



AmericanCoatings ASSOCIATIONSM

April 8, 2015

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Re: Clear and Reasonable Warning Regulations and Lead Agency Website Regulation

Dear Ms. Vela:

The American Coatings Association (“ACA” or “Association”) submits these comments to the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment (“OEHHA” or “Agency”) on the proposed California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Prop 65”) reforms. ACA submitted formal comments to the Agency on June 13, 2014, in response to OEHHA’s initial release of its pre-regulatory proposal to amend Prop 65.¹ ACA has remained actively involved in providing OEHHA with meaningful input as the Agency has made number of the revisions to its proposal. ACA, once again, appreciates the opportunity to comment on OEHHA’s latest proposal to repeal of Article 6 and adopt a new Article 6 (“Clear and Reasonable Warnings”)² and its proposal to create a website under Article 2, Section 25205 (“Lead Agency Website”).³

ACA is a voluntary, nonprofit trade association representing approximately 250 paints, coatings, adhesives, sealants, and caulks manufacturers, raw materials suppliers to the industry, and product distributors. The manufacture, sale, and distribution of paints and coatings are a \$20 billion dollar industry in the United States. ACA’s membership represents over 90% of the total domestic production of paints and coatings in the United States. The state of California currently represents approximately 18% of our domestic coatings market. ACA represents 15 paint and coatings manufacturers with locations in California. The paint and coatings industry, including manufacturers and retailers, employs over 31,000 workers in California.

Governor Brown has stated that the twin goals of Prop 65 reform are to prevent the flood of frivolous litigation and to improve the quality of warnings for consumers. OEHHA states in its initial statement of reasons for Clear and Reasonable Warnings (“Article 6 ISOR”) that this proposed regulation is intended to implement the Governor’s “vision concerning improving the quality of the warnings being given while providing compliance assistance to businesses subject to the warning requirements of this Act.”⁴

¹ See <http://oehha.ca.gov/prop65/warnings/pdf/commentsJune2014/AmericanCoatingsAssoc.pdf>.

² Proposed Regulation, “Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings.” January 16, 2015. http://www.oehha.org/prop65/CRNR_notices/WarningWeb/pdf/ProposedArticle6_cleartext.pdf.

³ Proposed Regulation, “Title 27, California Code of Regulations Article 2 Section 25205 Lead Agency Website.” January 16, 2015. http://www.oehha.org/prop65/CRNR_notices/pdf_zip/P65WebsiteRegTextJan2015.pdf.

⁴ Article 6 ISOR at p.4.

ACA applauds OEHHA's efforts to improve warnings for the public and provide businesses with clarity as to what constitutes clear and reasonable warnings under Prop 65. ACA also supports several of the changes OEHHA has made since its pre-regulatory draft was released, including the following:

- Eliminating the requirement to include the Globally Harmonized System of Classification Labeling of Chemicals ("GHS") Health Hazard pictogram
- Changing the warning language from "will expose" to "can expose"
- Putting the lead agency website in a separate section of the Prop 65 regulations to ensure that violations under the website provisions are not a violation of the "clear and reasonable" warning requirements and, therefore, are not subject to private enforcement actions, and
- Providing abbreviated warning requirements for on-product labels to accommodate size constraints.

ACA appreciates the Agency's consideration of numerous requests from businesses, both large and small, to make those necessary changes. However, ACA strongly urges OEHHA to consider and respond to the concerns our industry has over certain provisions that remain unchanged in this new draft. As is, the proposal will yield results contrary to the Agency and Governor Brown's goals by increasing litigation, having adverse economic impacts on companies doing business in California, and confusing consumers.

With regard to the Clear and Reasonable Warnings proposed regulations, we believe the following areas are still problematic, potentially costly, and would lead to an increase in litigation:

- The lack of an adequate sell-through period
- The identification of 12 chemicals to be included in the text of warnings
- The color and font requirements for product warnings, and
- Internet and catalog sales outside of California.

