

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATION

TITLE 27, CALIFORNIA CODE OF REGULATIONS

PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6

PROPOSITION 65 CLEAR AND REASONABLE WARNINGS

March 25, 2016

As required by Government Code section 11346.8(c), and Title 1, section 44 of the California Code of Regulations, the Office of Environmental Health Hazard Assessment (OEHHA) is providing notice of changes to the proposed regulation to repeal and add a new Article 6 to Title 27 of the California Code of Regulations.

This proposed regulation was originally the subject of a Notice of Proposed Rulemaking published on November 27, 2015, in the California Regulatory Notice Register (Register No Z-2015-1117-11), which initiated a public comment period. Forty-five written comments from the public were received during the comment period that ended January 25, 2016. In addition, OEHHA heard comments at a public hearing on the proposed regulation held on January 13, 2016.

After careful consideration of the comments, OEHHA has modified the text of the proposed regulation as follows:

- Section 25600(b) was modified to clarify that a warning that complies with Article 6 that is provided before the two-year effective date will be deemed to be clear and reasonable.
- Section 25600(c) was revised to clarify that a person may request the adoption of a warning method or content for a “specific product, chemical or area exposure warning” rather than a specific consumer product.
- Section 25600(d) was revised and moved from the general provisions of Subarticle 1 to the safe harbor provisions of Subarticle 2, Section 25601(f) based on stakeholder comments.
- Section 25600(e) [formerly numbered as (f)] was modified by striking the phrase “for a consumer product or environmental warning” in response to stakeholder comments. The word “warning” was added before “method” for clarity.
- Section 25600.1 was revised as follows:
 - In the definition of “affected area”, “listed” was added before “chemical” for clarity and the phrase “known to the state to cause cancer or birth defects or other reproductive harm” was removed as being unessential and redundant. The term “is” was changed to “can occur” for consistency with rest of the regulation.
 - The phrase “producers, packagers, importers” was added to the definition of “authorized agent” for internal consistency; this change was made throughout the regulation.
 - The term “consumer information” was added as a defined term for clarity.

- The term “consumer product” was added as a defined term for clarity.
- The existing definition for “consumer product exposure” was moved and renumbered for purposes of alphabetization.
- The phrase “or otherwise provides” was added to cover the distribution of consumer products to consumers. The phrase “including foods” was removed as redundant in light of the definition of consumer products which already incorporates foods. The term “purchasers” was changed to “consumers” and “internet” was capitalized in the definition of “retail seller;” these changes were made throughout the regulation for internal consistency.
- The subsections were renumbered to reflect the addition of new definitions
- In Section 25600.2(b) “supplier” was added for consistency, and “section” was changed to “article” for clarity.
- Section 25600.2(b)(3) was modified to remove the offer to provide warning materials at no charge. Based on comments received, OEHHA believes that the manufacturer, producer, packager, importer, supplier or distributor should provide the warning materials to the retailer unless the parties agree otherwise pursuant to subsection (i) [formerly (h)]. The phrase “and warning language for products sold on the Internet” was added to clarify the responsibility to provide warning language for consumer products sold online.
- Section 25600.2(b)(4) was modified to include “producer, packager, importer, supplier or distributor.” The subsection was also revised to clarify that confirmation of receipt of the notice must be provided “electronically or in writing,” in response to stakeholder requests for the ability to provide electronic confirmation of receipt.
- Section 25600.2(b)(5) was renumbered to subsection (c) and subdivided into two paragraphs for clarity. Subparagraph (c)(1) clarifies that the renewed notice must be confirmed electronically or in writing within six months during the first year after the effective date of the regulation and annually thereafter. The term “new” was stricken in subparagraph (c)(2) and replaced with the phrase “different or additional” added to clarify when an additional notice is required under the subsection.
- Section 25600.2(d) [formerly numbered as (c)] was modified to clarify that the retail seller is responsible for posting and maintaining warning materials for products sold over the Internet and a reference was added to the new subsection (c).
- Section 25600.2(e)(2) [formerly numbered as (d)(2)] was modified to remove “and intentionally” and to add “knowingly” before “caused...” for alignment with the relevant statutory framework.
- In Section 25600.2(e)(3) [formerly numbered as (d)(3)], a reference was added to the new subsection (c) for clarity.
- Section 25600.2(e)(4) [formerly numbered as (d)(4)] was modified to remove the offer to provide warning materials consistent with the change in 25600.2(b)(3), and a reference was added to the new subsection (c) and “or displaying” was added for clarity.
- In Section 25600.2(e)(5) [formerly numbered as (d)(5)] “supplier” was added for consistency.

