

**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  
SECTION 25603 CONSUMER PRODUCT EXPOSURE WARNINGS – CONTENT  
FOR ON PRODUCT WARNINGS FOR LISTED CHEMICALS IN PESTICIDES  
REGULATED UNDER FEDERAL INSECTICIDE, FUNGICIDE,  
AND RODENTICIDE ACT (FIFRA)**

**April 27, 2018**

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Article 6 of Title 27 of the California Code of Regulations<sup>1</sup>, section 25603. OEHHA adopted new Article 6 Clear and Reasonable Warnings regulations in August 2016 (Operative in August 2018) that included safe harbor warning methods and content for consumer product exposures (Sections 25602 and 25603) and occupational exposures (Section 25606) to listed chemicals. OEHHA has received a request to modify the safe harbor warning content for on product warnings for exposures to listed chemicals in pesticides. This is the subject of this rulemaking.

**PUBLIC PROCEEDINGS**

In order to be considered, **OEHHA must receive comments by 5:00 p.m. on June 11, 2018**, 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 electronically, rather than in paper form. Comments may be submitted electronically through our website at <https://oehha.ca.gov/comments>. Comments submitted in paper form can be mailed, faxed, or delivered in person to the address below.

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

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23<sup>rd</sup> Floor  
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Sacramento, California 95812-4010  
Telephone: 916-323-2517  
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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 this proposed regulatory amendment will be scheduled on request. To request a hearing, please 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 **May 25, 2018**, 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 website 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 state 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 proposed amendment to the regulations would add optional signal words that would be allowed in narrow circumstances where a warning is provided on a product regulated under FIFRA and the signal word “warning” conflicts with the FIFRA requirements.

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

The proposed regulatory action will assist businesses, in particular pesticide registrants, to comply with the Act by providing optional signal words for on product warnings for listed chemicals in pesticides that are also consistent with the FIFRA and related California laws. The health and welfare of California residents will likely benefit because warnings will be more likely to be placed on a product label, thus making it easier for them to identify the source of exposure to the listed pesticide.

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

OEHHA has conducted an evaluation and has determined that Article 6 is the only regulation concerning Proposition 65 warnings. The action is being proposed to harmonize safe harbor warning content requirements for product labels to ensure compatibility with state pesticide regulations. Therefore, the proposed regulatory action is neither inconsistent nor incompatible with any other existing state regulations.

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

Because Proposition 65 by its terms<sup>4</sup> does not apply to local agencies or school districts, OEHHA has determined the proposed regulatory action would not impose a

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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> See Health and Safety Code section 25249.11(b).

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 because Proposition 65 does not apply to these facilities.<sup>5</sup> OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result 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 adding optional signal words for safe harbor warnings for businesses wishing to provide warnings on product labels for exposures to listed chemicals in pesticides. The proposed amendment does not impose any mandatory requirements on those businesses. OEHHA has therefore made an initial determination that the adoption of these amendments 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 proposed amendment provides a narrow exception to the signal word requirements under the safe harbor provisions for affected businesses opting to provide safe harbor warnings on product labels for exposures to listed chemicals from the use of pesticides.

### **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 proposed amendment provides a narrow exception to the signal word requirements under the safe harbor provisions for

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

affected businesses opting to provide safe harbor warnings on product labels for exposures to listed chemicals from the use of pesticides.

### **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 proposed amendment interprets and makes specific the warning requirements of the Act by providing a narrow exception regarding signal words used for warnings on pesticide product labels. A business may still choose not to take advantage of the safe harbor provisions and provide an otherwise “clear and reasonable” warning that complies with the Act.

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

Affected businesses will likely benefit from the proposed regulatory action because the amendments provide optional safe harbor warning content for Proposition 65 warnings on pesticide product labels that are also consistent with FIFRA and related California laws. The health and welfare of California residents will likely benefit because warnings will more likely be placed on a product label, thus making it easier for consumers to identify the source of exposure to the listed pesticide.

### **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 the action is proposed, would be as effective and less burdensome to affected businesses than the proposed action, or would be more cost-effective to affected

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

businesses 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 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 website 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 website at [www.oehha.ca.gov](http://www.oehha.ca.gov).

OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT

Allan Hirsch  
Chief Deputy Director

Dated: April 27, 2018