Additionally, ACA also would like to address a number of problems with the proposed Lead Agency Website, such as the following:

- OEHHA's lack of authority to require information from businesses for website content
- Industry's lack of opportunity to review information about their chemicals and products prior to publication on website
- The difficulty in gathering the exposure information OEHHA can request
- OEHHA's disclaimer as to the accuracy of information it receives from manufacturers, producers, distributors or importers, and
- The lack of reasonable time frames or limits on the types of information that can be requested.

These issues, if they are to remain unchanged, will create significant challenges for manufacturers. ACA respectfully requests that OEHHA carefully consider the following recommendations:

ARTICLE 6: Clear and Reasonable Warnings

1. Need for Sell-Through Period

Section 25600 of the proposal states that "this Article will become effective two years after date of adoption." ACA strongly recommends that OEHHA allow for an unlimited sell-through period to ensure

that labeled products already in the distribution chain before the two-year effective date will remain compliant and will not be targets for litigation. Under this proposal, businesses that make efforts to transition to the new warning requirements are still potentially vulnerable if old warnings remain on their products and are not “sold through” to the end user or consumer prior to the effective date. OEHHA has stated that a business could argue that the previous safe harbor language is still “clear and reasonable.” However, OEHHA could protect businesses and reduce frivolous litigation by simply confirming this with a sell-through provision in the new regulations.

A sell-through period is particularly important for the paint and coatings industry since paint has a long shelf life. The shelf life of formulated products ranges between six months and two years, sometimes longer. On average, formulators ship their products to thousands of distributors’ locations, and these distributors keep a stock of as many as 500 units per stock keeping unit (“SKU”). These distributors often ship the products through additional distributors prior to the product arriving at a retail point of sale or being sold directly to an end user. Due to a complex supply chain and the lengthy shelf life, industry needs an unlimited sell-through period, which would allow products manufactured prior to the end of the two-year phase-in period to remain in commerce without being the target of frivolous lawsuits.

Without an unlimited sell-through period, it is likely that a large quantity of formulated products already in the distribution chain will need to be relabeled or destroyed to avoid potential litigation, both options represent significant costs to manufacturers. Additionally, relabeling products introduces a multitude of potential risk, such as but not limited to mislabeling errors and misinterpretations of changes by employees. These problems are particularly acute for smaller retailers who may move their stock at a slower rate than larger, high-volume retail outlets and who are more likely to lack the resources to commit to relabeling efforts.

An unlimited sell through period will allow products to remain in commerce without extensive efforts to locate containers in the marketplace and apply new labels. Many manufacturers work in a “batch to batch” manufacturing system and have the ability to serve a limited market with a specialty product. For example, automotive refinish coatings are often manufactured to specific criteria and, therefore, are only produced once every two years. Producing a product on a limited production schedule increases the volume produced in order to reduce the cost of manufacturing, which may leave products in the distribution chain for years, physically beyond the control of the product manufacturer.

Due to the complexities in the distribution system for formulated products, and the difficulties associated with changing a label, ACA requests that OEHHA provide an unlimited sell-through period for product already in the supply chain. This will help meet the Governor’s goal of reducing frivolous litigation by providing some protection for manufacturers, distributors or retailers that face bounty hunter lawsuits simply because slow-moving products with previously adequate warnings simply remain on the shelf beyond the effective date. Furthermore, most paint and coatings products are required to include a date code,⁵ normally on the bottom of the product container, which would make it easy to identify those who do not comply with the effective date, rather than deeming all products with the old warnings as noncompliant. More importantly, this technical change would not pose any danger to the public because the products, whether or not they have updated warnings, will have a warning statement.

Therefore ACA suggest that section 25600(b) be amended to state:

⁵ As required by the U.S. Environmental Protection Agency National Architectural and Interior Maintenance Coatings Rule. Available at 40 CFR 59.405.

This Article will become effective two years after the date of adoption. A person may provide a warning that complies with this Article prior to its two-year effective date. Any product manufactured prior to the effective date and labeled with the previously compliant safe harbor warning language will have met the requirements of a “clear and reasonable” warning under this Article, even if the product remains available for sale after the effective date.

