

**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**

**AMENDMENT TO SECTION 25705
SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK:**

GLYPHOSATE

April 7, 2017

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to adopt a Proposition 65¹ No Significant Risk Level (NSRL) of 1100 micrograms per day for glyphosate, by amending Title 27, California Code of Regulations, section 25705(b)².

PUBLIC PROCEEDINGS

Any written comments concerning this proposed action must be received by OEHHA by 5:00 p.m. on May 22, 2017, 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 "Glyphosate NSRL" in the subject line. Hard-copy comments may be mailed, faxed, or delivered in person to the address below.

Mailing Address: Ms. Esther Barajas-Ochoa
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS-12B
Sacramento, California 95812-4010
Fax: (916) 323-2265

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq., referred to herein as "Proposition 65" or "The Act."

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

Street Address: 1001 I Street, 12th Floor
Sacramento, California 95814

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. Comments on all regulatory and other actions are routinely posted on our website. By sending us your comments, you are waiving any right to privacy you may have in the information you provide. Individual commenters should advise OEHHA when submitting documents to request redaction of home address or personal telephone numbers. Names of commenters will not be redacted.

A public hearing on this proposed regulatory amendment will be scheduled on request. To request a hearing, send an e-mail to Esther Barajas-Ochoa at esther.barajas-ochoa@oehha.ca.gov or to the address listed above by no later than May 8, 2017, which is 15 days before the close of the comment period. OEHHA will mail a notice of the hearing to the requester and interested parties on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA website at least ten days before the public hearing date. The notice will provide the date, time, and location of the hearing.

If a hearing is scheduled and you have special accommodation needs, please contact Esther Barajas-Ochoa at (916) 322-2068 or esther.barajas-ochoa@oehha.ca.gov at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning the proposed regulatory action described in this notice to Esther Barajas-Ochoa, in writing at the address given above, or by telephone at (916) 322-2068. Fran Kammerer is a back-up contact person for inquiries concerning processing of this action and is available at fran.kammerer@oehha.ca.gov or (916) 445-4693.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Proposition 65 prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the state to cause cancer or reproductive toxicity, without first giving clear and reasonable warning to such individual³. The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water⁴.

³ Health and Safety Code section 25249.6.

⁴ Health and Safety Code section 25249.5.

For carcinogens, an exemption from the warning requirement is provided by the Act when the exposure for which the person is responsible can be demonstrated to produce no significant risk or that a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water⁵. A determination that a level of exposure poses no significant risk may be made utilizing regulations that have previously been adopted by OEHHA (Sections 25701-25721). Section 25701 describes alternative methods for making such a determination. Section 25705 sets forth the process for determining “no significant risk” levels for purposes of Proposition 65 and establishes those levels for certain listed chemicals.

Details on the basis for the proposed NSRL for glyphosate are provided in the Initial Statement of Reasons for this regulatory amendment, which is available on request from Esther Barajas-Ochoa and is posted on the OEHHA website at www.oehha.ca.gov.

This proposed amendment to section 25705 would add an NSRL for glyphosate by amending Section 25705(b) as follows (addition in underline):

<u>Chemical</u>	<u>NSRL, in micrograms per day</u>
<u>Glyphosate</u>	<u>1100</u>

To develop the proposed NSRL for glyphosate, OEHHA relied on Volume 112 in the series of International Agency for Research on Cancer (IARC) Monographs on the Evaluation of Carcinogenic Risks to Humans entitled “Some Organophosphate Insecticides and Herbicides: Diazinon, Glyphosate, Malathion, Parathion, and Tetrachlorvinphos”⁶, which summarizes the available data from rodent carcinogenicity studies of glyphosate, as well as other information relevant to the carcinogenic activity of the chemical. The NSRL is based upon the results of the most sensitive scientific study deemed to be of sufficient quality⁷. The derivation of the NSRL for glyphosate is discussed in more detail in the Initial Statement of Reasons for this proposed regulatory amendment.

Anticipated Benefits of the Proposed Regulation

Some businesses may not be able to afford the expense of establishing an NSRL and therefore may be exposed to litigation for a failure to warn or for a prohibited discharge of the listed chemical. By providing an NSRL, this regulatory proposal spares

⁵ Health and Safety Code sections 25249.9 and 25249.10

⁶ International Agency for Research on Cancer (IARC, 2015). IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 112, Some Organophosphate Insecticides and Herbicides: Diazinon, Glyphosate, Malathion, Parathion, and Tetrachlorvinphos. IARC, World Health Organization, Lyon, France. Available at: <http://monographs.iarc.fr/ENG/Monographs/vol112/index.php>

⁷ Section 25703(a)(4)

businesses the expense of calculating their own NSRL and may also enable them to reduce or avoid litigation costs. In addition, the NSRL does not require, but may encourage, businesses to lower the amount of the listed chemical in their product to a level that does not cause a significant exposure, thereby providing a public health benefit to Californians. This in turn may reduce exposure to glyphosate and reduce residential, occupational and environmental exposures to chemicals that cause cancer.

