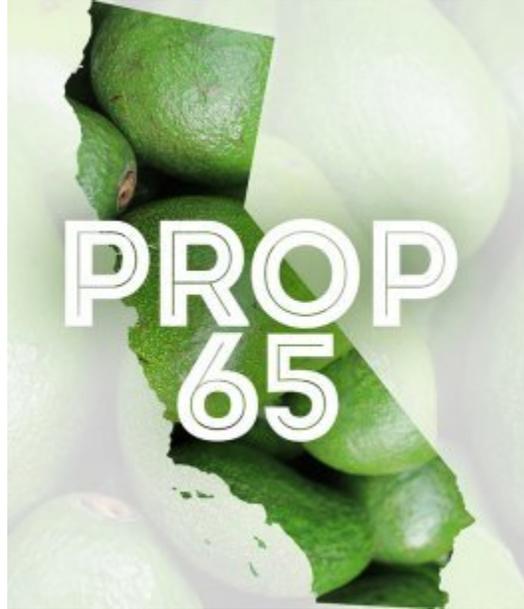


# Legislature considers Several Chemicals of Concern



# Table of Contents

- CAL EPA to Initiate Cancellation Proceedings for Chlorpyrifos ..... 1**
- EPA Releases Proposed Interim Registration Review Decision (PID) for Glyphosate acid and its Salts ..... 4**
- CAL EPA to Initiate Cancellation Proceedings for Chlorpyrifos ..... 7**
- The California State Assembly Passed Bill that would Require Private party litigants to report Appeals to the California Attorney General ..... 10**
- California Legislature Moves forward chemicals in Products bills ..... 11**
- OEHHA Proposes three new Maximum Allowable Dose Leves for Chlorpyrifos ..... 14**
- New Prop 65 Safe Harbor Warnings for Residential Rental Properties set to go into effect this summer ..... 17**
- New Prop 65 Safe Harbor Warnings for Residential Rental Properties set to go into effect this summer ..... 20**

# CAL EPA to Initiate Cancellation Proceedings for Chlorpyrifos

By LisaLisa | Legislature considers Several Chemicals of Concern

The California Environmental Protection Agency (CalEPA) has announced that the California Department of Pesticide Regulation (DPR) will be initiating cancellation proceedings of chlorpyrifos. In its press release, CalEPA states that the decision to commence cancellation proceedings “follows mounting evidence, including recent findings by the state’s independent Scientific Review Panel on Toxic Air Contaminants, that the pesticide causes serious health effects in children and other sensitive populations at lower levels of exposure than previously understood.”

DPR’s decision, following years of review in California of chlorpyrifos, is certain to garner significant controversy, comments, and, potentially, may erupt into litigation.

## **A Hazardous Substance is Assessed by DPR**

Chlorpyrifos first entered the comprehensive risk assessment process after being designated by DPR with a “high priority” status in 2011, and some of the DPR documents supporting the current action were issued in 2011.

In December 2015, DPR released a draft risk assessment for public comment. Since the risk assessment identified potential human exposure to spray drift (via inhalation or deposition) as a concern, DPR entered chlorpyrifos in its formal evaluation process to determine the scientific evidence for listing it as a pesticide Toxic Air Contaminant (TAC) (CA Food & Agric. Code §§ 14021-14027).

DPR’s assessments were intended to evaluate chlorpyrifos as a pesticide TAC as defined in California regulations (Title 3, Section 6864). The determination of a pesticide TAC is based on whether the air concentrations, either measured or modeled, exceed the reference concentration (RfC) divided by ten.

Under the applicable California statutory provisions, the designation of an active ingredient as a TAC is based on an evaluation that assesses the following:

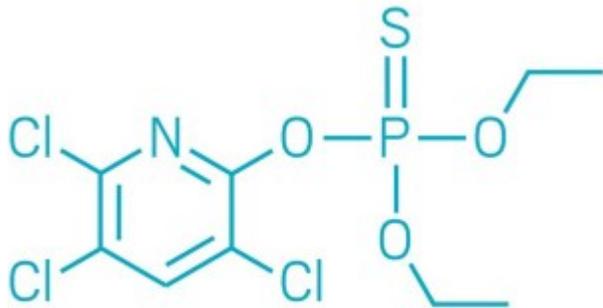
- The availability and quality of data on health effects;
- The potency, mode of action, and other relevant biological factors;
- An estimate of the levels of exposure that may cause or contribute to adverse health effects; and
- The range of risks to humans resulting from current or anticipated exposure (CA Food & Agric. Code § 14023(a)).

DPR published its draft revised report entitled “Evaluation of Chlorpyrifos as a Toxic Air Contaminant” in December 2017 and an addendum to that report in June 2018. DPR issued its final TAC evaluation in July 2018. The July 2018 evaluation concludes that “chlorpyrifos meets the criteria of TAC designation by using either the developmental neurotoxicity endpoint or the [acetylcholinesterase (AChE)] inhibition endpoint, even without the additional 10x uncertainty factor necessary to account for the fact that the developmental neurotoxicity effects occur at a lower level than AChE inhibition.”

DPR’s findings, public comments, and responses to those comments were reviewed by the Scientific Review Panel (SRP) on TACs. SRP’s findings on chlorpyrifos issued in August 2018 “unanimously concluded that the

report, with the revisions requested by the Panel, is based on sound scientific knowledge, and represents a balanced assessment of our current scientific understanding.”

In April 2019, chlorpyrifos was listed in California as a TAC, which triggered a DPR requirement to “develop control measures to protect the health of farmworkers



## Chlorpyrifos

*Chlorpyrifos is a organo-phosphate pesticide known to cause neurological damage to children.*

and others living and working near where the pesticide is used.” In its press release announcing the cancellation proceedings, CalEPA states that “DPR has determined, in consultation with CDFA, the Office of Environmental Health Hazard Assessment (OEHHA), and the California Air Resources Board (CARB), that sufficient additional control measures are not feasible.”

