INITIAL STATEMENT OF REASONS

TITLE 27, CALIFORNIA CODE OF REGULATIONS SECTION 25705(b).

SECTION 25705(b). SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK

PURPOSE OF PROPOSED REGULATION

This proposed regulation sets forth the no significant risk level (NSRL) for a chemical listed under Proposition 65\(^1\) that will be adopted into Title 27, California Code of Regulations, section 25705(b)\(^2\). This NSRL was derived using scientific methods outlined in Section 25703.

Details on the basis for this proposed level are provided in the document cited below, which is available on the Office of Environmental Health Hazard Assessment (OEHHA) website at [www.oehha.ca.gov](http://www.oehha.ca.gov) and is included in the rulemaking record. The cited document is a risk assessment prepared by OEHHA describing and summarizing the derivation of the regulatory level listed below.

The proposed regulation would adopt into Section 25705(b) the following regulatory level for one chemical known to cause cancer:

<table>
<thead>
<tr>
<th>Chemical</th>
<th>NSRL, in units (µg/day)</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,4,6-Trinitrotoluene</td>
<td>8.2</td>
<td>OEHHA (2010)</td>
</tr>
</tbody>
</table>

BACKGROUND

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 individual\(^3\). 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 a source of drinking water\(^4\).

The Act provides an exemption from the warning requirement if a person in the course of doing business is able to demonstrate that an exposure for which the person is responsible poses no significant risk of cancer\(^5\). The Act also provides an exemption from the prohibition against discharging a listed chemical into sources of drinking water

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\(^1\) The Safe Drinking Water and Toxic Enforcement Act of 1986, Codified at Health and Safety Code section 25249.5 et seq., commonly referred to as Proposition 65.

\(^2\) All further references are to sections of Title 27 of the California Code of Regulations.

\(^3\) Health and Safety Code, section 25249.6

\(^4\) Health and Safety Code, section 25249.5

\(^5\) Health and Safety Code, sections 25249.10 and 25249.11
if the amount discharged does not constitute a “significant amount”, as defined, and the
discharge is in conformity with all other laws and regulatory requirements. Section
25701 describes alternative methods for making a determination that a given exposure
poses no significant risk. One such method is the application of a specific regulatory
level for the chemical in question established in section 25705(b). The levels set in
section 25705(b) supersede the levels established in section 25709 (Exposure to Trace
Elements) and section 25711 (Levels Based on State or Federal Standards).

Regulations previously adopted by OEHHA provide guidance for determining whether
an exposure to, or a discharge of, a chemical known to cause cancer meets the
statutory exemption. These regulations provide three ways by which a person in the
course of doing business may make such a determination:

1. By conducting a risk assessment in accordance with the principles described in
   Section 25703 to derive a NSRL, which is defined as the level of exposure to
   the chemical which is calculated to result in no more than one excess case of
   cancer in an exposed population of 100,000, assuming exposure over a 70-year
   lifetime (10^-5 lifetime risk of cancer); or

2. By application of the specific regulatory level adopted for the chemical in Section
   25705; or

3. In the absence of such a level, by using a risk assessment conducted by a state
   or federal agency, provided that such assessment substantially complies with
   Section 25703(a).

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S
REASONS FOR REJECTING THOSE ALTERNATIVES

OEHHA is not aware of any reasonable alternatives to the proposed regulatory action.

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

The proposed regulatory action will not adversely impact small business. The proposed
regulation identifies levels below which businesses are exempt from Proposition 65
warning requirements and the discharge prohibition. It does not impose any
requirement upon any business, including small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC
IMPACT ON BUSINESS

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. The regulation identifies levels below which businesses are

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6 Health and Safety Code, sections 25249.9 and 25249.11
7 Title 27, California Code of Regulations, sections 25701-25721
exempt from Proposition 65 warning requirements and the discharge prohibition. No costs or expenses are incurred by businesses to comply with the proposed regulation. There is no significant adverse economic impact on any business. In fact, the proposed regulatory action makes it easier for affected businesses to comply with Proposition 65 by helping them determine when the warning and discharge requirements may apply.

DUPICATION 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.

REFERENCE

Office of Environmental Health Hazard Assessment (OEHHA, 2010). No Significant Risk Level (NSRL) for the Proposition 65 Carcinogen 2,4,6-Trinitrotoluene. OEHHA, Reproductive and Cancer Hazard Assessment Branch, California Environmental Protection Agency, Oakland, July 2010.