No Inconsistency or Incompatibility with Existing Regulations

OEHHA has conducted an evaluation for whether there are any other regulations on this matter and has found that these are the only regulations dealing with glyphosate. Therefore, OEHHA has determined that the proposed regulation is neither inconsistent nor incompatible with 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.

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

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses in California

OEHHA concluded that it is (1) unlikely that the proposal will eliminate any jobs, (2) unlikely that the proposal will create unknown number of jobs, (3) unlikely that the proposal will create unknown number of new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

Proposition 65 requires businesses with ten or more employees to provide warnings when they expose people to chemicals that are known to cause cancer or developmental or reproductive harm. The law also prohibits the discharge of listed chemicals into sources of drinking water. *Glyphosate (CAS No. 1071-83-6)* will be added to the list of chemicals known to the state to cause cancer for purposes of Proposition 65⁸. The effective date of this listing will be determined following a decision from the Court of Appeal regarding a request for a stay in the pending case *Monsanto v OEHHA*.⁹ A separate Notice will be published, along with an updated Proposition 65 list, when the chemical is added to the list.

⁸ The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code, section 25249.5, et seq.

⁹ *Monsanto et al v OEHHA et al.*, Fresno County Superior Court case #16CECG00183, recently appealed to the California Court of Appeal (5th District). A case number has not yet been assigned.

One year after the date of listing, businesses that manufacture, distribute or sell products with glyphosate in the state must provide a warning if their product or activity exposes the public or employees to significant amounts of this chemical. The regulatory proposal does not create additional compliance requirements, but instead provides a “safe harbor” value that aids businesses in determining whether a warning is required for a given exposure.

Benefits of this regulation include sparing businesses the expense of calculating their own NSRL and possibly enabling them to reduce or avoid litigation costs. Providing an NSRL may encourage businesses to lower the amount of the listed chemical in their product to a level that does not cause a significant exposure, thereby providing a public health benefit to Californians. This in turn may reduce exposure to glyphosate and reduce resident, worker and environmental exposures to chemicals that cause cancer.

PEER REVIEW

This notice and the Initial Statement of Reasons are being provided to the OEHHA Science Advisory Board’s Carcinogen Identification Committee for review and comment.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

Because Proposition 65 expressly ¹⁰ 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.

COSTS OR SAVINGS TO STATE AGENCIES

Because Proposition 65 expressly ¹¹ does not apply to any state agency, OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

¹⁰ See Health and Safety Code section 25249.11 (b)

¹¹ See Health and Safety Code section 25249.11 (b)

EFFECT ON FEDERAL FUNDING TO THE STATE

Because Proposition 65 expressly¹² does not apply to any federal agency, OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs because it provides compliance assistance to businesses subject to the Act, but does not impose any mandatory requirements on those businesses.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

Because the proposed regulatory level provides compliance assistance to businesses subject to the Act, but does not impose any mandatory requirements on those businesses, OEHHA has made an initial determination that the adoption of the 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.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The proposed NSRL was developed to provide compliance assistance for these businesses in determining whether a warning is required or a discharge is prohibited. The NSRL provides a level of exposure at or below which a warning is not required and a discharge is not prohibited. Use of the NSRL is not mandatory. The implementing regulations allow a business to calculate its own level and provide guidance in order to assist businesses in doing so¹³. However, conducting such a process can be expensive and time consuming, and the resulting levels may not be defensible in an enforcement action. OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulation will not impose any mandatory requirements on small business. Rather, the proposed NSRL will provide compliance assistance for small businesses subject to the Act because it will help them determine whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition of the Act.

¹² See Health and Safety Code section 25249.11 (b)

¹³ Title 27, Cal. Code of Regs., section 25801 et seq.

CONSIDERATION OF ALTERNATIVES

Government Code section 11346(a)(13) requires that OEHHA must determine that no reasonable alternative considered by the OEHHA or that has otherwise been identified and brought to the attention of the 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 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 than the proposal described in this Notice.

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 regulation, all the information upon which the regulation is based, and the text of the regulation. A copy of the Initial Statement of Reasons, the text of the regulation and the documents relied on to develop the proposed regulation are available upon request from OEHHA at the address and telephone number indicated above. These documents are also posted on OEHHA's website 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 changed regulatory text and the full text will be mailed to individuals whose comments were received by OEHHA during the public comment period, or who testified or submitted written comments at the public hearing, if held, and anyone who requests notification from OEHHA of the availability of such changes. Copies of the notice and the changed regulation will also be available on the OEHHA website at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons for this regulatory action may be obtained, when it becomes available, from OEHHA at the address and telephone number indicated above, and on the OEHHA website at www.oehha.ca.gov.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

Allan Hirsch
Chief Deputy Director

Dated: April 7, 2017