### Commentary

DPR’s announcement is the beginning of what the agency estimates could be a two-year cancellation proceeding, although the process may take even longer. Other actions proposed in conjunction with the cancellation proceeding include:

- DPR to consult with county agricultural commissioners and local air pollution control districts before filing for cancellation.
- DPR to support “aggressive” enforcement of existing restrictions on the use of chlorpyrifos including a ban on aerial spraying, quarter-mile buffer zones, and limiting use to crop-pest combinations that lack alternatives.
- DPR and CDFA to convene a cross-sector working group to identify, evaluate, and recommend safer and more practical and sustainable alternative pest management solutions to chlorpyrifos.
- California Governor Gavin Newsom to propose \$5.7 million in new budget funding “to support the transition to safer, more sustainable alternatives.

DPR’s action must also be viewed in conjunction with various federal and state reviews and resulting litigation regarding chlorpyrifos’ continued registration and use. EPA, for example, is conducting its own registration review of chlorpyrifos and was ordered by the U.S. Court of Appeals for the Ninth Circuit to issue, within 90 days of April 19, 2019, order, its final decision regarding the continued registration of chlorpyrifos.

Other states are also taking action to ban chlorpyrifos, notably Hawaii, which enacted legislation in 2018 to ban the use of chlorpyrifos in Hawaii by **2022**; and New York, whose legislature approved bills in April 2019 to ban chlorpyrifos use in New York by **2021**.

Stakeholders should review all these issues closely, as these unprecedented decisions are likely to provide multiple opportunities to comment or otherwise participate to ensure that regulatory requirements are indeed being met for cancellation.

# EPA Releases Proposed Interim Registration Review Decision (PID) for Glyphosate acid and its Salts

By LisaLisa | Legislature considers Several Chemicals of Concern

The U.S. Environmental Protection Agency (EPA) has announced it has released its Proposed Interim Registration Review Decision (PID) for glyphosate acid and its various salt forms. 84 Fed. Reg. 19782. In the PID, EPA states that it “did not identify any human health risks from exposure to any use of glyphosate” but did identify “potential risk to mammals and birds” within the application area or areas near the application area and “potential risk to terrestrial and aquatic plants from off-site spray drift, consistent with glyphosate’s use as a herbicide.” Even with these potential risks, the PID states that “EPA concludes that the benefits outweigh the potential ecological risks when glyphosate is used according to label directions” and proposes certain risk mitigation strategies, including:

- “To reduce off-site spray drift to non-target organisms, the EPA is proposing certain spray drift management measures” with specific spray drift mitigation language to be included on all glyphosate product labels for products applied by liquid spray application;
- “To preserve glyphosate as a viable tool for growers and combat weed resistance, the EPA is ... proposing that herbicide resistance management language be added to all glyphosate labels” and to require measures “for the pesticide registrants to provide growers and users with detailed information and recommendations to slow the development and spread of herbicide-resistant weeds”;
- Inclusion on labels of a non-target organism advisory statement to alert users of potential impact to non-target organisms; and
- “EPA is also proposing certain labeling clean-up/consistency efforts to bring all glyphosate labels up to modern standards.”

EPA states that these measures were discussed with glyphosate registrants, who do not oppose the proposed risk mitigation measures outlined in the PID.

The public can submit comments on EPA’s proposed decision at [www.regulations.gov](http://www.regulations.gov) in Docket Number EPA-HQ-OPP-2009-0361. Public comments are due by **July 5, 2019**. In addition to the PID, EPA is also posting to the glyphosate docket EPA’s response to comments on glyphosate’s usage and benefits (dated April 18, 2019), EPA’s response to comments on the human health risk assessment (dated April 23, 2018), and EPA’s response to comments on the preliminary ecological risk assessment (dated November 21, 2018).

This PID was issued shortly after the Agency for Toxic Substances and Disease Registry’s announcement on April 8, 2019, of the opening of a docket on the draft toxicological profile for glyphosate. 84 Fed. Reg. 13922. ATSDR seeks comments and additional information or reports on studies about the health effects of glyphosate for review and potential inclusion in the profile. Comments are due by **July 8, 2019**.

EPA’s PID and related documents, along with ATSDR’s draft profile and the peer review which will follow, can be expected to become part of the larger debate about the potential risks of glyphosate. In 2017, EPA evaluated the carcinogenic risk of glyphosate and released it’s draft human health and ecological risk assessments.

EPA's PID is interesting not only for the conclusions EPA reached following its review of data submitted by registrants in response to a data call-in (DCI) and following the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel's (SAP) meeting to consider and review scientific issues related to EPA's evaluation of the carcinogenic potential of glyphosate, but for the issues that remain to be addressed. Notably, EPA states that it has not considered the petition filed on September 27, 2018, to reduce glyphosate's tolerance because the petition was filed after the comment period for the human health and ecological risk assessments closed. Instead, EPA plans to post the petition in the glyphosate docket and address the petition concurrently with the development of the Interim Registration Review Decision.

In addition, EPA has not in the PID or related documents addressed issues regarding its Endangered Species Act (ESA) assessment or its Endocrine Disruptor Screening Program (EDSP) activities. EPA states it intends to complete an assessment of risk to ESA-listed species prior to completing its final registration review decision for glyphosate, and that it also will make an EDSP determination under Federal Food, Drug, and Cosmetic Act (FFDCA) Section 408(p) before completing its registration review. EPA also notes that it continues to evaluate risks to pollinators and that if it determines "that additional pollinator exposure and effects data are necessary to help make a final registration review decision for glyphosate, then the EPA will issue a DCI to obtain these data." Although there are significant areas that remain to be resolved, EPA issued the PID "so that it can (1) move forward with aspects of the registration review case that are complete and (2) implement interim risk mitigation."

## **Congresswoman Dingell Introduces Legislation to ban PFAS Compounds in Food Containers and Cookware**

Congresswoman Debbie Dingell (D-MI) today introduced legislation to ban the use of toxic perfluorinated compounds (PFAS) in food containers and cookware.