2. Chemicals Included in the Text of a Warning

Section 25602 identifies 12 chemicals that would be required to be included on warnings. ACA has argued in its previous public comments and continues to believe that this chemical-specific warning approach will only confuse consumers and leave regulated entities even more vulnerable to potential litigation. The proposal’s requirement for manufacturers to identify the 12 chemicals on Prop 65 warnings is arbitrary, unnecessarily costly, and fails to provide any tangible public health benefit.

Significantly, OEHHA has provided no rational, science-based selection criteria for the initial list of chemicals that must be identified in warnings. While all 12 chemicals are on OEHHA’s list of chemicals known to cause cancer or reproductive toxicity in the state of California, OEHHA does not provide quantifiable, scientific reasoning why these 12 chemicals in particular were chosen over the hundreds of other chemicals on the list. Rather, OEHHA largely bases its criteria on highly subjective factors like widespread prevalence, recognizability to the public, and recent enforcement activity.⁶ This acknowledgement demonstrates that the selection process was not driven by pressing public health concerns, which makes the proposal unsupportable given that it will likely increase Prop 65 lawsuits.

Furthermore, the claim that the public is familiar with such chemical names as “chlorinated tris” or “phthalates” is questionable on its face. Merely identifying a chemical name on a product warning does not provide the consumer with appropriate information about the health risks that may or may not be associated with that chemical at a certain concentration. Mandating chemical specific warnings will mislead the public to perceive the 12 chemicals are *more* dangerous than other chemicals. While the Article 6 ISOR states that OEHHA does not intend to imply that the 12 chemicals pose a greater health risk to the public than other listed chemicals not included in the section, the requirement of singling out certain chemicals over others on a warning with no other context contradicts this intent. OEHHA has provides no compelling evidence to support the idea that a consumer who is provided a clear and reasonable warning about risks associated with use of a product would somehow become more “informed” or make a more rational decision about use of the product if the names of particular chemicals are provided as well.

And finally, by adding more elements that are required for warnings, OEHHA is opening the door for increased litigation. The flood of “shake down,” crippling lawsuits has already caused significant national concern. The current approach is typically to target businesses that do not provide a warning, which has led to businesses “playing it safe” by over-labeling products. If bounty hunters can now target business for failing to warn *and* for “inadequate” or “bad” warnings, there is no limit to how much this litigation problem will escalate. Due to the multitude of issues regarding chemical specific Prop 65 warnings, ACA strongly urges OEHHA to abandon chemical specific warnings under Prop 65.

⁶ Article 6 ISOR at p. 14.

In the alternative, if OEHHA chooses to keep the requirements for the 12 specific chemicals, ACA urges the Agency to include *in the proposed regulations* specific, science-based criteria and process it used, and will use in the future, for the selection of chemicals to be identified on Prop 65 warnings. Stating reasons in the Article 6 ISOR does not provide necessary clarity for regulated entities and will do little to accomplish the Agency's goal of preventing frivolous litigation, providing clarity for businesses or winning the trust of consumers. Enumerated criteria will assure the public and industry that there is and will continue to be consistency in the determination of chemicals to be identified on warnings. Businesses obligated to comply will be better-able make business decisions because they could, to some degree, predict the chemicals that may be chosen to be specifically listed on warnings.

3. Color of ANSI Yellow Triangle Pictogram

Section 25604 requires that the content for product exposure warnings include the yellow American National Standard Institute's ("ANSI") symbol and the word WARNING. The proposal states that if the signage or labeling for the product is not in color, the ANSI symbol can be in black and white. Otherwise, the yellow color is required.

Many of our member companies are subject to the federal revised Hazard Communication Standard ("HCS 2012"), which implements the GHS. The U.S. Occupational Health and Safety Administration's ("OSHA") requirement for labels include GHS pictograms in red and black. This creates a problem since our members who have to comply with HCS 2012 would not be afforded the black and white color option for Prop 65, and they would have to put the Prop 65 ANSI pictogram in yellow and black.

