

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

**PROPOSED AMENDMENTS TO
SECTION 25903(b)(2)(E) AND APPENDIX A**

CONTENTS OF NOTICES OF VIOLATION

PURPOSE AND BACKGROUND OF PROPOSED AMENDMENT

PURPOSE

These proposed regulatory amendments clarify what must be included with a 60-Day Notice of Violation served on an alleged violator of Proposition 65¹. Title 27 Cal. Code of Regs., section 25903(b)(2)(E)² outlines the content requirements for Notices of Violation involving occupational exposures but does not currently cross-reference specific requirements of the Occupational Health and Safety Regulations that pertain to Proposition 65 Notices of Violation. This has resulted in deficient Notices of Violation being served for alleged violations of occupational exposure warning requirements. The proposed amendments would change section 25903(b)(2)(E) by adding a cross-reference to Title 8 Cal. Code of Regs., section 338(b). This would clarify that Proposition 65 Notices of Violation for occupational exposures have to conform with section 338(b), which requires that such notices contain a specified statement.³

Additionally, Appendix A of section 25903 contains information on Proposition 65 that must be included in all 60-Day Notices of Violation. However, Appendix A currently includes a Special Compliance Procedure Proof of Compliance form that is only applicable to alleged violators for the specific types of exposures

¹ 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".

² All further references are to sections of Title 27 of the California Code of Regulations unless otherwise stated.

³ Title 8 Cal. Code of Regs., section 338(b) states that "any sixty-day notice concerning a Supplemental Enforcement Matter shall include the following statement:

'This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.'

identified in Health and Safety Code section 25249.7(k). This has caused confusion and led to some notice recipients attempting to use the special compliance form even when they do not qualify for use of this form. The proposed amendments would remove the Special Compliance Procedure Proof of Compliance form from Appendix A and move it to a new Appendix B. Removing the special compliance form from the Appendix A general information provided with all 60-Day Notices of Violation will help ensure that the special compliance form is only included with a Notice of Violation in the specific instances where it is applicable.

PROPOSITION 65 AND NOTICES OF VIOLATION

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 65⁴. OEHHA has the authority to promulgate and amend regulations to further the purposes of the Act⁵.

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. Businesses that violate Proposition 65 can be sued by state and local prosecutors or private individuals acting in the public interest. However, a private action can only be started 60 days after the private enforcer has sent the Notice of Violation to the Attorney General, district attorney, city attorney in the same jurisdiction, and the alleged violator.

Section 25903(b)(2)(E) describes the content required for Notices of Violation involving occupational exposures. Notices alleging an occupational exposure must contain specific language required by the Occupational Health and Safety Regulations, specifically, Title 8, of the California Code of Regulations, section 338(b). However, section 25903(b)(2)(E) does not currently cross-reference Title 8 Cal. Code of Regs., section 338(b). The proposed amendments include a cross-reference to this mandatory language.

Additionally, a Notice of Violation served upon an alleged violator must include Appendix A of section 25903 as an attachment.⁶ Included in the current Appendix A is a Special Compliance Procedure Proof of Compliance Form that is provided to the alleged violator only for certain types of exposures pursuant to Health and Safety Code section 25249.7(k), which the Legislature added to Proposition 65 in 2013 by enacting AB 227 (Gatto, Chapter 581, Statutes of 2013). This section provides for procedures that an alleged violator can use to

⁴ Health and Safety Code, section 25249.12(a) and Cal. Code of Regs., Title 27, section 25102(o).

⁵ Health and Safety Code, section 25249.12(a).

⁶ Title 27 Cal. Code of Regs., section 25903(b)(1).

come back into compliance with Proposition 65 warning requirements for these specific exposures, which are:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

The proposed amendments would move the Special Compliance Procedure Proof of Compliance Form to Appendix B in order to clarify that this special procedure is only required for the specific exposures described above,⁷ and should not be included with all Notices of Violation.

PROPOSED REGULATORY AMENDMENTS

The proposed changes to section 25903(b)(2)(E) and Appendix A and the proposed Appendix B are set out on pages 7 through 19 of this document. Deleted text is crossed out and new text is underlined.

PROBLEM BEING ADDRESSED BY THIS PROPOSED RULEMAKING

Section 25903(b)(2)(E): This section outlines the requirements for Notices of Violation involving occupational exposures but does not currently cross-reference specific requirements of the Occupational Health and Safety Regulations. Noticing parties could mistakenly read section 25903(b)(2)(E) as containing all requirements for occupational notices and omit the language required under Title 8 Cal. Code of Regs., section 338(b), leading to a deficient Notice of Violation.

⁷ Health and Safety Code section 25249.7(k).

Appendix A and Proposed Appendix B: The current Appendix A of section 25903 contains a Special Compliance Procedure Proof of Compliance form that is only applicable to alleged violators for the specific types of exposures identified in Health and Safety Code section 25249.7(k). Including this Special Compliance form with all Notices of Violation has caused confusion and led to some notice recipients attempting to comply with Health and Safety Code section 25249.7(k) where this section does not apply. The proposed amendments to Appendix A and proposed Appendix B is intended to avoid this confusion and clarify the application of this provision.