Recent attention has focused on PFAS in groundwater and the environment. The hazardous substance is frequently used to greaseproof, waterproof, and give nonstick properties to food containers, cookware, and consumer products.

The Environmental Working Group found that as much as 40 percent of fast food wrappers and paper products tested positive for fluorine chemicals.

Peer-reviewed studies found that PFAS chemicals in food containers can contaminate food. PFAS chemicals have been linked to liver disease, thyroid dysfunction, and several forms of cancer.

“Everywhere you look, PFAS is threatening public health and contaminating our way of life,” said Dingell. “We already know the double cheeseburger and fries are not the most healthy meal, but no one suspects the dangerous chemicals seeping into your food from the wrapper or food containers. This important legislation ensures unsafe, hazardous chemicals are not allowed near the food we eat.”

The Keep Food Containers Safe from PFAS Act empowers the Food and Drug Administration (FDA) to deem PFAS substances in any food containers or cookware as unsafe. The bill gives the FDA until 2022 to enforce this ban. The text of the bill is available [here](#).

Dingell leads efforts in Congress to combat and address PFAS contamination. She led the introduction of The PFAS Action Act which would simply require the US Environmental Protection Agency (EPA) to list all PFAS chemicals, including PFOA, PFOS, GenX, and many other chemicals, as hazardous substances under the Superfund clean-up program within one year.

This week the Energy and Commerce Committee held a hearing on numerous bills, including Dingell’s PFAS Action Act, that addresses the threat to public health and the environment. One witness, Erik Olson – Senior Director for Health & Food at the Natural Resources Defense Council – testified on the need to ban PFAS in food containers and cookware.

Olson wrote in his prepared testimony, “While FDA has banned certain long-chain PFAS from food packaging in response to a petition from NRDC and our allies, other PFAS are essentially unregulated in food packaging and food contact substances. The legislation is needed to ban PFAS from these uses and from cosmetics and personal care products such as dental floss.”

# CAL EPA to Initiate Cancellation Proceedings for Chlorpyrifos

By LisaLisa | Legislature considers Several Chemicals of Concern

The California Environmental Protection Agency (CalEPA) has announced that the California Department of Pesticide Regulation (DPR) will be initiating cancellation proceedings of chlorpyrifos. In its press release, CalEPA states that the decision to commence cancellation proceedings “follows mounting evidence, including recent findings by the state’s independent Scientific Review Panel on Toxic Air Contaminants, that the pesticide causes serious health effects in children and other sensitive populations at lower levels of exposure than previously understood.”

DPR’s decision, following years of review in California of chlorpyrifos, is certain to garner significant controversy, comments, and, potentially, may erupt into litigation.

## **A Hazardous Substance is Assessed by DPR**

Chlorpyrifos first entered the comprehensive risk assessment process after being designated by DPR with a “high priority” status in 2011, and some of the DPR documents supporting the current action were issued in 2011.

In December 2015, DPR released a draft risk assessment for public comment. Since the risk assessment identified potential human exposure to spray drift (via inhalation or deposition) as a concern, DPR entered chlorpyrifos in its formal evaluation process to determine the scientific evidence for listing it as a pesticide Toxic Air Contaminant (TAC) (CA Food & Agric. Code §§ 14021-14027).

DPR’s assessments were intended to evaluate chlorpyrifos as a pesticide TAC as defined in California regulations (Title 3, Section 6864). The determination of a pesticide TAC is based on whether the air concentrations, either measured or modeled, exceed the reference concentration (RfC) divided by ten.

Under the applicable California statutory provisions, the designation of an active ingredient as a TAC is based on an evaluation that assesses the following:

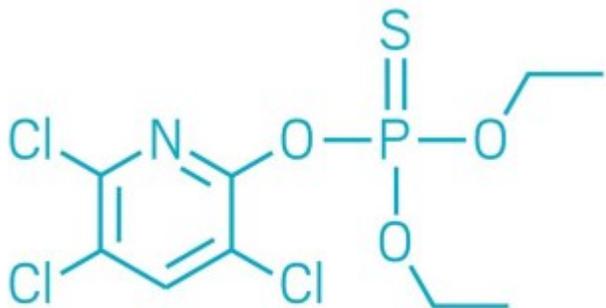
- The availability and quality of data on health effects;
- The potency, mode of action, and other relevant biological factors;
- An estimate of the levels of exposure that may cause or contribute to adverse health effects; and
- The range of risks to humans resulting from current or anticipated exposure (CA Food & Agric. Code § 14023(a)).

DPR published its draft revised report entitled “Evaluation of Chlorpyrifos as a Toxic Air Contaminant” in December 2017 and an addendum to that report in June 2018. DPR issued its final TAC evaluation in July 2018. The July 2018 evaluation concludes that “chlorpyrifos meets the criteria of TAC designation by using either the developmental neurotoxicity endpoint or the [acetylcholinesterase (AChE)] inhibition endpoint, even without the additional 10x uncertainty factor necessary to account for the fact that the developmental neurotoxicity effects occur at a lower level than AChE inhibition.”

DPR’s findings, public comments, and responses to those comments were reviewed by the Scientific Review Panel (SRP) on TACs. SRP’s findings on chlorpyrifos issued in August 2018 “unanimously concluded that the

report, with the revisions requested by the Panel, is based on sound scientific knowledge, and represents a balanced assessment of our current scientific understanding.”

In April 2019, chlorpyrifos was listed in California as a TAC, which triggered a DPR requirement to “develop control measures to protect the health of farmworkers



## Chlorpyrifos

*Chlorpyrifos is a organo-phosphate pesticide known to cause neurological damage to children.*

and others living and working near where the pesticide is used.” In its press release announcing the cancellation proceedings, CalEPA states that “DPR has determined, in consultation with CDFA, the Office of Environmental Health Hazard Assessment (OEHHA), and the California Air Resources Board (CARB), that sufficient additional control measures are not feasible.”