ACA members have spent thousands of dollars to purchase two-tone printers that can only print red and black to accommodate the new requirements for the red border for GHS pictograms. This issue primarily affects industrial product labels, which use a different print process than the consumer market. Consumer product labels are typically printed on a contractual basis in extremely large quantities to reduce the cost per label. Traditionally, these labels are more colorful for branding and marketing purposes. In contrast, industrial products use simple two-color labels and print on an as-needed basis. These products are often sold in large quantities (i.e., 5 gallon pails, 55 gallon drums) and it is cost prohibitive to print the more consumer-oriented labels. The label stock onto which the GHS/industrial labels are printed may, in fact, have been printed with limited elements in color, such as the company logo. Despite the presence of some color elements on the label, these labels should be viewed as black and white labels. Prior to the implementation of the HCS 2012, industrial product labels were printed in black ink. In preparation for the revised HCS 2012, one coatings manufacturer purchased 10 two-tone (red and black ink) printers at the approximate cost of \$10,000 per unit. If these manufacturers are forced to print in black, red *and* yellow ink, these printers will be obsolete.

Due to the reasons above, ACA requests that OEHHA simply allow manufacturers using GHS pictograms be afforded the black and white option. This is a practical improvement that would not deter from providing a clear and reasonable warning, and it could potentially save companies thousands of dollars.

4. Font Size

Section 25604 of the Article 6 proposed regulations states that on-product warning labels may be provided using a number of elements, including the word "WARNING" in all capital letters, in bold print, and no smaller than 10 point font. For the product warning, the words "Cancer" and/or "Reproductive" and the Prop 65 URL must be in 8-point type. ACA strongly recommends that rather than prescribing

specific font sizes for all kinds of products, OEHHA should adopt a more flexible approach to accommodate smaller container sizes. The Federal Hazardous Substances Act (FHSA) mandates use of one of three signal words (danger, warning or caution), HCS 2012 requires use of one of two signal words (danger or warning), while Prop 65 requires only "WARNING." ACA members are concerned that if OEHHA requires a font size as large as, or larger, than the federally mandated language, there may be confusion by the multitude of signal words that may appear on a label.

OEHHA should require that the font size be no smaller than the font being used for the precautionary statements provided on the label, as required by the appropriate federal standard. This will allow OEHHA to adopt the more specific requirements under the FHSA (see Table below) for products intended for the consumer market. Additionally, this language provides the needed flexibility, allowed by HCS 2012, for industrial products, which are used only by trained professionals.

16 CFR 1500.19(d)(7) - All labeling statements required by this section shall comply with the following type size requirements. 16 CFR 1500.121(c)(1) explains how to compute the area of the principal display panel and letter height.

Area sq. in	0-2	+2-5	+5-10	+10-15	+15-30	+30-100	+100-400	+400
Type Size								
Sig. Wd	3/64"	1/16"	3/32"	7/64"	1/8"	5/32"	1/4"	1/2"
St. Haz	3/64"	3/64"	1/16"	3/32"	3/32"	7/64"	5/32"	1/4"
Oth. Mat	1/32"	3/64"	1/16"	1/16"	5/64"	3/32"	7/64"	5/32"

OEHHA provides such flexibility in its proposal for shelf tag or shelf sign warnings under Section 25603 (a). ACA offers this suggestion as a practical fix that will significantly help business comply with the regulations and provide them the necessary flexibility to protect themselves from bounty hunter lawsuits.

5. Internet and Catalog Sales

Under Section 25603, OEHHA establishes warning criteria for internet purchases and catalog purchases. ACA's primary concern with this provision is that OEHHA has no ability to limit or control the requirement of the Prop 65 warnings being necessary for only products sold in the state of California. Online and catalog sales expand throughout the country—so, businesses that sell products in other states will be forced to provide Prop 65 warnings in the event that a California resident purchases the product. OEHHA must ensure that it does not extend outside its statutory authority by regulating products in commerce that are sold outside of California. If Prop 65 warning messages are required for internet and catalog purchases in states that have no familiarity with Prop 65, the warnings could seriously confuse or alarm consumers. OEHHA must take care in its regulations to create safeguards so that businesses do not have to face the enormous burden of providing Prop 65 warnings outside of OEHHA jurisdiction.

