

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

**PROPOSED AMENDMENTS TO
SECTION 25903(b)(2)(E) AND APPENDIX A**

CONTENTS OF NOTICES OF VIOLATION

This is the Final Statement of Reasons for regulatory amendments that clarify what must be included with a 60-Day Notice of Violation served on an alleged violator of Proposition 65¹. These amendments change Title 27 Cal. Code of Regs., section 25903(b)(2)(E) by adding a cross-reference to Title 8 Cal. Code of Regs., section 338(b). They also remove the Special Compliance Procedure Proof of Compliance form from Appendix A of section 25903 and move it to a new Appendix B. The Initial Statement of Reasons set forth the grounds for the amendments to the regulation. A public comment period was provided from May 19 through July 3, 2017. One public comment was received and no public hearing was requested on this proposal.

UPDATE OF INITIAL STATEMENT OF REASONS

An update of the Initial Statement of Reasons is not necessary because no changes from the originally proposed amendments have been made.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD

OEHHA received one written comment during the public comment period. This comment was submitted via email by the California Independent Oil Marketers Association and is summarized below followed by OEHHA's response.

Comment

The commenter objects to the definition of "small business" used in the following statement from the Notice of Proposed Rulemaking: "Proposition 65 expressly exempts businesses with less than 10 employees from the warning and discharge requirements of the law." The commenter requests that OEHHA "correct the definition of a 'small business' to reflect the Department of General Services" definition.

¹ 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".

Response

The comment is not relevant to the proposed rulemaking. OEHHA notes however that the Proposition 65 warning and discharge exemption for businesses with less than 10 employees is a specific provision in the Act.² OEHHA does not have the authority to change the definition of small business for purposes of this law.

ALTERNATIVES DETERMINATION

In accordance with Government Code, section 11346.9(a)(4), the Office of Environmental Health Hazard Assessment (OEHHA) has considered available alternatives and determined that no reasonable alternative would be more effective in carrying out the purpose for which the amendment was proposed, or would be as cost 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. The alternative to these amendments to sections 25903(b)(2)(E) and Appendix A would be to leave the current regulations as they are. Not amending these sections could continue to create confusion as to what is required in a valid Notice of Violation for occupational exposures and when the special compliance procedures in Health and Safety Code section 25249.7(k) apply. No alternative that is less burdensome yet equally as effective in addressing such confusion has been proposed.

LOCAL MANDATE DETERMINATION

OEHHA has determined this regulatory action will not impose 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. Thus, this regulation does not impose any mandate on local agencies or school districts.

² Health and Safety Code section 25249.11.