### Commentary

DPR’s announcement is the beginning of what the agency estimates could be a two-year cancellation proceeding, although the process may take even longer. Other actions proposed in conjunction with the cancellation proceeding include:

- DPR to consult with county agricultural commissioners and local air pollution control districts before filing for cancellation.
- DPR to support “aggressive” enforcement of existing restrictions on the use of chlorpyrifos including a ban on aerial spraying, quarter-mile buffer zones, and limiting use to crop-pest combinations that lack alternatives.
- DPR and CDFA to convene a cross-sector working group to identify, evaluate, and recommend safer and more practical and sustainable alternative pest management solutions to chlorpyrifos.
- California Governor Gavin Newsom to propose \$5.7 million in new budget funding “to support the transition to safer, more sustainable alternatives.

DPR’s action must also be viewed in conjunction with various federal and state reviews and resulting litigation regarding chlorpyrifos’ continued registration and use. EPA, for example, is conducting its own registration review of chlorpyrifos and was ordered by the U.S. Court of Appeals for the Ninth Circuit to issue, within 90 days of April 19, 2019, order, its final decision regarding the continued registration of chlorpyrifos.

Other states are also taking action to ban chlorpyrifos, notably Hawaii, which enacted legislation in 2018 to ban the use of chlorpyrifos in Hawaii by **2022**; and New York, whose legislature approved bills in April 2019 to ban chlorpyrifos use in New York by **2021**.

Stakeholders should review all these issues closely, as these unprecedented decisions are likely to provide multiple opportunities to comment or otherwise participate to ensure that regulatory requirements are indeed being met for cancellation.

# The California State Assembly Passed Bill that would Require Private party litigants to report Appeals to the California Attorney General

By LisaLisa | Legislature considers Several Chemicals of Concern

The California State Assembly recently passed (AB 1123) a bill that would require private party litigants in Proposition 65 enforcement actions to notify the California Attorney General (AG) of any appeals in such cases. Currently, the law only requires plaintiffs in a Prop 65 action to provide notice to the AG 60 days in advance of filing a complaint based on a notice of violation and upon settlement.

The purpose of the 60-day notice requirement provides the AG an opportunity to decide if the state should pursue the case, an option that occurs in a very small percentage of Prop 65 enforcement actions particularly those that involve high profile cases that involve important public policy issues.

An analysis of the bill prepared for the legislative counsel notes, “the Attorney General may be unaware of pending appeals that address issues of statewide concern with respect to the enforcement or interpretation of Prop 65.” The proposed legislation would correct that situation and afford the AG the opportunity to weigh in with the court regarding the state’s interest in any particularly significant issues raised by the case.



# California Legislature Moves forward chemicals in Products bills

By LisaLisa | Legislature considers Several Chemicals of Concern

California legislature moves forward chemicals in products bills

The \$70-billion cosmetics industry has prevailed over California consumers this month by succeeding to shelve a reform bill that would ban potentially toxic ingredients from makeup, hair products, and other personal care products.

The state Assembly's Environment, Safety and Toxic Materials Committee put delayed a scheduled vote on the Toxic-Free Cosmetics Act (AB 495) as it became abundantly clear to supporters they didn't have enough votes to move the bill to the Assembly Health Committee, which was set to take up and vote on the proposed legislation on April 23.

The Toxic-Free Cosmetics Act now probably will not resurface until the legislative season next year, where it would meet equally strong opposition from lobbyists intent on sending the proposed legislation to die.

Industry groups fiercely opposed the bill, by arguing that there isn't enough scientific evidence to merit banning certain chemicals, including asbestos and lead, from personal-care products. The California



Chamber of Commerce branded the bill a “jobs killer.”

“I’m in support of creating jobs in California,” Assemblyman Al Muratsuchi (D-Torrance), a co-sponsor of the bill, told me. “But that shouldn’t be at the expense of the health and well-being of women, men and children.”

Passage of the Toxic-Free Cosmetics Act “should have been a no-brainer,” he said.

Should have been. But industry interests once again trumped public interest.

The bill defines a “toxic 20” list of potentially harmful ingredients and prohibits their use in personal-care goods. Backers of the legislation hoped that, because of California’s size and market clout, enacting such a law would force cosmetics companies to eliminate the potentially dangerous ingredients nationwide.

It’s not a radical move. Dozens of other countries already have banned or restricted these ingredients from

cosmetics.

But the powerful cosmetics industry, which just the other day was handing out free samples to legislative staffers outside the Capitol, argued that this was another example of regulatory overreach.

Jay Ansell, vice president of the Personal Care Products Council, a trade group, said the bill “grossly oversimplifies the complex science behind the ingredients in cosmetics and personal-care products.”

Many of the ingredients cited in the legislation “have been agreed upon as safe when used under prescribed conditions in cosmetics and personal care products by independent experts around the globe,” he told me.

“Existing federal and international laws are put in place to keep our consumers safe,” Ansell said. “But laws like AB 495 would just contribute to the patchwork of state and local regulations that do not represent the best relevant and available science.”

Actually, no, proponents of the bill claim. Laws like AB 495 would take available science and give consumers the benefit of the doubt.

Susan Little, the senior advocate for California government affairs for the Environmental Working Group, said it’s foolish to keep products on store shelves if there’s even a remote chance they’re dangerous.

“We can instead choose to be protective and prevent harm,” she said.

Congress hasn’t updated regulations for the industry since it passed a federal cosmetics law in 1938.

“California has the fifth-largest economy in the world and is a leader in the makeup industry,” Little said. “If manufacturers have to comply with our state law, they would likely have to reformulate products sold throughout the United States.”

In December, California became the first state to ban the sale of animal-tested cosmetics. The Cruelty-Free Cosmetics Act, which takes effect in January, prevents the sale of any cosmetic product or ingredient that involved animal testing.

This aligns us with the European Union, Switzerland, India, Israel, Guatemala and other regions that have imposed similar bans.

