

PROPOSED AMENDMENTS TO
TITLE 11, DIVISION 4, CHAPTER 1
DEPARTMENT OF JUSTICE

(Notice issued February 4, 2016)

**NOTICE OF MODIFICATION OF TEXT OF PROPOSED REGULATION
AND 15-DAY PUBLIC COMMENT PERIOD**

Through this rulemaking, the Department of Justice (DOJ), also known as the Office of the Attorney General, proposes to amend parts of the regulations set forth in California Code of Regulations, title 11, sections 3000 through 3008 and sections 3201 through 3204, and to renumber section 3204 as section 3205. The amendments would affect settlement terms, penalty amounts, and attorney's fees in civil actions filed by private persons in the public interest pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health and Safety Code §§ 25249.5-25249.13; § 25180.7; and § 25192. A Notice of Proposed Rulemaking was issued on September 25, 2016, and published in the California Regulatory Notice Register (Register 2016, No. 39-Z). Written comments from the public were received during a 45-day comment period that closed on November 9, 2016, and there was a public hearing in Oakland, California, on November 9, 2016.

Pursuant to Government Code section 11346.8, subdivision (c), and California Code of Regulations, title 1, section 44, DOJ hereby provides notice of modifications to the proposed amendments and will accept written comments regarding the changes for 15 days following issuance of this notice. A copy of the modified text of the proposed regulations, with the new modifications shaded and double underlined, is attached to this notice. The modifications, identified below by their respective section and subdivision numbers to title 11 of the California Code of Regulations, are as follows:

§ 3001(g): A definition of "Private Enforcer" has been added since the term is used in the regulations but was not defined.

§ 3201(b)(2): The subdivision has been modified in response to comments that compliance with the original proposal would be impractical and deter settlement. The last sentence was added to clarify what evidence is needed where a settlement requires changes in air emissions or other changes in the defendant's practices, besides reformulation of one or more listed chemicals.

§ 3201(e): The subdivision has been modified to clarify that the documentation requirement applies only to investigation costs that a private enforcer seeks to recoup in the settlement.

§ 3204(b)(6)(B): The original proposed amendment defined "economic interest" by incorporating through reference regulations adopted by the Fair Political Practices Commission ("FPPC") to implement the Fair Political Practices Act. The modification replaces the cross-reference with a definition of "economic interest" that is based on the FPPC's regulations but adapted to apply in the present context.

Any interested person, or her or his authorized representative, may submit written comments regarding the modifications. **All written comments must be submitted to DOJ by mail, fax, courier, e-mail, or hand-delivery by no later than 5:00 p.m. on Friday, February 19, 2016.** You are encouraged to submit comments in electronic form, rather than in paper form.

Comments should be addressed to:

Trish Gerken
Senior Legal Analyst
Office of the Attorney General
2550 Mariposa Mall, Rm. 5090
Fresno, CA 93721
Fax: (559) 488-7387
E-mail: Trish.Gerken@doj.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Documents related to this rulemaking, including copies of public comments received and a the transcript of the public hearing, are available on the DOJ website at:
<https://oag.ca.gov/prop65/regs2015>.

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