



ENVIRONMENTAL LAW FOUNDATION



April 8, 2015

VIA E-MAIL

Monet Vela
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Re: Comments on Proposed Revisions to Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings

Dear Ms. Vela:

This letter is on behalf of a coalition of public interest and public health groups who participate in Proposition 65 enforcement and policy. The coalition includes Environmental Law Foundation, As You Sow, Californians for Alternatives to Toxics, Center for Environmental Health, Center for Food Safety, Lexington Law Group, and Mateel Environmental Justice Foundation. We provide these comments on the proposed revisions to Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings. We thank OEHHA for providing this opportunity for comment, along with the productive public hearing held on March 25, 2015.

The bulk of our comments are contained in the annotated version of the regulations which we include here as Exhibit A, and which we incorporate by reference. In these annotations, we have provided specific comments on most of the provisions that OEHHA has written.

Our comments emphasize a few themes:

- We support these revisions as a general matter. As the first substantial revision to the warning regulations in more than twenty years, we believe that they make the warnings more clear and we believe that clarity results in informed consumer behavior. Notably, we agree with efforts to identify specific chemicals where feasible. We are supportive of the triangle symbol, and would encourage its use, in conjunction with safe harbor language, for all warnings. We applaud the efforts to provide warnings to non-English-speaking populations. While we have specific comments that we think can improve some of these efforts, we are heartened by the trajectory that OEHHA has chosen to take.
- We are not in support of the “safe harbor for retailers” provisions contained in section 25600.2. We believe that retailers will try to argue that these provisions

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create new exemptions from the warning requirement that are not contemplated by the statute. Further, we are concerned that it will allow for large numbers of products to completely evade enforcement. We strongly urge OEHHA to consider removing this section.

- We also have concerns about allowing retailers to provide warnings at, or after, the point of sale. In general, warnings should be provided as early as possible in the purchase process. Warnings provided at the point of sale or on the receipt are too late to provide meaningful opportunities for comparison shopping. We also oppose allowing newspaper warnings for environmental exposures since they are not well designed to inform people about risks, especially now that newspapers are read by fewer and fewer people.
- We also support efforts by OEHHA to ensure that warnings regarding consumer product exposures are sufficiently specific to enable consumers to determine which products are subject to a warning. This baseline requirement should apply to all consumer product warnings to ensure meaningful choices for consumers and to minimize overwarning.

Again, we thank you for the hard work that has gone into these proposed revisions and we look forward to working with you in this process as it moves forward.

Sincerely,



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Exhibit A

Below, please find annotations to the proposed text of Title 27 of the California Code of Regulations, Article 6. These annotations are provided by a coalition of environmental and public health groups comprising Environmental Law Foundation, As You Sow, Center for Environmental Health, Center for Food Safety, Lexington Law Group, Mateel Environmental Justice Foundation, and Californians for Alternatives to Toxics (collectively, the “coalition”). The annotations below, along with the accompanying letter, serve as these groups’ comments on the proposed regulation.

Key to the annotations: *Insertion*
~~Deletion~~
COMMENT

Subarticle 1: General

§ 25600 General

- (a) Article 6, subarticles 1 and 2 apply when a clear and reasonable warning is required under Section 25249.6 of the Act. Subarticle 1 sets forth general provisions applicable throughout this Article, including the allocation of responsibility among parties when a warning for a product is required under the Act. Subarticle 2 provides “safe harbor” content and methods² for providing a warning that have been determined “clear and reasonable” by the lead agency. Nothing in Article 6 or Subarticles 1 and 2 shall be interpreted to determine whether a warning is required for a given exposure under Section 25249.6 of the Act.
- (b) ~~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.~~

COMMENT: The coalition does not believe there is any reason to provide a phase-in period for regulations that establish “safe harbor” warnings that are, by definition, optional.

- (c) If the lead agency has not adopted a warning method or content specific to a product, area, or chemical in Section 25608, an interested party may request that the lead agency adopt one pursuant to Government Code Section 11340.6 et seq. (Petition for Rulemaking), or may request guidance from the lead agency pursuant to Article 2, section 25203 (Interpretive Guideline Request) or Article 2, section 25204 (Safe Use Determination).
- (d) A person may provide information to the exposed individual that is supplemental to the warning required by Section 25249.6 of the Act, such as further information about the form or nature of the exposure and ways to avoid exposure. In order to comply with this Article, supplemental information may not contradict, dilute, or diminish the warning. Supplemental information may not be substituted for the warning required by Section 25249.6 of the Act.

