

Client Alert

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Risky Business: OEHHA to Require Prop 65 Data Submissions

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The California Office of Environmental Health Hazard Assessment (“OEHHA”) has adopted new regulations that require businesses that make or use chemicals listed under Proposition 65 to provide certain information about the chemicals to the State upon request. The State will then publish information about the risks of exposure to such chemicals. The regulations also provide that businesses will have an opportunity to contest the published information. These regulations were adopted under Title 27, Article 2, Section 25205 of the California Code of Regulations. For a copy of the new regulations, [click here](#).

First, Section 25205 requires that businesses provide OEHHA with information for use on OEHHA’s website. In particular, the regulations state that OEHHA may request certain information from a “manufacturer, distributor, or importer” of a product containing a listed chemical. The requested party shall have 90 days to provide such information in response to OEHHA’s request. OEHHA is entitled to request, among other things, the following:

- The concentration of the chemical in a product;
- The anticipated routes of exposure; and
- The estimated levels of exposure.

Although the requirements are quite burdensome, Section 25205 does not require new testing in response to OEHHA’s inquiry. Instead, the requested party need only provide information that is already reasonably available. If two entities receive information requests regarding the same product or exposure, those entities may respond through their trade organization.

Second, Section 25205 states that OEHHA shall provide a process for any person to correct inaccurate material on the website. The regulation does not detail what that process shall be, except to say that a complainant must provide information showing that the material on the website is inaccurate. This may be a valuable tool for disputing inaccurate information. However, as many commenters noted in response to the proposed regulation, it may be a time-intensive process to monitor information on the website.

Third, Section 25205 requires OEHHA to maintain a website that displays certain information about chemicals that OEHHA has already listed under authority of Proposition 65. In particular, OEHHA must publish information concerning the following:

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- Common routes of exposure to listed chemicals;
- Strategies for reducing exposure to such chemicals;
- Links to additional information about such chemicals, as provided by entities such as the Food and Drug Administration; and
- “Reasonably available information concerning human exposure to listed chemicals.”

Further, requested parties have the opportunity to designate information as a trade secret when releasing it to OEHHA. Before OEHHA publishes the information, it must notify the requested party and provide an opportunity to further contest the publication. The contest will take place in “an appropriate legal proceeding,” a term that the regulation does not define.

These regulations go into effect April 1, 2016.

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