The Toxic-Free Cosmetics Act would go even further by prohibiting use of potentially harmful ingredients.

Along with asbestos and lead, the bill says a cosmetic is “adulterated” if it contains dibutyl phthalate, diethylhexyl phthalate, formaldehyde, formaldehyde releasers, mercury, and related compounds, isobutylparaben, isopropyl paraben, butylparaben, propylparaben, toluene, triclosan, carbon black, or per- and polyfluoroalkyl substances (PFAS).

You kind of need a chemistry degree to make sense of much of that.

What’s important is many of these ingredients are commonly found in makeup, perfumes, lotions and hair products, often as preservatives to increase shelf life.

What’s no less important is that, according to many scientists, these substances can be hazardous to your

health.

Phthalates, for example, make nail polish stronger. And they can cause reproductive and developmental problems.

Parabens are included in many cosmetics and hair products, allowing them to last longer by inhibiting the growth of bacteria and mold. They're carcinogenic and can disrupt hormone function.

Formaldehyde serves as a hair straightener and nail hardener. It too can give you cancer.

Mercury and the pigment carbon black can be found in eye makeup. They've been linked to cancer and reproductive toxicity.

Although these ingredients have been banned from cosmetics in other countries, the U.S. Food and Drug Administration takes a more hands-off approach.

"With the exception of color additives and a few prohibited ingredients, a cosmetic manufacturer may use almost any raw material as a cosmetic ingredient and market the product without an approval from FDA," the agency says.

That's why hopes were so high for the California legislation. We can do right if the federal government can't, or won't.

But not yet, apparently.

Emily Rusch, executive director of the California Public Interest Research Group, said Tuesday's committee hearing that she's disappointed by the industry's win but not giving up.

"Most people use multiple personal-care products every day — makeup, shampoo, deodorant," she said. "We need to keep pushing manufacturers to make them safer. They clearly aren't going to do it on their own."

My advice: Become an avid reader of ingredients.

With a little searching, you can find hair products that don't contain parabens or eye makeup without carbon black. And alternatives don't necessarily cost more.

Walgreens, Target, CVS, and Walmart are among major retailers that already have committed to getting safer cosmetic products onto their shelves.

The industry doesn't seem to care if it exposes people to danger — and obviously has the political muscle to keep lawmakers at bay.

# OEHHA Proposes three new Maximum Allowable Dose Levels for Chlorpyrifos

By LisaLisa | Legislature considers Several Chemicals of Concern

The Office of Environmental Health Hazard Assessment (OEHHA) today announced it proposes to establish three Proposition 65<sup>[1]</sup> Maximum Allowable Dose Levels (MADLs) for exposure to chlorpyrifos by amending Section 25805(b) of Title 27 of the California Code of Regulations. The proposed oral and inhalation MADLs for chlorpyrifos are both 0.58 micrograms per day, and the proposed dermal MADL is 7.2 micrograms per day.

## PUBLIC PROCEEDINGS

The agency has opened a public comment period for the proposed MADL through the close of business on July 8, 2019

Any written comments concerning this proposed action, regardless of the form or method of transmission, must be received by OEHHA by **July 8, 2019**, 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.

We encourage you to submit comments in electronic form, rather than in paper form. Comments may be submitted electronically through our website at <https://oehha.ca.gov/comments>. Hard-copy comments may be mailed, faxed, or delivered in person to the appropriate address below.

**Mailing Address:** Ms. Monet Vela

Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS-2311F  
Sacramento, California 95812-4010

Fax: (916) 323-2517  
Street Address: 1001 I Street  
Sacramento, California 95814

A public hearing on this proposed regulatory amendment will be scheduled on request. To request a hearing, send an e-mail to Monet Vela at [monet.vela@oehha.ca.gov](mailto:monet.vela@oehha.ca.gov) or to the address listed above by no later than **June 24, 2019**, which is 15 days before the close of the comment period. OEHHA will send a notice of the hearing to the requester and interested parties on its Proposition 65 email list for regulatory public hearings. The notice will also be posted on the OEHHA web site at least ten days before the public hearing date. The notice will provide the date, time, and location of the hearing.

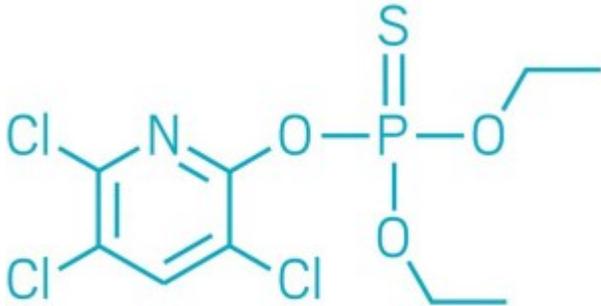
## CONTACT

Please, direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela, in writing at the address given above, via e-mail to [monet.vela@oehha.ca.gov](mailto:monet.vela@oehha.ca.gov) or (916) 323-2517. Mario Fernandez is the back-up contact. He can be reached at (916) 323-2635 or [mario.fernandez@oehha.ca.gov](mailto:mario.fernandez@oehha.ca.gov).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

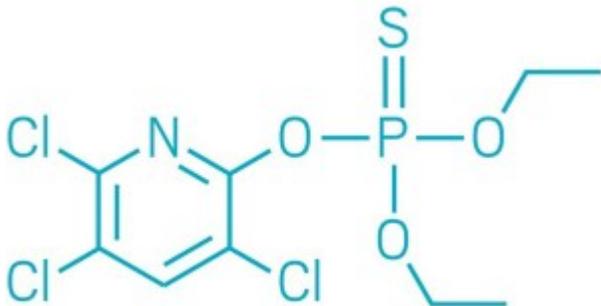
Proposition 65 prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the state to cause cancer or reproductive toxicity, without first giving clear and reasonable warning to such individual<sup>[2]</sup>. The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into the land where such chemical passes or probably will pass into any source of drinking water<sup>[3]</sup>. Warnings are not required and the discharge prohibition does not apply when exposures are insignificant.<sup>[4]</sup> The MADLs provide guidance for determining when this is the case.<sup>[5]</sup>

Details on the basis for the proposed MADLs for chlorpyrifos are provided in the Initial Statement of Reasons for this regulatory amendment, which is available on request from Monet Vela and is posted on the OEHHA web site at [www.oehha.c](http://www.oehha.c)



## Chlorpyrifos

*Chlorpyrifos is a organo phosphate pesticide known to cause neurological damage to children.*



## Chlorpyrifos

*Chlorpyrifos is a organo phosphate pesticide known to cause neurological damage to children.*

[a.gov](http://a.gov).