COMMENT: The coalition approves of subsection (d). We support OEHHA’s emphasis on the need to prevent persons required to provide warnings from diluting the effect of those warnings with contradictory language.

(e) A person is not required to provide separate warnings to each exposed individual.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25600.1 Definitions

(a) “Affected area” means the area ~~in which~~ in the vicinity of the source of the exposure where an exposure to a chemical known to the state to cause cancer or birth defects or other reproductive harm is ~~reasonably calculated to occur~~ occurring at a level that requires a warning.

COMMENT: We suggest removing the words “reasonably calculated to occur” throughout the proposed regulation. The coalition is concerned that regulated entities could “reasonably calculate[]” their “affected area” both too broadly, resulting in meaningless over-warning, and too narrowly, resulting in under-warning. Further, the regulation as written does not specify what party is responsible for the “reasonable calculation” or what standards of evidence would be sufficient. At best, this language is vague and confusing. At worst, a regulated entity could use any expert with a master’s degree to “reasonably calculate” just about anything they wish. This presents vast opportunities for gaming the warning requirement.

We believe that the “affected area” should be defined simply as the area where exposures require a warning.

We also suggest adding the language regarding the “vicinity of the source of the exposure” to clarify that the affected area is limited to the area where the exposure occurs at a level requiring a warning. For instance, on a large industrial site, there may be areas presenting no risk of exposure, and areas with high exposure levels. In order to reduce the risk of over-warning, only the areas where there is an exposure requiring a warning should be considered the “affected area” for purposes of this regulation.

(b) “Environmental exposure” means an exposure that occurs as the result of contact with an environmental medium, including but not limited to ambient air, indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or natural substances, through inhalation, ingestion, or skin or other contact with the body. All exposures that are not product exposures or occupational exposures are environmental exposures.

(c) “Food” has the same meaning as defined in Health and Safety Code Section 109935 and includes “dietary supplements” as defined in California Code of Regulations, title 17, section 10200.

~~(d) “Knowingly” has the same meaning as defined in Article 1, section 25102(n).~~

COMMENT: Article 1, section 25102 already applies to all of Chapter 1 of Title 27 of the California Code of Regulations. It is therefore redundant to define it again here. We suggest removing this subsection.

- (e) “Label” means a display of written, printed or graphic material that is affixed to a product or its immediate container or wrapper.
- (f) “~~Labeling~~*Signage*” means any written, printed graphic or electronically provided communication that accompanies a product, including shelf signs or tags ~~provided at the point of sale or display of a product.~~

COMMENT: The coalition is concerned about the inclusion of material provided at the point of sale in the definition of “labeling.” As discussed more fully in our comments to section 25603, we believe that providing warnings at the point of sale does not constitute a clear and reasonable warning. Moreover, shelf signage and other warning systems should be distinguished from “labeling.”

- (g) “Occupational exposure” means an exposure to any employee at his or her place of employment.
- (h) “~~Consumer product~~*Product* exposure” means an exposure that results from ~~a person’s~~*the* acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer product, including consumption of a food or dietary supplement.

COMMENT: We believe that throughout the regulation, the term “product exposure” should be replaced with “consumer product exposure.” This change would clarify that the regulation is concerned with providing warnings to individual purchasers and consumers of consumer products. As written, the regulation applies to industrial products and commercial purchasers, which will result in confusion and perverse outcomes. Throughout the draft regulation, we have added the word “consumer” where appropriate in order to emphasize this point.

We believe that adding the word “consumer” here and throughout the regulation would clarify that these regulations are aimed at providing warnings to consumers for consumer products.

- (i) “Retailer” means a person or business that sells products, including foods, directly to ~~consumers~~*purchasers* by any means, including via the internet. For purposes of this Article, a retailer only includes those functions of a business involved in the sale of products, including foods, directly to ~~consumers~~*purchasers*, even if the business or facility ~~is also engaged in~~ primarily devoted to non-retail activities.

