be held only on request. No request for a public hearing was received by OEHHA. No written comments were received by OEHHA.

On December 7, 2007, OEHHA provided the technical support documents forming the basis for the proposed regulatory levels for chemicals listed as known to the State to cause cancer to the members of the Carcinogen Identification Committee for their review and comment as allowed by Title 22, Cal. Code of Regs., §12302(e). No comments were received from any committee members.

ALTERNATIVES DETERMINATION

In accordance with Government Code, section 11346.5(a)(7), OEHHA has, throughout the adoption process of this regulation, considered available alternatives to determine whether any alternative would be more effective in carrying out the purpose for which the regulations were proposed, or would be as effective and less burdensome to affected private persons than the proposed action. OEHHA has determined that no alternative considered would be more effective, or as effective and less burdensome to affected persons, than the proposed regulation.

For chemicals listed under the Act as known to cause cancer, the Act exempts discharges to sources of drinking water and exposures of people without provision of a warning if the exposure poses “no significant risk” of cancer (Health and Safety Code, section 25249.10(c)). The Act does not specify numerical levels of exposure that represent no significant risk of cancer.

The purpose of this regulation is to provide a “safe harbor” level for a particular chemical exposure. This regulation establishes the numerical no significant risk level for one carcinogen, nitromethane. At or below this level, the Act does not require a warning regarding cancer or prohibit discharges to sources of drinking water based on

carcinogenicity concerns associated with nitromethane. Thus, this level will allow persons subject to the Act to determine whether a given discharge to sources of drinking water or exposure to people involving these chemicals is subject to the warning requirement and discharge prohibition provisions of the Act related to the risk of cancer (Health and Safety Code sections 25249.6).

Although Title 22, Cal. Code of Regs, § 12703 describes principles and assumptions for conducting risk assessments to derive safe harbor levels, many businesses subject to the Act do not have the resources to perform these assessments. Yet each business with ten or more employees needs the ability to determine whether its activities or products are subject to the discharge prohibition or warning requirements of the Act. Given the wide use of several of the chemicals covered by this regulation, the absence of this regulation would leave numerous businesses without an efficient way of determining if they are in compliance with the Act without the expenditure of significant resources on their part.

LOCAL MANDATE DETERMINATION

OEHHA has determined this regulatory action will not pose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to 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 from this regulatory action. It should be noted that Proposition 65 provides an express exemption from the warning requirement and discharge prohibition for all state and local agencies. Thus, these regulations do not impose any mandate on local agencies or school districts.