This proposed regulation sets forth three MADLs for adoption into Section 25805 that were derived using scientific methods outlined in Section 25803.

The proposed regulation would adopt the following MADLs for exposure to chlorpyrifos, by amending Section 25805 as follows (addition in underline):

(b) Chemical Name	Level (Micrograms/day)
-------------------	------------------------

Relevant studies that provide information on the toxicity of chlorpyrifos were identified in the materials that formed the basis for listing chlorpyrifos as causing reproductive toxicity with the developmental endpoint. A comprehensive literature search found one additional relevant study since the Proposition 65 listing of chlorpyrifos. All of the relevant studies were reviewed, and the most sensitive study deemed to be of sufficient quality was selected to provide the basis for the MADLs.

#### Anticipated Benefits of the Proposed Regulation

By providing these MADLs, this regulatory proposal may encourage businesses to change their practices in ways that reduce bystander, worker and environmental exposures to chlorpyrifos. In addition, some businesses may not be able to afford the expenses of establishing MADLs and therefore may face litigation for a failure to warn or for a prohibited discharge of the listed chemical. Adopting this regulation will save these businesses those expenses and may reduce litigation costs. Furthermore, by providing safe harbor levels, this regulatory proposal 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 health benefit to Californians.

Chlorpyrifos is a highly toxic reproductive and developmental toxicant used as a pesticide in several agricultural applications. It was listed as a reproductive toxicant under Proposition 65 on November 29, 2017.

The widely pesticide is widely used on fruit, vegetable, and nut crops. It is the focus of two California regulatory actions, a [pending state bill](#), SB 458 *This chapter shall be known, and may be cited, as the Protect Children from Brain-Damaging Chlorpyrifos Act of 2019.* and a [federal](#) appeals [court order](#) for the U.S. Environmental Protection Agency to decide whether to ban chlorpyrifos.

In addition, Sen. Tom Udall (D-N.M.) has sponsored federal legislation to ban the chemical.

#### No Inconsistency or Incompatibility with Existing State Regulations

OEHHA has conducted an evaluation of whether there are any other regulations on this matter and has found that these are the only regulations dealing with Proposition 65 Maximum Allowable Dose Levels for chlorpyrifos. 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 or 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**

This regulatory proposal will not affect the creation or elimination of jobs within the State of California. 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 reproductive harm. The law also prohibits the discharge of listed chemicals into sources of drinking water.

# New Prop 65 Safe Harbor Warnings for Residential Rental Properties set to go into effect this summer

By LisaLisa | Legislature considers Several Chemicals of Concern

**By William M. Sloan, Tyler G. Welti, and Gregory S. Berlin**

On March 21, 2019, the Office of Environmental Health Hazard Assessment (OEHHA) adopted amendments to California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (known as Proposition 65 or Prop 65) that add sections on safe harbor warnings for exposures to listed chemicals at residential rental properties. The purpose of the new regulations is to provide more specificity regarding the content of safe harbor warnings for exposures to listed chemicals that may occur at residential rental properties, and the corresponding methods for providing warnings for those exposures. The new regulations become effective on July 1, 2019.

## Prop 65 Background

Under Prop 65 and the implementing regulations, businesses with 10 or more employees must provide “clear and reasonable” warnings to Californians before exposing them to a chemical listed by OEHHA as a carcinogen or reproductive toxicant (more than 900 chemicals are now on the list). The regulations establish criteria for what OEHHA considers to be a “clear and reasonable” warning, including specific language that, if used, is deemed compliant with the regulations (known as “safe harbor” warning language). Compliance with safe harbor warnings enables businesses to avoid litigation concerning the sufficiency of their warnings. In 2016, OEHHA adopted new Prop 65 safe harbor warning regulations that became effective on August 30, 2018. The new regulations include generic safe harbor warning language, as well as safe harbor warnings for specific businesses, such as hotels, restaurants, and dentists. The California Apartment Association requested that OEHHA include in the new regulations a “tailored warning” for exposures to chemicals that may occur at apartments. However, OEHHA did not include a tailored warning in the rulemaking at that time but agreed to consider the possibility of a future rulemaking for residential rental properties.

## OEHHA Adopts Safe Harbor Warnings for Residential Rental Properties

Over the years, the apartment industry has been the subject of numerous 60-day notice of violation letters. The industry has also long expressed concern about what a clear and reasonable warning would entail for the types of exposures they expect to encounter within their business operations. Given these concerns, in 2016, the apartment industry asked OEHHA to clarify the acceptable warning method and content to use to comply with Prop 65 warning requirements and requested that OEHHA adopt a specifically



tailored warning regulation for the industry.

In response to these concerns, on February 23, 2018, OEHHA proposed new tailored safe harbor warnings for residential rental properties. OEHHA concluded that tailored warnings for residential rental properties were necessary to reduce the number of vague or over-inclusive warnings being given for exposures that may or may not occur at rental properties at a level that requires a warning. In addition, OEHHA concluded the regulations were necessary to make warnings clearer and more informative for the public, and to provide certainty for landlords that must comply with Prop 65 warning requirements.

OEHHA subsequently received three comment letters in response to its proposed rulemaking from the California Apartment Association, the California Association of Realtors, and one individual. OEHHA then modified the proposed regulation to increase clarity and again invited public comments. OEHHA made no further changes to the proposed regulation and adopted the amendments on March 21, 2019.

