

**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 ADOPTION OF NEW SECTION UNDER ARTICLE 7
NO SIGNIFICANT RISK LEVELS
SECTION 25704 EXPOSURES TO LISTED CHEMICALS IN COFFEE
POSING NO SIGNIFICANT RISK**

June 22, 2018

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to add a new section to Article 7 of Title 27 of the California Code of Regulations¹, section 25704, stating that exposures to Proposition 65² listed chemicals in coffee that are produced as part of and inherent in the processes of roasting coffee beans and brewing coffee pose no significant risk of cancer.

PUBLIC PROCEEDINGS

Public Hearing

A public hearing will be held on **August 16, 2018**, at which time any person may make comments orally or in writing on the proposed action described in this notice. The public hearing will commence at 10 AM in the Sierra Hearing Room, California Environmental Protection Agency Building, 1001 I Street, 2nd Floor, Sacramento, California and will last until all business has been conducted or 2 pm.

Written Comment Period

Any written comments concerning this proposed regulatory action, regardless of the form or method of transmission, must be received by OEHHA by **5 p.m. on August 30, 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

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

² 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".

<https://oehha.ca.gov/comments>. Comments submitted in paper form can be mailed, faxed, or delivered in person to the address below.

All submissions should be directed to:

Monet Vela
Office of Environmental Health Hazard Assessment
P. O. Box 4010
Sacramento, California 95812-4010
Telephone: 916-323-2517
Fax: 916-323-2610

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.

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. Carl DeNigris is a back-up contact person for inquiries concerning processing of this action and is available at (916) 322-5624 or carl.denigris@oehha.ca.gov.

AUTHORITY

Health and Safety Code section 25249.12.

REFERENCE

Health and Safety Code sections 25249.6 and 25249.10.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

OEHHA is the lead state agency that implements Proposition 65 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.³ Coffee, a unique and complex chemical mixture made from the roasted seeds

³ Health and Safety Code section 25249.6

of the coffee plant, contains many different compounds, including carcinogens listed under Proposition 65, and anticarcinogens. The International Agency for Research on Cancer (IARC)—the only Proposition 65 authoritative body to have evaluated coffee—concluded that coffee consumption is not classifiable as to its overall carcinogenicity and is associated with reduced risk of certain cancers in humans. These findings are contained in Volume 116 of the IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Drinking Coffee, Mate, and Very Hot Beverages, released on June 13, 2018.

OEHHA has determined that exposures to Proposition 65 listed chemicals in coffee that are produced as part of and inherent in the processes of roasting coffee beans and brewing coffee pose no significant risk of cancer. The proposed regulation would clarify this determination.

Anticipated Benefits of the Proposed Regulation

The proposed regulation will further the goals of the authorizing statute by clarifying that there is no significant cancer risk resulting from exposures to listed carcinogens in coffee that are created by and inherent in the processes of roasting coffee beans or brewing coffee. The regulation provides guidance to businesses concerning whether they need to provide Proposition 65 warnings for coffee. This regulation will therefore benefit the health and welfare of California residents by helping to avoid cancer warnings for chemicals in coffee that do not pose a significant cancer risk.

No Inconsistency or Incompatibility with Existing Regulations

OEHHA has determined that the proposed regulatory action is neither inconsistent nor incompatible with any other existing state regulations because it provides compliance assistance to businesses subject to the Act, but does not impose any mandatory requirements on those businesses, state or local agencies and does not address compliance with any other law or regulation.

LOCAL MANDATE/FISCAL IMPACT

Because Proposition 65 by its terms⁴ does not apply to local agencies or school districts, OEHHA has determined the proposed regulatory action would not impose a 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

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

apply to these facilities.⁵ 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 regulation clarifies that Proposition 65 listed chemicals in coffee pose no significant risk of cancer. It does not impose any mandatory requirements on businesses. OEHHA has therefore made an initial determination that the adoption of this regulation 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

This regulatory action will not impact the creation or elimination of jobs within the State of California because it does not create additional compliance requirements. The regulatory action simply clarifies that Proposition 65 listed chemicals in coffee pose no significant cancer risk.

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 because it does not create additional compliance requirements. It simply clarifies that exposure to Proposition 65 chemicals in coffee pose no significant cancer risk.

⁵ Health and Safety Code section 25249.11(b)

The Expansion of Businesses Currently Doing Business within the State

This regulatory action will not impact the expansion of businesses within the State of California because it does not create additional compliance requirements. It simply clarifies that exposure to Proposition 65 chemicals in coffee pose no significant cancer risk.

Benefits of the Proposed Regulation

The proposed regulation will further the goals of the authorizing statute by clarifying that there is no significant cancer risk resulting from exposures to listed carcinogens in coffee that are created by and inherent in the processes of roasting coffee beans or brewing coffee. The regulation provides guidance to businesses concerning whether they need to provide Proposition 65 warnings for coffee. This regulation will therefore benefit the health and welfare of California residents by helping to avoid cancer warnings for chemicals in coffee that do not pose a significant cancer risk.

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 employees⁶ and the action does not impose any new requirements upon any business.

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

⁶ 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.

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.

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.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

Allan Hirsch
Chief Deputy Director

Dated: June 22, 2018