

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

**AMENDMENTS TO SECTION 25204
SAFE USE DETERMINATIONS
SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986**

UPDATE OF INITIAL STATEMENT OF REASONS

The proposed amendments as originally noticed to the public, will modify section 25204 in the following subsections:

25204(a) currently states that OEHHA's SUDs are advisory only and not binding in any enforcement proceeding. The proposed amendment would give OEHHA's determinations presumptive effect in an enforcement proceeding.

25204(d)(1) currently establishes a nonrefundable processing fee of \$500 to be paid when a SUD request is submitted to the agency. The proposed amendment would increase the processing fee established in the regulation from \$500.00 to \$1000.00.

25204(g) currently states that the lead agency or any other state agency that is considering the request may ask for additional information or explanation from the SUD applicant at any time while an accepted request for a SUD is pending. The proposed amendment would add a requirement that any information requested be provided to the agency within 60 days, unless otherwise agreed by the agency.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF SEPTEMBER 12, 2008 THROUGH NOVEMBER 21, 2008.

COMMENT 1: National Paint & Coatings Association, Inc., and the California Paint Council stated that "The language of the proposed Section 25204 is potentially susceptible to an argument that the "presumption" intended to be afforded is a presumption affecting the burden of production (i.e. shifting the burden back to a plaintiff in an enforcement action, but otherwise not affecting the burden of proof), rather than a presumption affecting the burden of proof (i.e. establishing the exemption defense, but allowing for the presumption to be rebutted upon a showing by plaintiff that outweighs the SUD). The commenter suggested that OEHHA clarify the regulatory language, by inserting the phrase "affecting the burden of proof" after the word "presumption".

RESPONSE 1: OEHHA agrees with the commenter and has added the clarifying phrase "affecting the burden of proof" after the word "presumption" in section 25204(a).

Additional Non-Substantive Change: In section 25204(g), the word “accepted” was added to indicate that the 60-day limit to submit the information requested by the agency refers to the phase of a Safe Use Determination process after the request has been accepted by the agency. No time frame for complying with the request for additional information had previously been included in this section of the regulation.

ALTERNATIVES DETERMINATION

In accordance with Government Code, section 11346.9(a)(7), OEHHA has considered available alternatives to determine whether any alternative would be more effective in carrying out the purpose for which the regulations were proposed. OEHHA has also considered whether an alternative existed that 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 regulatory amendments.

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. It should be noted that all state and local government agencies are expressly exempt from Proposition 65. Thus, these regulatory amendments will not impose any mandate on local agencies or school districts.