

**NOTICE OF PROPOSED RULEMAKING  
AND ANNOUNCEMENT OF PUBLIC HEARING**

**TITLE 27, CALIFORNIA CODE OF REGULATIONS**

**PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6**

**PROPOSITION 65  
CLEAR AND REASONABLE WARNINGS**

**January 16, 2015**

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to repeal the current Article 6 regulations and adopt new regulations in Article 6 in Title 27 of the California Code of Regulations. These new regulations would further the “right-to-know” purposes of the statute and provide more specific guidance on the content of safe harbor warnings for a variety of exposure situations, and corresponding methods for providing those warnings. It also would add a specific section to the regulations addressing the relative responsibilities for providing warnings for businesses in the chain of commerce versus retail sellers of a given product.

**PUBLIC PROCEEDINGS**

Public Hearing

A public hearing will be held on March 25, 2015, at which time any person may present statements or arguments orally or in writing relevant to the action described in this notice. The public hearing will commence at 10:00 in the Coastal Hearing Room, California Environmental Protection Agency Building, 1001 I Street, 2<sup>nd</sup> Floor, Sacramento, California and will last until 12:00 noon.

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 **5:00 p.m. on April 8, 2015**, 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 via e-mail, rather than in paper form. Send e-mail comments to [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov). Please include “Clear and Reasonable Warning Regulations” in the subject line. Hard-copy comments may be mailed, faxed, or delivered in person to the appropriate address below.

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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 provided to third parties upon request.

## **CONTACT**

Inquiries concerning the proposed Proposition 65 regulation described in this notice may be directed to Monet Vela at (916) 323-2517, or by e-mail at [monet.vela@oehha.ca.gov](mailto:monet.vela@oehha.ca.gov), or by mail to OEHHA, P.O. Box 4010, Sacramento, California 95812-4010. 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 state entity responsible for the implementation of Proposition 65.<sup>1</sup> OEHHA has the authority to adopt and amend regulations to make specific and further the purposes of Proposition 65. OEHHA maintains a list of chemicals known to cause reproductive toxicity or cancer. Proposition 65 requires businesses to provide a warning when they knowingly and intentionally cause an exposure to a listed chemical, and prohibits the discharge of listed chemicals into sources of drinking water.

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<sup>1</sup> The Safe Drinking Water and Toxics Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 *et seq.*, commonly referred to as "Proposition 65".

Under the existing Article 6 regulations, a warning is “clear” if it clearly communicates that the chemical in question is known to the State of California to cause cancer, birth defects or other reproductive harm. It is “reasonable” if the method employed to transmit the message is reasonably calculated to make the warning message available to the individual prior to exposure. However, the existing safe harbor warnings lack the specificity necessary to ensure that the public receives useful information about potential exposures.

In proposing this regulatory action, OEHHA intends to address many of the issues that have surfaced since the original regulation was adopted in 1988 by clarifying the relative responsibilities of manufacturers and others in the chain of distribution for providing warnings for products that are eventually sold at retail. The proposed regulations would also make needed changes to the current requirements for a “safe harbor” warning by integrating new technology, providing more useful information to Californians about their exposures to listed chemicals and by providing more compliance assistance for affected businesses, thereby furthering the purposes of the Act.

#### SPECIFIC BENEFITS OF THE PROPOSED REGULATIONS

These proposed regulations would repeal the current Article 6 and adopt a new Article 6 that includes two Subarticles. The proposed regulations would better serve the public by requiring more detailed information in Proposition 65 safe harbor warnings including how to avoid or reduce exposures to listed chemicals. This furthers the “right-to-know” purposes of the statute. This access to more detailed information would further promote public health and safety.

The regulatory proposal also provides more clarity to the warning requirements and more specificity regarding the minimum elements for providing a “clear and reasonable” warning for exposures that occur from products, including foods, and exposures that occur in various environmental settings. Because businesses are given the option to use warning methods adopted by OEHHA, businesses can take advantage of the more detailed guidance and compliance assistance provided by the proposed regulations, while retaining the right to provide other non-safe-harbor warnings they believe are compliant with the Act.

#### NO INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS

OEHHA has conducted an evaluation and has determined that these are the only regulations concerning Proposition 65 Clear and Reasonable Warnings. Therefore, the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations. The regulations do not change the existing mandatory requirements on businesses subject to Proposition 65, state or local agencies and do not address compliance with any other law or regulation.

## **LOCAL MANDATE/FISCAL IMPACT**

Because Proposition 65 by its terms<sup>2</sup> 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; 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 the proposed regulatory action. Also, the proposed action will not create any cost or saving to any state agency, and will not create any cost or savings in federal funding to the state.

## **NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The proposed regulatory action 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. The proposed regulation does not impose any significant new requirements upon any private person or California businesses.

## **KNOWN COST IMPACTS**

OEHHA is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulation does not impose any significant new requirements upon private persons.

## **RESULTS OF ECONOMIC IMPACT ANALYSIS (Gov. Code section 11346.3(b))**

OEHHA finds there will be no significant economic impact related to this proposed regulation. The proposed regulation would not impose any significant costs because businesses are already subject to the warning requirements of Proposition 65. Because businesses are given the option to use warning methods adopted by OEHHA, businesses can take advantage of the more detailed guidance and compliance assistance provided by the proposed regulations, while retaining the right to provide other non-safe-harbor warnings they believe are compliant with the Act. Therefore, OEHHA concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) unlikely that the proposal will create an unknown number of jobs, (3) unlikely that the proposal will create an unknown number of new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposal will affect the expansion of existing businesses..

This regulatory action will not impact the creation of new businesses or the elimination of existing businesses within the State of California. The regulation interprets and makes specific certain aspects of the Act and provides more specific and detailed

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<sup>2</sup> See Health and Safety Code section 25249.11(b)

guidance for safe harbor warning methods and content for businesses that decide to take advantage of this guidance.

**Benefits of the Proposed Regulation:** The proposed regulations will further the purposes of Proposition 65 by providing more informative warnings to the public and reduced uncertainty for businesses who must comply with the warning requirements of the Act.

## **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.

## **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 Proposition 65 is proposed, or would be as 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.

OEHHA held two pre-regulatory workshops, received 51 comment letters and participated in over 30 meetings with a wide range of stakeholders regarding the proposed regulations. Alternatives were offered by these stakeholders in the comments, letters and in the meetings. OEHHA carefully considered each alternative and OEHHA incorporated both substantive and non-substantive input offered by stakeholders into this regulatory proposal. However, OEHHA was also mindful of its statutory responsibility to ensure that this regulatory effort remains consistent with the purpose of the statute.<sup>3</sup> Some of the suggested alternatives would not accomplish that goal and were therefore not included in this proposal.

## **EFFECT ON SMALL BUSINESSES**

OEHHA has determined that the proposed regulatory action will not impose any mandatory requirements on small businesses. Proposition 65 expressly exempts businesses with less than 10 employees<sup>4</sup> from the warning and discharge requirements of the law.

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<sup>3</sup> Health and Safety Code section 25249.12(a)

<sup>4</sup> Health and Safety Code section 25249.11(b)

## **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 regulations 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 Web site 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 web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT

Allan Hirsch  
Chief Deputy Director

Dated: January 16, 2015