- Section 25600.2(f) [formerly numbered as (e)] was modified to simplify the explanation of the notice requirement, and to allow a business five (5) business days, rather than two (2) in response to stakeholder requests for an extension of the time period in which a retail seller is deemed to have “actual knowledge” of an exposure.
- Section 25600.2(g) [formerly numbered as (f)] was modified to clarify that a retail seller must “promptly” provide the requested information; this change was made to require action on behalf of the retail seller in response to the request. The term “supplier” was also added for consistency.
- Section 25600.2(g)(2) [formerly numbered as (f)(2)] was modified to clarify that it is a “consumer” product that causes an exposure.
- Section 25600.2(i) [formerly numbered as (h)] was modified to clarify that provided that the consumer receives a compliant warning prior to exposure, the responsible parties, may enter into a written agreement with the retail seller that allocates responsibility differently. “Supplier” was added for consistency. Also a reference to subsection (e) was added. The phrase “to the extent that the warning provided to the purchaser of the product meets the requirements of Section 25249.6 of the Act” was removed.
- Section 25601(c) was modified to clarify that any one of the listed chemicals for which the person has determined a warning is required can be included in the warning and that if the warning is for more than one endpoint, then one or more chemicals for each endpoint must be included in the warning unless the named chemical is listed for both endpoints. The phrase “to the extent an exposure to that chemical is at a level requiring a warning” was also removed in response to stakeholder comments.
- A new subsection (d) was added to Section 25601 to clarify how a consumer product exposure warning must be provided. This provision was included in Section 25601 to provide safe harbor guidance regarding consumer product exposure warnings.
- A new subsection (e) was added to Section 25601 to clarify how an environmental exposure warning must be provided. This provision was included in Section 25601 to provide guidance regarding safe harbor environmental product exposure warnings.
- New subsection (f) to Section 25601 was moved from Section 25600(d) and modified to clarify the types of supplemental information that may be provided in a warning.
- Section 25602(a)(1) was modified to remove reference to type size consistent with the addition of the new Section 25601(d), and “posted sign” was added.
- Sections 25602(a)(3) was modified to remove reference to type size consistent with the addition of the new Section 25601(d).
- Section 25602(b) was modified to clarify that for products sold on the Internet the warning must either be included on the product display page or provided as a clearly marked hyperlink on the product display page or otherwise displayed “prior to completing the purchase”. The subsection was also modified to remove reference to type size consistent with the addition of the new Section 25601(d). Language was also added to clarify that if the product has an on product label, the website warning can use the same warning content.

