

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

TITLE 27, CALIFORNIA CODE OF REGULATIONS

PROPOSED ADOPTION OF SECTION 25205

**PROPOSITION 65
LEAD AGENCY WEBSITE**

January 16, 2015

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) is initiating a rulemaking to add section 25205 to Title 27, Article 2, of the California Code of Regulations. This regulation would establish the framework for a website operated by OEHHA that would provide supplemental information to the public about potential exposures to Proposition 65 listed chemicals.

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 proposed regulatory action described in this notice. The public hearing will commence at 1:30 p.m. in the Coastal Hearing Room, California Environmental Protection Agency Building, 1001 I Street, 2nd Floor, Sacramento, California and will last until 4:00 p.m. or when all business is complete.

Written Comment Period

Any written comments concerning this proposed 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 received 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. Please include "Lead Agency Website Regulation" in the subject line. Hard-copy comments may be mailed, faxed, or delivered in person to the appropriate address below.

Monet Vela
Office of Environmental Health Hazard Assessment
P. O. Box 4010
Sacramento, California 95812-4010

Telephone: 916-323-2517
Fax: 916-323-2610
E-mail: P65PublicComments@oehha.ca.gov

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, 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.

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), 25249.11 and 25249.12

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BACKGROUND

OEHHA is the state entity responsible for the implementation of Proposition 65.¹ 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. The law 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.

Currently, members of the public have no centralized source for obtaining supplemental information regarding the warnings that are being provided for chemical(s) that are listed under Proposition 65, or for information on how they might be exposed to the chemical(s) and how they might reduce or avoid such exposures. A key objective of the proposed regulation is to increase the availability of consistent, understandable

¹ 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".

information to the public regarding warnings provided for potential exposures to listed chemicals. The proposed regulation would establish a one-stop shop for supplemental information concerning the warnings Californians see on products and at locations throughout the state.

This proposed regulation is intended to leverage the public's existing and future use of the Internet in order to provide supplemental, contextual information about potential exposures to listed chemicals, in order to allow them to make informed choices concerning those exposures, thus furthering the purposes of the statute. OEHHA intends to develop chemical and exposure information, as resources allow, that is supplemental to the warnings required by the Act.

OEHHA believes that the supplemental information provided on the website will aid interested individuals who receive a warning to learn about the chemicals involved in a potential exposure, how they can be exposed to those chemicals, and any steps they could take to reduce or eliminate a potential exposure. This will further the purposes of the Act by supplementing the basic information conveyed by Proposition 65 warnings.

SPECIFIC BENEFITS OF THE PROPOSED REGULATION

The proposed regulation would establish the general framework for a website operated by OEHHA that would provide public access to information relevant to potential exposures to listed chemicals as well as general information on the health effects of listed chemicals and preventive measures to reduce the likelihood of significant exposures. This access to more detailed information would further promote public health and safety. The proposed regulation will further the 'right to know' purposes of Proposition 65 by providing important supplemental and contextual information to the public regarding potential exposures to listed chemicals in furtherance of the purposes of the Act.

NO INCONSISTENCY OR INCOMPATABILITY WITH EXISTING REGULATIONS

After conducting an evaluation for any related regulations in this area, OEHHA has determined that the proposed regulation is the only provision establishing a Lead Agency Website for Proposition 65. Therefore, the proposed regulation is neither inconsistent nor incompatible with existing state regulations. The regulation does not significantly change the existing mandatory requirements on any business, state or local agency and does not address compliance with any other law or regulation.

LOCAL MANDATE/FISCAL IMPACT

Because Proposition 65 by its terms² 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

² See Health and Safety Code section 25249.11(b)

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 private persons. While the regulation requires businesses to provide information regarding listed chemicals to OEHHA upon request, this information is similar to that obtained by the business for the purpose of determining whether to provide a Proposition 65 warning. OEHHA anticipates that most businesses will voluntarily provide it with information and there will seldom be a need for it to specifically request information from a given business. The more likely approach would be to request information from an entire business sector through an association, thus reducing any potential costs.

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. As noted above, while the regulation requires businesses to provide information regarding listed chemicals to OEHHA upon request, this information is similar to that obtained by the business for the purpose of determining whether to provide a Proposition 65 warning. OEHHA anticipates that most businesses will voluntarily provide it with information and there will seldom be a need for it to specifically request information from a given business. The cost of providing existing information to OEHHA should be minimal.

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. The proposed regulation will allow OEHHA to request existing information from businesses, but the cost of complying with these requests should be minimal. 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, and (4) unlikely that the proposal will eliminate any existing businesses.

Benefits of the Regulation: This regulatory action provides public access to more detailed information, and would further promote public health and safety. The proposed regulation will, further the "right to know" purposes of Proposition 66 by providing important supplemental and contextual information to the public regarding potential exposures to listed chemicals in furtherance of the purposes 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 significant 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 the regulation 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 received numerous comment letters in response to the two pre-regulatory workshops and pre-regulatory drafts of the regulation. OEHHA also participated in over 30 meetings with a wide range of stakeholders. Alternatives to the proposed lead agency website regulation were offered by several stakeholders. OEHHA carefully considered each alternative and incorporated both substantive and non-substantive input offered by stakeholders into this regulatory proposal. The Agency's statutory responsibility is to ensure that this regulatory effort remains consistent with the purpose of the statute. 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 employees³ from the warning and discharge requirements of the law.

³ 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. This document is 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 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.

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.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

Allan Hirsch
Chief Deputy Director

Dated: January 16, 2015