NECESSITY

The amended language in section 25903(b)(2)(E) is necessary to ensure that private enforcers do not omit the language required under Title 8 Cal. Code of Regs., section 338(b) when serving notice on an alleged violator for an occupational exposure. Amending the text of Appendix A and moving the text to proposed Appendix B for the Special Compliance Procedure Proof of Compliance Form for Health and Safety Code section 25249.7(k) is necessary to clarify when this special procedure should be used and prevent confusion that might result from the current format of regulations.

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 amendments discussed above would be to leave the current regulations as they are. Failure to amend section 25903(b)(2)(E) and Appendix A could continue to create confusion as to what is required in a valid Notice of Violation for occupational exposures and when the special compliance procedures in Health and Safety Code section 25249.7(k) apply. No alternative that is less burdensome yet equally as effective in addressing such confusion has been proposed.

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

OEHHA is not aware of any adverse 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,⁸ so it has no effect on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

Because the proposed regulatory amendment does not impose any new mandatory requirements on businesses subject to the Act, OEHHA does not anticipate any significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

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))

In compliance with Government Code section 11346.3, OEHHA has assessed all the elements pursuant to sections 11346.3(b)(1)(A) through (D):

Impact on the Creation or Elimination of Jobs or Expansion of Business in California: The proposed amendments do not create additional compliance requirements but rather clarify the current requirements for private individuals who serve Notices of Violation on businesses. As a result, this regulatory proposal will not affect the creation or elimination of jobs or the expansion of business within the State of California.

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

⁸ Health and Safety Code, section 25249.11(b).

compliance requirements and only clarifies current requirements related to the service of Proposition 65 Notices of Violation.

Benefits of the Proposed Regulation: Noticing parties and alleged violators will benefit from the proposed amendment because it will clarify the information required in a valid Notice of Violation. These clarifications will ensure that alleged violators are correctly and fully informed of proper compliance procedures. Facilitating proper compliance will benefit the health and welfare of California residents.

Results: The proposed amendments will not impact the elements described in Government Code sections 11346.3(b)(1)(A)-(C) but they will clarify the notice process for both noticing parties and notice recipients. These clarifications will further the purposes of Proposition 65 by ensuring clear notice and compliance procedures.

PROPOSED REGULATORY AMENDMENTS

§ 25903(b)(2)(E). Contents of Notices Involving Occupational Exposures

...

(E) For notices of violation of Section 25249.6 of the Act involving occupational exposures:

1. the general geographic location of the unlawful exposure to employees, or where the exposure occurs at many locations, a description of the occupation or type of task performed by the exposed persons;
2. where the alleged violator is the manufacturer or distributor of the chemical or products causing the exposure, the notice shall identify products in the same manner as set forth for consumer product exposures in subparagraph (b)(2)(D), above;
3. the notice shall include the language set forth in 8 CCR §338(b);

...

Note: Authority cited: Sections 25249.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.⁹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant¹⁰ it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from

² See Section 25501(a)(4)

discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary

to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

~~A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:~~

- ~~• Corrected the alleged violation;~~
- ~~• Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and~~
- ~~• Notified the private party serving the notice in writing that the violation has been corrected.~~

~~The written notification to the private party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.~~

~~An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private party.~~

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

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Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

**~~SPECIAL COMPLIANCE PROCEDURE
PROOF OF COMPLIANCE~~**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- ~~1. You have actually taken the corrective steps that you have certified in this form.~~
- ~~2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.~~
- ~~3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.~~
- ~~4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.~~

~~PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY~~

The alleged violation is for an exposure to: (check one)

~~___ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.~~

~~___ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.~~

~~___ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.~~

~~___ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.~~

IMPORTANT NOTES:

- ~~1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.~~
- ~~2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.~~

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Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

~~Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.~~

~~I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):~~

- ~~Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;~~
- ~~Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR~~

~~Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.~~

Certification

~~My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).~~

Signature of alleged violator or authorized representative — Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment’s Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: _____

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

APPENDIX BOFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCYTHE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): SPECIAL COMPLIANCE PROCEDURE

This Appendix B contains the notice of special compliance procedure and proof of compliance form prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). Under the Act, a private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. These exposures are:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;

-
- Agreed to pay a civil penalty of \$500 (subject to change in 2019 and every five years thereafter) to the private party within 30 days; and
 - Notified the private party serving the notice in writing that the violation has been corrected.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator.

When a private party sends a notice of alleged violation that alleges one or more of the exposures listed above, the notice must include a notice of special compliance procedure, and a proof of compliance form to be completed by the alleged violator as directed in the notice.

The notice and proof of compliance form is reproduced here:

Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE **PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. **You have actually taken the corrective steps that you have certified in this form.**
2. **The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
3. **The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
4. **This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date:

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Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: _____

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.