



DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY & HEALTH
LEGAL UNIT
1515 CLAY STREET, SUITE 1901
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June 8, 2021

NOTIFICATION OF PROPOSED EMERGENCY REGULATORY ACTION

Subject: Definition of Normal Consumption

The Department of Industrial Relations, Division of Occupational Safety and Health (“the Division”) is proposing to adopt an emergency regulation, Section 340.7 of Title 8 of the California Code of Regulations, to define the term “normal consumption” used in Labor Code section 6403.3.

There is not sufficient time for a definition of “normal consumption” to be codified through a non-emergency regulation adopted in accordance with the provisions of California Government Code section 11346 et seq. Labor Code section 6403.3 was signed into law on September 29, 2020 and its stockpile requirement was effective as of April 1, 2021. Since shortly after AB 2537 was signed into law, the Division has been working with affected stakeholders to determine the types of consumption-related data available to employers and the suitability and feasibility of different procedures to calculate normal consumption. These discussions involved multiple meetings over the course of multiple months. Given the amount of time required to conduct these meetings, as well as the time that would be necessary to complete the minimal procedural requirements set forth by the Administrative Procedures Act for a regular rulemaking, the regular rulemaking process would be insufficient to timely provide a definition of “normal consumption.”

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulations action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, the Division will proceed with a regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

Title 1 of the California Code of Regulations, Section 55(b) sets forth the requirements for submitting comments to OAL on this Proposed Emergency Rulemaking. Comments must be in writing, must

identify the topic of this rulemaking (i.e., “8 C.C.R. § 340.7 Definition of Normal Consumption”), and must be submitted directly to OAL as follows:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339
Fax: (916) 323-6826
E-mail: staff@oal.ca.gov

In addition, a copy of the comments must be transmitted to the Division’s contact person for this rulemaking. To ensure prompt receipt and consideration of your comments, the Division requests that you transmit a copy either by e-mail to lbrokaw@dir.ca.gov (please put “Definition of Normal Consumption” in the subject line), by facsimile to the attention of Lisa Brokaw at (510) 286-7039, or by USPS directed to:

Lisa Brokaw, Esq.
Division of Occupational Safety and Health Legal Unit
1515 Clay Street, Suite 1901
Oakland, CA 94612

If OAL approves this Proposed Emergency Rulemaking, OAL will file the regulation with the Secretary of State, and the Proposed Emergency Rulemaking will become effective for one hundred and eighty (180) days. Within the 180-day effective period, the Division will proceed with a regular rulemaking action, including a public comment period. The Proposed Emergency Rulemaking will remain in effect during this regular rulemaking action.

Attached to this notice is the specific regulatory language of the Division’s proposed emergency action and Finding of Emergency.

You may review the proposed regulatory language and Finding of Emergency on the Division’s website at the following address: [Definition of Normal Consumption](#)

If you have any questions regarding this proposed emergency action, please contact Lisa Brokaw at lbrokaw@dir.ca.gov or (510) 286-6958.