

**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 AMENDMENT TO ARTICLE 6
CLEAR AND REASONABLE WARNINGS**

**Warnings for Exposures to Glyphosate from Consumer Products
New Sections 25607.48 and 25607.49**

July 23, 2021

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend certain sections of Article 6 of Title 27 of the California Code of Regulations.¹ OEHHA is proposing to adopt a new safe harbor warning regulation to address the content of warnings for exposure to glyphosate in consumer products.

This proposed rulemaking would add Sections 25607.48 and 25607.49 to the Title 27, Article 6 Clear and Reasonable Warnings regulations. The proposed regulations would provide safe harbor guidance for businesses that cause consumer product exposures to glyphosate that require warning.

PUBLIC PROCEEDINGS

Written Comment Period

Any written comments concerning this proposed regulatory action, regardless of the form or method of transmission, must be received by OEHHA no later than September 7, 2021, the designated close of the 45-day written comment period required under the Administrative Procedure Act. All written comments will be posted on the OEHHA website at the close of the public comment period.

OEHHA recommends that the public 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.

<https://oehha.ca.gov/comments>. Comments submitted in paper form can be mailed or delivered in person to the address below. OEHHA encourages all commenters to submit their comments in a format compliant with the accessibility requirements of the Americans with Disabilities Act, so that they can be read using screen reader technology and those with visual impairments are able to listen to them.

All non-electronic submissions should be directed to:

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
PO. Box 4010
Sacramento, California 95812-4010
Telephone: 916-323-2517

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.

Public Hearing

A public hearing on this proposed regulatory amendment will only be scheduled upon request. The hearing may be web-based due to the COVID-19 emergency ². To request a hearing, send an e-mail to Monet Vela at monet.vela@oehha.ca.gov or to the address listed above. The request must be received no later than August 23, 2021, which is 15 days prior to the close of the comment period. If a hearing is scheduled, OEHHA will e-mail a notice of the hearing to the requester and interested parties, and the notice will be posted on OEHHA's web site at least ten days before the public hearing date. The notice will provide the date, time, and information for accessing the hearing.

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. Mario Fernandez is the 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.

REFERENCE

² Executive Orders [N-25-20](#) and [N-29-20](#).

Health and Safety Code sections 25249.6, 25249.7 and 25249.11(f).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

OEHHA is the lead agency that implements Proposition 65³ 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.⁴ The Act also prohibits the discharge of listed chemicals to sources of drinking water.⁵ The new regulation would further the “right-to-know” purposes of the Act and provide warning language tailored for exposures to glyphosate that exceed its NSRL. The content and methods provided in the proposed regulation are deemed “clear and reasonable” by the lead agency for purposes of the Act.⁶ The proposed warning content is also intended to provide balanced and understandable information to individuals who may be exposed to glyphosate. This proposed rulemaking would add Sections 25607.48 and 25607.49 to the Title 27, Article 6 Clear and Reasonable Warning regulations. The proposed regulations would provide safe harbor guidance for businesses that cause consumer product exposures to glyphosate that require a warning. The new regulation would further the “right-to-know” purposes of the Act and provide warning language tailored for these exposures. Businesses who choose to provide the safe harbor warning language for such exposures would comply with the Act, because the content and methods provided in the regulation are deemed “clear and reasonable” by the lead agency for purposes of the Act. The warning content is intended to provide balanced and understandable information to individuals who may be exposed to glyphosate at levels requiring warning.

SPECIFIC BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulatory action will facilitate businesses’ compliance with the Act by providing clarifying guidance concerning the provision of safe harbor warnings under Proposition 65. The health and welfare of California residents will likely benefit by increasing the public’s ability to understand the warnings they receive for certain consumer products containing glyphosate they may choose to purchase.

³ 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”.

⁴ Health and Safety Code section 25249.6.

⁵ Health and Safety Code section 25249.5.

⁶ OEHHA is aware that a permanent injunction against the enforcement of the warning requirement for glyphosate exposures was entered by the Federal District Court, however, that case is on appeal and in any event does not prohibit businesses from providing a warning.

NO INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS

OEHHA has conducted an evaluation and has determined that Article 6 is the only regulation concerning Proposition 65 warnings. Therefore, the proposed regulatory action is neither inconsistent nor incompatible with any other existing state regulations. The action does not change the existing mandatory requirements on businesses subject to Proposition 65, or state or local agencies and does not address compliance with any other law or regulation.

LOCAL MANDATE/FISCAL IMPACT

Because Proposition 65 by its terms⁷ 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, nor will there be any costs or savings to the state or in federal funding to the state because of the proposed regulatory action.

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 regulatory action provides compliance assistance to businesses subject to the Act by providing guidance on the method of transmitting and the content of safe harbor warnings for consumer product exposures to glyphosate that exceed its NSRL. OEHHA has therefore made an initial determination that the adoption of this 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.

⁷ See Health and Safety Code section 25249.11(b).

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

Creation or Elimination of Jobs within the State of California

The proposed regulatory action will not impact the creation or elimination of jobs within California. The action provides specific guidance by adding methods of transmitting and the content of safe harbor warnings for consumer product exposures to glyphosate that exceed its NSRL.

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

The proposed regulatory action will not impact the creation of new businesses or the elimination of existing businesses within California. The action provides specific guidance by adding methods of transmitting and the content of safe harbor warnings for consumer product exposures to glyphosate that exceed its NSRL.

The Expansion of Businesses Currently Doing Business within the State

OEHHA does not anticipate any major impact on the expansion of businesses currently doing business within the state. The action provides specific guidance by adding methods of transmitting and the content of safe harbor warnings for consumer product exposures to glyphosate that exceed its NSRL.

BENEFITS OF THE PROPOSED REGULATION

Affected businesses will likely benefit from the proposed regulatory action because the amendments provide guidance concerning safe harbor warnings for high dose exposures to glyphosate. The proposed regulatory action will benefit worker safety, the state's environment, and the health and welfare of California residents by providing more meaningful information and increasing the public's understanding of the potential risk posed by exposures to glyphosate.

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 employees.⁸

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, 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.

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 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.

⁸ Health and Safety Code section 25249.11(b).

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

Carol Monahan-Cummings
Chief Counsel

Dated: July 23, 2021