ACA's reading of section 25603 is that manufacturers providing on product warnings are exempted from the online sales and catalog sales warning requirements. If our interpretation is correct, the statements in 25603(a)(3) should be repeated in sections 25603(b) and (c) to provide additionally clarity.

6. On Product Warnings for Industrial Products labeled pursuant to OSHA HCS 2012

Section 25607, Occupational Exposure Warnings, states that if product is labeled pursuant to OSHA's revised HCS 2012 then it meets the "clear and reasonable" warning requirement. Products with HCS 2012 or CHCS labels are only used within workplaces, by trained professionals. If an HCS 2012 label meets the requirements of a "clear and reasonable" warning for the employer in the state of California (occupational exposure warning), then logically, that same standard should be applied to a manufacturer that labels products in California according to HCS 2012 and sells them in the industrial market as products intended solely for use within workplaces, by trained employees and professionals. ACA requests that OEHHA, as it already has in its section on occupational exposure warnings, formally exempt products labeled pursuant to HCS 2012 from the warning requirements provided that the products are sold for industrial or professional use only.

ACA suggests the following language be added to section 25604, Product Warnings- Content:

Section 25604(d) Products sold and labeled for professional and industrial use only, and labeled pursuant to the federal Hazard Communication Standard (29 Code of Federal Regulations, section 1910.1200), the California Hazard Communication Standard (Title 8, California Code of Regulations section 5194), or, for pesticides, the Pesticides and Worker Safety requirements (Title 3, California Code of Regulations section 6700 *et seq.*) meets the requirements of this Article.

ARTICLE 2, SECTION 25205: Lead Agency Website

OEHHA's Lack of Statutory Authority

ACA reiterates its position made during the first round of public comments that the Lead Agency Website should be *voluntary* for manufacturers, producers, distributors and importers of products regulated under Prop 65. Earlier in the rulemaking process, OEHHA stated that it had intended to allow businesses providing warnings the *option* of submitting information for a new public website; instead, the Agency has opted to impose a mandatory requirement on manufacturers to respond to OEHHA's information requests. OEHHA explains in its Initial Statement of Reasons for this section ("Article 2 ISOR") that the purpose of these information requests is to "supplement" the basic information conveyed by Prop 65 warnings, and to "[aid] interested individuals who receive a warning to learn about the chemicals involved in a potential exposure..."⁷.

Compliance with Prop 65 regulations will have a new element of complexity beyond warning for potential exposures. Businesses will have the legal obligation to submit an array of information for OEHHA at its request, and see this information posted on a website for the public to scrutinize. While violations of the Lead Agency Website regulations would not be subject to private enforcement actions, the product specific information will be readily available to plaintiffs' attorneys. The Lead Agency Website could become a database of information on potential targets for Prop 65 lawsuits by comparing the information published on the website with the products in commerce to see if they have corresponding warnings.

In addition to the burdens and litigation problems that this Lead Agency Website creates with the new obligations on manufacturers, ACA questions OEHHA's statutory authority to impose these obligations in

⁷ Article 2 ISOR at pg. 4.

the first place. OEHHA justifies this Lead Agency Website under the “right-to-know” purposes of the statute so that OEHHA can provide more detailed information about exposures to listed chemicals for which warnings are being provided. Further, the Article 2 ISOR states that the Agency has the authority under Section 25249.11 of the Act to “require a given business or industry to provide it with certain information related to the warnings business may be providing, should that become necessary.”⁸

Section 25249.11 states that in section (f), defining warnings, “[w]arning’ within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, *placing notices in public news media* [emphasis added], and the like, provided that the warning accomplished is clear and reasonable.” This section is referring to clear and reasonable warnings, Article 6, of Prop 65. This section does not translate to authority to require that businesses provide supplemental information for a public website separate from the Clear and Reasonable Warning requirements. The Lead Agency Website is not equivalent to labels, notices going to public news media, or mailings to water customers and the like. Therefore, OEHHA’s decision to cite Section 25249.11 as its authority to require business to provide information related to warnings is inappropriate.