#### Methods for Transmitting Warnings

The new regulation applies to “residential rental properties,” which are defined to include “an apartment, house, duplex, triplex, condominium or other dwellings that a landlord rents to a tenant to live in, including common areas.” See 27 C.C.R. § 25607.34(a). It does not apply to “hotels,” which are covered under 27 C.C.R. §§ 25607.32, 25607.33.

The regulation requires warnings to be provided to each known adult occupant of the rental property at the time of renting, leasing, or “hiring out” the property. Warnings may be transmitted in hardcopy or electronic format by any of the following means: (1) delivering a letter to each known adult tenant; (2) sending an electronic message to each known adult tenant’s email address; or (3) including the warning in a lease or rental agreement. The warning must be renewed each year by one of these same methods.

If the lease, rental agreement, renewal, or any other disclosures or required notices from the landlord to the tenant are provided to the tenant in any language other than English, the warning must also be provided in those languages. For instance, many cities in California have standard notices prepared by the municipality that must be distributed by landlords or posted on residential rental properties that explain tenant rights under local ordinances. Many cities require that these notices are displayed in various languages, and, therefore, any Prop 65 warning would have to be displayed in that language as well.

#### Content of Warnings

The new regulation also requires the warnings to have certain content, including: (1) a warning symbol consisting of a triangle with an exclamation point; (2) the name of at least one chemical that is a carcinogen and/or reproductive toxicant that is present at the property; and (3) the URL for the new OEHHA Prop 65 warning website. Below is an example of the full warning statement for exposures to both listed carcinogens and reproductive toxicants:

WARNING: {Name of one or more exposure source(s)} on this property can expose you to chemicals including {name of one or more chemicals} which is {are} known to the State of California to cause cancer and {name of one or more chemicals} which is {are} known to the State of California to cause birth defects or other reproductive harm. Talk to you a landlord or the building owner about how and when you could be exposed to these chemicals in your building. For additional information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

There are also modifications to the language for properties that contain either a carcinogen or a reproductive toxicant (but not both), and for properties that contain chemicals listed as both a carcinogen and a reproductive toxicant.

#### Potential Chemicals of Concern in Residential Rental Properties

Exposures to listed chemicals at residential rental properties can occur because of the installation, presence, maintenance, or age of certain building materials, components, or fixtures, and activities of residents and their guests (such as smoking tobacco or cannabis or driving motor vehicles). Of course, exposure scenarios will vary among rental properties. Each property, area of the property, and even unit may have unique features and chemicals that could result in exposures that trigger Prop 65’s warning requirements.

Examples of Prop 65-listed chemicals that tenants may be exposed to include:

- Formaldehyde in some building materials, including some insulation, composite-wood cabinetry, and wall and flooring materials;
- Carbon monoxide from any fireplaces or unvented gas space heaters;

- Lead from imported pre-1997 vinyl mini-blinds, or plumbing materials or paint chips in older buildings;
- Crystalline silica in certain paints and painted surfaces;
- Asbestos in ceiling materials, if disturbed, in older buildings; and
- Some pesticides that are on the Prop 65 list, for indoor or outdoor use.

Other chemical exposures that can occur at apartments or other residential rental properties include (1) carbon monoxide and motor vehicle exhaust in enclosed parking structures; and (2) tobacco smoke and nicotine in designated smoking areas.

In addition, construction materials used in walls, floors, ceilings, and outside cladding contain chemicals, such as formaldehyde resin, asbestos, arsenic, cadmium, and creosote, which are released as gases or vapors during normal degradation or deterioration, and as dust or particulate when disturbed during repairs, maintenance, or renovation, all of which can lead to exposures.

Should You Display a Safe Harbor Warning?

Landlords are not required to use OEHHA's safe harbor warnings. However, declining to do so poses a risk of enforcement action, and landlords will need to defend their warnings as being "clear and reasonable."

Landlords that fail to provide adequate warnings are subject to penalties as high as \$2,500 per violation per day.

*Venable San Francisco-based Environmental partner Bill Sloan, who advises clients in the development, water resources, air quality, climate change, energy, and endangered species issues.*

*Venable San Francisco-based counsel Tyler G. Welti is a former trial attorney with the U.S. Department of Justice's Environment & Natural Resources Division, and has been active in handling project development issues involving a federal nexus, including transportation projects, renewable and conventional energy developments, timber harvests, and other infrastructure and natural resource development projects.*

Gregory Berlin is an associate in Venable's Environmental practice.

# New Prop 65 Safe Harbor Warnings for Residential Rental Properties set to go into effect this summer

By LisaLisa | Legislature considers Several Chemicals of Concern

**By William M. Sloan, Tyler G. Welti, and Gregory S. Berlin**

On March 21, 2019, the Office of Environmental Health Hazard Assessment (OEHHA) adopted amendments to California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (known as Proposition 65 or Prop 65) that add sections on safe harbor warnings for exposures to listed chemicals at residential rental properties. The purpose of the new regulations is to provide more specificity regarding the content of safe harbor warnings for exposures to listed chemicals that may occur at residential rental properties, and the corresponding methods for providing warnings for those exposures. The new regulations become effective on July 1, 2019.

## Prop 65 Background

Under Prop 65 and the implementing regulations, businesses with 10 or more employees must provide “clear and reasonable” warnings to Californians before exposing them to a chemical listed by OEHHA as a carcinogen or reproductive toxicant (more than 900 chemicals are now on the list). The regulations establish criteria for what OEHHA considers to be a “clear and reasonable” warning, including specific language that, if used, is deemed compliant with the regulations (known as “safe harbor” warning language). Compliance with safe harbor warnings enables businesses to avoid litigation concerning the sufficiency of their warnings. In 2016, OEHAA adopted new Prop 65 safe harbor warning regulations that became effective on August 30, 2018. The new regulations include generic safe harbor warning language, as well as safe harbor warnings for specific businesses, such as hotels, restaurants, and dentists. The California Apartment Association requested that OEHHA include in the new regulations a “tailored warning” for exposures to chemicals that may occur at apartments. However, OEHHA did not include a tailored warning in the rulemaking at that time but agreed to consider the possibility of a future rulemaking for residential rental properties.