- Section 25602(c) was modified to remove the reference to type size consistent with the addition of the new Section 25601(d). In response to stakeholder comments, language was also added to clarify that if the product has an on product label, the catalog warning can use the same warning content.
- Section 25603(a)(2)(A) and (B) were modified for clarity and readability.
- Section 25603(a)(2)(C) was modified to clarify situations in which a warning is required for multiple chemicals that each cause a different toxicity endpoint.
- Section 25603(a)(2)(D) was added to clarify the situation in which a warning is required for a chemical that causes both toxicity endpoints.
- In response to stakeholder comments concerning adequacy of the safe harbor environmental exposure provisions, Section 25604 was modified to more clearly state the requirements for transmitting an environmental exposure warning and clarifying that for indoor environments or outdoor spaces with clearly defined entrances, the specified warning method in subsection (a)(1) must be used.
- Sections 25605(a)(3), (a)(4) and (a)(5) were modified to clarify that a description of the exposure source should be included in the warning.
- Section 25605(a)(6) was added to clarify the situation in which a warning is required for a listed chemical that causes both toxicity endpoints.
- Section 25606 was modified for clarity and readability. The term “warning” was added to clarify the type of information related to occupational exposures meet the warning requirements of Article 6.
- Section 25607 was modified to clarify that a specific tailored warning must be used unless the conditions of subsection (b) apply.
- Section 25607.1(a), Section 25607.2(a)(1), Section 25607.3(a)(3), Section 25607.12(a)(1), Section 25607.14(a)(1)(A), and Section 25607.16(a)(2) were modified to remove reference to type size consistent with the addition of the new Section 25601(d). Section 25607.1(a), Section 25607.3(a)(3), Section 25607.12(a)(1), Section 25607.14(a)(1)(A), and Section 25607.16(a)(2) were modified to remove the minimum type size requirement size consistent with the addition of the new Section 25601(d).
- Section 25607.1(c) was modified for clarity by striking “label, labeling, or sign” and requiring that if “any consumer information” for a “specific food product” is provided in a language other than English, the warning must also be provided in that language. This modification is in response to concerns that unrelated signs such as advertising could trigger a foreign language requirement for a retailer.
- Section 25607.2(a)(4) was modified to clarify situations in which a warning is required for multiple chemicals that each cause a different toxicity endpoint.
- Section 25603(a)(5) was added to clarify the situation in which a warning is required for a chemical that causes both toxicity endpoints.
- In Section 25607.5(a)(3), “A warning” was added for clarity.
- Section 25607.8(a) “either” was changed to “one or both” for consistency.
- Sections 25607.10(a), 25607.11(a), 25607.12(a), 25607.14(a), and 25607.15(a) were modified to include “consumer product” to clarify the type of anticipated exposure. Section 25607.11(a) “one or more” was changed to “one or both”. In Section 25607.12(a)(1)(A) “and” was added and in subsection (a)(1) and subparagraphs (a)(1)(A) and (a)(1)(B) “is” was added.
- In Section 25607.13(a) “from furniture” was added for clarity and consistency.

- Section 25607.13(a)(1)(C) was modified to clarify how to identify the chemical names depending on the situations in which a warning is required for multiple chemicals that each cause a different toxicity endpoint.
- Section 25607.15(a)(3) was modified to add an additional caution, “Do not idle the engine except as necessary”.
- Section 25607.17(a)(3) was modified to add, “do not idle the engine except as necessary” to provide an additional caution for a person to minimize exposure to diesel engine exhaust.
- Section 25607.22(a) was modified to move the definition of “amusement park” to subsection (b) and to define “amusement ride”.
- Section 25607.23(a) was modified to clarify that the identity of the affected area and the source of exposure must be included in the warning and that the warning refers to the particular amusement park for which the warning was being provided.
- Section 25607.25 the term “environmental” exposures to petroleum products was added for consistency and clarity.
- Sections 25607.26 and 25607.28, “sign” was changed to “warning” for consistency and clarity.
- Sections 25607.27(a)(3) and (b)(3) were modified to include an additional caution statement, “Do not stay in this area longer than necessary” in the warning.
- Non-substantive, grammatical changes were made throughout the regulation for consistency.

Included with this notice are copies of the regulatory language with the modified language provided in underline and strikeout format. These modifications are also available on the OEHHA website at www.oehha.ca.gov, and may be requested from Monet Vela at the OEHHA Legal Office at (916) 323-2517.

OEHHA will accept written comments on the amendments to the proposed regulation until **April 11, 2016 at 5:00 p.m.**

We encourage you to submit comments in electronic form, rather than in paper form.

Comments transmitted by e-mail should be addressed to P65Public.Comments@oehha.ca.gov. Please include “Clear and Reasonable Warnings Regulation” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the address below. Mailed, faxed or hand-delivered comments should be addressed to:

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