In fact, no provision in the Prop 65 regulations explicitly gives OEHHA the authority to require businesses to provide supplemental information beyond what is already provided in a Prop 65 mandated warning. Furthermore, in the proposed new Article 6 regulations, Section 25600 (d) (General provisions) states that a person *can* provide supplemental information to the warnings required under Section 25608 (“Specific Product, Chemical and Area Exposure Warnings”). OEHHA can simply use this provision it has already proposed in Article 6 to obtain the same kind of information it seeks under the Lead Agency Website regulations without going outside of its authority by making these information submissions truly voluntary.

If OEHHA continues to pursue the Lead Agency Website, ACA has a number of practical concerns with the proposed regulations as well:

1. Lack of Opportunity to Review Web Content Made Public

Section 25205(a)(1) allows OEHHA to: 1) develop and maintain the Lead Agency Website to publish warning information provided under subsection (b); and 2) publish information provided that OEHHA determines is relevant. Section 25205(a)(2) allows manufacturers to request that information be corrected *after* OEHHA publishes it to the website. ACA asserts that manufacturers should be notified of the product specific information and provided the opportunity to review and respond to any information that may affect their businesses *prior* to publication. This opportunity should be explicitly included in subsection (b) of the proposed regulation for businesses that supply information to the Agency to be able to review and comment on the information before publication.

During ACA’s meeting with OEHHA staff on March 24, 2015, OEHHA stated that the Agency plans to develop fact sheets on chemicals in products based upon publically available information. ACA urges OEHHA to carefully consider the information it posts. Although OEHHA does not consider the publication of this information to be a “regulation,” the Agency is an authoritative body in California. When OEHHA releases information on the Lead Agency Website, it will be considered accurate and will carry great weight with the public.

⁸ Article 2 ISOR at p. 10.

ACA encourages OEHHA to speak with the Department of Toxic Substances Control (DTSC) to review the stakeholder input DTSC received after the initial release of the first three Priority Products under the Safer Consumer Products. The release of potentially inaccurate or misleading information, as was the case with DTSC, about chemicals in certain products without allowing affected entities to review the information for inaccuracies can have unfair, negative market impacts and undermine the program's credibility.

ACA suggests adding a part (e) in Section 25205 to say the following:

(e) The manufacturer, producer, distributor, or importer of a product or a particular business that is providing a warning and that provides information pursuant to a lead agency request under subsection (b) of this Act must have the opportunity to review the information the lead agency website intends to publish on the Lead Agency Website before publication and provide input.

2. OEHHA's Disclaimer

Section 25205(a)(7) states that OEHHA will provide a disclaimer stating that the Agency cannot assure the accuracy of information received from industry. ACA notes that this disclaimer only targets manufacturers, producers, distributors or importers of products, while it does not address all of the other resources that OEHHA can use when developing its website. As OEHHA cannot guarantee the accuracy of *any* of the information received from the public, this section should be amended to state that OEHHA will disclaim *all* information on the lead agency website.

ACA suggests:

(7) Provide a disclaimer indicating that OEHHA cannot assure the accuracy of information ~~it has received under section (b) from manufacturers, producers, distributors, or importers of consumer products~~ publishes on the lead agency website.

3. Difficulty of Obtaining Information OEHHA can Request from Businesses

While the agency does not intend that this website be onerous on industry and will look to information already available before requesting additional information from companies, this language must be included in the proposed regulations. The Article 2 ISOR specifically states that "this section does not confer any responsibility on a business to do new testing or analysis in response to a request from OEHHA. If the business does not have the requested information, then it would be sufficient for it to respond to an information request by providing the responsive information that it does have and informing OEHHA that it does not possess the other requested information."⁹ ACA recommends that OEHHA include this language *in the actual text* of the regulations to give businesses certainty that information requests under Section 25205(b) do not confer any additional testing obligations.