## OEHHA Adopts Safe Harbor Warnings for Residential Rental Properties

Over the years, the apartment industry has been the subject of numerous 60-day notice of violation letters. The industry has also long expressed concern about what a clear and reasonable warning would entail for the types of exposures they expect to encounter within their business operations. Given these concerns, in 2016, the apartment industry asked OEHHA to clarify the acceptable warning method and content to use to comply with Prop 65 warning requirements and requested that OEHHA adopt a specifically



tailored warning regulation for the industry.

In response to these concerns, on February 23, 2018, OEHHA proposed new tailored safe harbor warnings for residential rental properties. OEHHA concluded that tailored warnings for residential rental properties were necessary to reduce the number of vague or over-inclusive warnings being given for exposures that may or may not occur at rental properties at a level that requires a warning. In addition, OEHHA concluded the regulations were necessary to make warnings clearer and more informative for the public, and to provide certainty for landlords that must comply with Prop 65 warning requirements.

OEHHA subsequently received three comment letters in response to its proposed rulemaking from the California Apartment Association, the California Association of Realtors, and one individual. OEHHA then modified the proposed regulation to increase clarity and again invited public comments. OEHHA made no further changes to the proposed regulation and adopted the amendments on March 21, 2019.

#### Methods for Transmitting Warnings

The new regulation applies to “residential rental properties,” which are defined to include “an apartment, house, duplex, triplex, condominium or other dwellings that a landlord rents to a tenant to live in, including common areas.” See 27 C.C.R. § 25607.34(a). It does not apply to “hotels,” which are covered under 27 C.C.R. §§ 25607.32, 25607.33.

The regulation requires warnings to be provided to each known adult occupant of the rental property at the time of renting, leasing, or “hiring out” the property. Warnings may be transmitted in hardcopy or electronic format by any of the following means: (1) delivering a letter to each known adult tenant; (2) sending an electronic message to each known adult tenant’s email address; or (3) including the warning in a lease or rental agreement. The warning must be renewed each year by one of these same methods.

If the lease, rental agreement, renewal, or any other disclosures or required notices from the landlord to the tenant are provided to the tenant in any language other than English, the warning must also be provided in those languages. For instance, many cities in California have standard notices prepared by the municipality that must be distributed by landlords or posted on residential rental properties that explain tenant rights under local ordinances. Many cities require that these notices are displayed in various languages, and, therefore, any Prop 65 warning would have to be displayed in that language as well.

#### Content of Warnings

The new regulation also requires the warnings to have certain content, including: (1) a warning symbol consisting of a triangle with an exclamation point; (2) the name of at least one chemical that is a carcinogen and/or reproductive toxicant that is present at the property; and (3) the URL for the new OEHHA Prop 65 warning website. Below is an example of the full warning statement for exposures to both listed carcinogens and reproductive toxicants:

WARNING: {Name of one or more exposure source(s)} on this property can expose you to chemicals including {name of one or more chemicals} which is {are} known to the State of California to cause cancer and {name of one or more chemicals} which is {are} known to the State of California to cause birth defects or other reproductive harm. Talk to you a landlord or the building owner about how and when you could be exposed to these chemicals in your building. For additional information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

There are also modifications to the language for properties that contain either a carcinogen or a reproductive toxicant (but not both), and for properties that contain chemicals listed as both a carcinogen and a reproductive toxicant.

#### Potential Chemicals of Concern in Residential Rental Properties

Exposures to listed chemicals at residential rental properties can occur because of the installation, presence, maintenance, or age of certain building materials, components, or fixtures, and activities of residents and their guests (such as smoking tobacco or cannabis or driving motor vehicles). Of course, exposure scenarios will vary among rental properties. Each property, area of the property, and even unit may have unique features and chemicals that could result in exposures that trigger Prop 65’s warning requirements.

Examples of Prop 65-listed chemicals that tenants may be exposed to include:

- Formaldehyde in some building materials, including some insulation, composite-wood cabinetry, and wall and flooring materials;
- Carbon monoxide from any fireplaces or unvented gas space heaters;

- Lead from imported pre-1997 vinyl mini-blinds, or plumbing materials or paint chips in older buildings;
- Crystalline silica in certain paints and painted surfaces;
- Asbestos in ceiling materials, if disturbed, in older buildings; and
- Some pesticides that are on the Prop 65 list, for indoor or outdoor use.

Other chemical exposures that can occur at apartments or other residential rental properties include (1) carbon monoxide and motor vehicle exhaust in enclosed parking structures; and (2) tobacco smoke and nicotine in designated smoking areas.

In addition, construction materials used in walls, floors, ceilings, and outside cladding contain chemicals, such as formaldehyde resin, asbestos, arsenic, cadmium, and creosote, which are released as gases or vapors during normal degradation or deterioration, and as dust or particulate when disturbed during repairs, maintenance, or renovation, all of which can lead to exposures.

Should You Display a Safe Harbor Warning?

Landlords are not required to use OEHHA's safe harbor warnings. However, declining to do so poses a risk of enforcement action, and landlords will need to defend their warnings as being "clear and reasonable."

Landlords that fail to provide adequate warnings are subject to penalties as high as \$2,500 per violation per day.

*Venable San Francisco-based Environmental partner Bill Sloan, who advises clients in the development, water resources, air quality, climate change, energy, and endangered species issues.*

*Venable San Francisco-based counsel Tyler G. Welti is a former trial attorney with the U.S. Department of Justice's Environment & Natural Resources Division, and has been active in handling project development issues involving a federal nexus, including transportation projects, renewable and conventional energy developments, timber harvests, and other infrastructure and natural resource development projects.*

Gregory Berlin is an associate in Venable's Environmental practice.