

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

**PROPOSED AMENDMENTS TO
SECTION 25204(f), SAFE USE DETERMINATION**

PUBLIC HEARINGS

PURPOSE AND BACKGROUND OF PROPOSED AMENDMENT

PURPOSE

This proposed regulatory amendment would provide that a public hearing on an accepted Safe Use Determination (SUD) request will only be held upon request. A hearing could be requested by an interested person no later than 15 days prior to the close of the written comment period. Historically, hearings on SUD requests are not well attended. This regulatory action would streamline the SUD process and save agency time and resources in instances where no public hearing is necessary.

PROPOSITION 65 AND SAFE USE DETERMINATIONS

Proposition 65 was enacted as a ballot initiative on November 4, 1986. The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is the lead state entity responsible for the implementation of Proposition 65¹. OEHHA has the authority to promulgate and amend regulations to further the purposes of the Act².

The Act requires businesses to provide a warning when they cause an exposure to a chemical listed as known to the state to cause cancer or reproductive toxicity. The Act also prohibits the discharge of listed chemicals to sources of drinking water. One way an affected business can determine whether a warning is required for a specific exposure, or whether a specific discharge of a listed chemical to a source of drinking water is prohibited, is by asking for a formal opinion from OEHHA.

Section 25204 of the California Code of Regulations, Title 27³, sets out the procedures and criteria for requesting that OEHHA issue a formal written opinion known as a "Safe Use Determination" (SUD). Currently, section 25204(f) states

¹ Health and Safety Code, section 25249.12(a) and Cal. Code of Regs., Title 27, section 25102(o).

² Health and Safety Code, section 25249.12(a).

³ Formerly Title 22, Cal. Code of Regulations, section 12204, all further references are to sections of Title 27 (formerly Title 22) of the California Code of Regulations unless otherwise indicated.

that interested persons may comment on an accepted SUD request “in writing or in person at a public hearing which shall be held on a date not less than 30 days after the notice is published.”

PROPOSED REGULATORY AMENDMENT

The proposed change to Section 25204(f) is underlined below:

(f) In the case of a request for safe use determination that appears to comply with these procedures, the lead agency shall issue a written acceptance of the request. At the same time, a public notice of the acceptance of the request will be submitted for publication in the California Regulatory Notice Register and sent to interested persons. The public notice will include the text or a summary of the request as appropriate. It will advise interested persons that they may comment on the request in writing or in person if a public hearing is requested. Any interested person may request at a public hearing no later than 15 days prior to the close of the written comment period. If requested, the hearing which shall be held on a date not less than 30 days after the notice is published.

PROBLEM BEING ADDRESSED BY THIS PROPOSED RULEMAKING

The current language in Section 25204(f) requires a public hearing to be held for every SUD request that is accepted, even if a hearing is not requested. SUD hearings often are not well attended and members of the public seldom make comments at the hearing. Holding a hearing for each request unnecessarily diverts limited agency resources and staff time and can prolong the SUD application process. This proposed amendment would remove the mandatory hearing requirement and replace it with a provision allowing an interested member of the public to request a hearing at least 15 days prior to the end of the public comment period for the SUD request. If no request is received, a hearing will not be scheduled. This will ensure that where there is public interest in the SUD request, a hearing will be scheduled.

NECESSITY

In the past few years, the number of SUD requests OEHHA has received has increased. However, attendance at the public hearings required by the existing regulation has been minimal and generally no public comments are received at the hearing. Committing the agency to hold a public hearing in all instances is neither necessary nor prudent in establishing an efficient SUD process. The amended language is therefore necessary to explain that a hearing will only be held upon request.

BENEFITS OF THE PROPOSED REGULATION

See “Benefits of the Proposed Regulation” under ECONOMIC IMPACT ANALYSIS below.

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

No other technical, theoretical or empirical material was relied upon by OEHHA in proposing the adoption of this amendment.

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

The alternative to the amendment to Section 25204(f) would be to leave the current language as it is. Failure to amend this subsection would unnecessarily burden the agency and businesses requesting a SUD by requiring OEHHA to hold hearings even when no one other than the requester is present and no comments are provided. No alternative that is less burdensome yet equally as effective in providing for a public hearing has been proposed.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

OEHHA is not aware of significant cost impacts that small businesses would incur as a result of the proposed action. In addition, Proposition 65 is limited by its terms to businesses with 10 or more employees,⁴ so it has no effect on very small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

OEHHA does not anticipate that the proposed amendment to the regulation will have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Moreover, by not requiring a public hearing for every SUD request, this amendment will benefit the businesses seeking a SUD by streamlining the review process and potentially saving them the time and expense of attending and presenting their request at a public hearing.

⁴ Health and Safety Code, section 25249.11(b).

EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS

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))

It is not possible to quantify any monetary values for this proposed amendment because the SUD process is entirely voluntary and only provides compliance assistance for businesses subject to the Act. However, OEHHA anticipates that there would be cost savings for both OEHHA and SUD requesters if a hearing is not held.

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses in California: This regulatory proposal will not affect the creation or elimination of jobs within the State of California. Proposition 65 requires businesses with ten or more employees to provide warnings when they expose people to chemicals that are known to cause cancer or reproductive harm. The law also prohibits the discharge of listed chemicals into sources of drinking water. The voluntary SUD process provides a way for affected businesses to determine whether a warning is required for a specific exposure, or whether a specific discharge of a listed chemical to a source of drinking water is prohibited. This amendment may make that process less burdensome on businesses that choose to make use of the SUD process.

Impact on the Creation of New Businesses or Elimination of Existing Businesses within the State of California

This regulatory action will not impact the creation of new businesses or the elimination of existing businesses within the State of California. The regulatory proposal does not create additional compliance requirements, but instead removes a requirement that a public hearing be held after the acceptance of any SUD request.

Benefits of the Proposed Regulation: The agency, the public, and the business community will benefit from the proposed amendment because it will save the time and resources necessary for holding a public hearing in many

instances where no hearing is needed, and potentially streamline the SUD request process. The voluntary SUD process provides a way for affected businesses to determine whether a warning is required for a specific exposure, or whether a specific discharge of a listed chemical to a source of drinking water is prohibited. This amendment is likely to make that process less burdensome on the businesses that use it while maintaining the openness and transparency in the Safe Use Determination process.

Results: By amending the SUD regulation to provide that a public hearing will be held only if requested, the SUD application process will be more efficient and less time consuming for both OEHHA and the businesses seeking to make use of the process.