As to the kinds of information OEHHA can request, ACA has a number of suggestions to address the practical challenges businesses will face in managing these requests. Downstream formulators often receive limited information provided via Safety Data Sheets (SDS) from their upstream suppliers. This information often contains either incomplete or inconclusive information regarding the residual levels of

⁹ Article 2 ISOR at pg. 7.

Prop 65 listed chemicals. Now that OEHHA's Lead Agency Website seeks to list all chemicals in a product that a warning is provided for, companies will either have to perform exposure assessment or cite chemicals that pose no risk to the user of the product. As OEHHA does not expect a significant economic impact on businesses required to report information, the Agency could simply provide a de minimus disclosure level for the Lead Agency Website.

ACA suggests:

(3) The name of the listed chemical or chemicals for which a warning is being provided that are present above 0.1% concentration.

Regarding sections 25205(b)(6) and (9), the limited information regarding chemical ingredients on the SDS often either comes in ranges or is incomplete. This makes it unreasonably difficult for downstream formulators to develop meaningful, quantitative estimates of exposure. OEHHA has stated in section 25205(b)(7) that the information only needs to be provided if it is known; ACA requests that this qualification be provided to subsection (6). Further, subsection (9) should be combined with subsection (8) to allow manufactures to provide appropriate exposure information.

ACA suggests amending these subsections to state the following:

(6) For product warnings, the concentration (~~mean, minimum, maximum~~) of the chemical or chemicals in the final product, if known. The product contains multiple component parts the business must provide the concentration (~~mean, minimum, maximum~~) of the chemical or chemicals in each of the components, if known.

(8) A description of the anticipated routes and pathways of exposure to the listed chemical(s) for which the warning is being provided, if known.

4. Necessity of Limits on Time frame and Type of Information Requested

The proposed regulation also gives OEHHA the discretion to mandate short timelines, stating that manufacturers must supply certain information within a "timeframe specified in the request." While OEHHA has stated it will be flexible with businesses it requests information from, this flexibility must be made explicit in the text of the regulations. ACA suggests that the Agency specify a timeframe as well as clearly establish the narrow parameters in terms of information OEHHA can request from manufacturers. This way, OEHHA can be consistent with its stated intent to gather *general information* about products for the purpose of "filling gaps" in information that is not already publicly available about products and chemicals.

ACA suggest that this section be amended to:

The manufacturer, producer, distributor, or importer of a product, including food or a particular business that is providing a warning must provide the following information, when reasonably available, upon the lead agency's request, and within the a reasonable timeframe specified in the request of six months or more.

Currently, section 25205(b)(10) states the Agency may request "any other information the Lead Agency deems necessary for the furtherance of this section." This provision gives OEHHA significant discretion

to request highly specific information that could be onerous for companies to obtain given complex supply chains, costly, or even information that would compromise trade secrets and confidential business information. The Article 2 ISOR¹⁰ explains that OEHHA intends to limit the information that the Agency can request under this section. In order to put reasonable limits in the regulations and safeguards for businesses mandated to provide OEHHA with data, ACA suggests amending section 25205(b)(10) to:

(10) Any other information ~~that the lead agency deems necessary~~ related to potential exposures to listed chemicals for which warnings are already being provided under the Act.

CONCLUSION

ACA remains hopeful that with continued collaboration between OEHHA and all interested stakeholders, Prop 65 reform will alleviate the large number of frivolous lawsuits crippling the system, while continuing to protect and inform the people of the state of California. For additional information or questions, please contact Javaneh Nekoomaram at (202) 719-3715 or at jnekoomaram@paint.org or Stephen Wieroniey at (202) 719-3687 or at swieroniey@paint.org.

Respectfully Submitted,



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¹⁰ Article 2 ISOR at p. 7.