COMMENT: “Purchasers” should be changed to “consumers,” both for consistency and to avoid inadvertently including wholesale distributors. Often, the consumer of the product, and thus the individual who is exposed, is not the purchaser. We support all efforts to provide warnings to the consumer, not just the purchaser.

- (j) “Sign” means a physical presentation of written, printed, graphic or electronically provided communication, other than a label or labeling, posted in a conspicuous manner that is associated with the exposure and under such conditions as to make it likely to be read, seen and understood by an ordinary person.

COMMENT: There appears to be an inconsistency between subsections (f) and (j): subsection (f) includes a “shelf sign” as an example of labeling, but subsection (j) excludes a “label or labeling” from the definition of “sign.” This could lead to confusion.

As a solution, we suggest separating the definitions of “label” and “labeling” from “signs.” We are aware of some preemption issues related to labeling, and we believe that defining “signs” separately might avoid those issues.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25600.2 Responsibility to Provide Product Exposure Warnings

- (a) Section 25249.11 of the Act requires the lead agency to minimize the burden on retail sellers of products when it adopts regulations concerning clear and reasonable warnings except where the retail seller itself is responsible for introducing a listed chemical into the product.
- (b) The manufacturer, producer, packager, importer or distributor of a product may comply with this section either by affixing a label to the product bearing a warning that satisfies Section 25249.6 of the Act, *or, if that is not feasible*, by providing a written notice directly to the authorized agent for a retailer who is subject to Section 25249.6 of the Act, which:

COMMENT: As written, section 25600.2(b) allows a manufacturer, producer, packager, importer or distributor to choose whether to provide the warning itself or provide the required notice to a retailer. This essentially allows a manufacturer, producer, packager, importer or distributor to shift the burden onto the retailer. We suggest adding language that requires the manufacturer, producer, packager, importer or distributor to provide the warning itself unless it is not feasible to do so. This change would prevent entities higher up in the production chain from shifting the burden down the line without making any showing of infeasibility. It would also comport with Proposition 65’s directive that “regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.”

Also, subsection (b) allows a manufacturer to provide notice only to a retailer’s authorized agent. This could lead to confusion if the retailer has not authorized an agent to receive such a notice. In the worst case, a retailer could avoid compliance by simply refusing to authorize an agent. We suggest allowing manufacturers to provide notice to the retailer directly. The manufacturer should use the address and/or contact information that it normally uses to communicate with the retailer.

- (1) States that a warning is required for the product under Section 25249.6 of the Act;
- (2) Includes the exact name or description of the product or specific identifying information for the product such as a Universal Product Code or other identifying designation;
- (3) Either includes all necessary warning materials such as labels, labeling, shelf signs or tags that satisfies Section 25249.6 of the Act, or offers to provide such materials at no charge to the retailer;

- (4) Has been received and acknowledged in writing by the retailer by signing, dating, and returning the notice to the entity that provided it; and
- (5) Has been renewed and acknowledged in writing by the retailer by signing, dating, and returning the notice to the entity that provided it at least every 180 days during the period in which the product is sold in California by the retailer.

COMMENT: We suggest providing language allowing a retailer to return products to manufacturers/packers/producers/distributors if that party does not comply with the requirements contained in section 25600.2, subsection (B)(1)-(5). This will prevent retailers from being saddled with unmarketable products that do not contain the required warnings.

Additionally, we suggest making the requirement that retailers provide acknowledgement of receipt of the warning materials a separate requirement. This would clarify the retailer's responsibility to provide such acknowledgment.

- (c) The placement and maintenance of warning materials that the retailer receives pursuant to section (b) is the responsibility of the retailer.
- (d) The retailer is responsible for providing the warning required by Section 25249.6 of the Act for a product exposure only when one or more of the following circumstances exist:
 - (1) The retailer is selling the product under a brand or trademark that is owned or licensed by the retailer or an affiliated entity;
 - (2) The retailer has knowingly and intentionally introduced a listed chemical into the product, or caused a listed chemical to be created in the product;
 - (3) The retailer has covered, obscured or altered a warning label that has been affixed to the product pursuant to subdivision (b); or
 - (4) The retailer has received warning information and materials (or an offer to provide warning materials) for the exposure pursuant to subdivision (b) and the retailer has sold the product without conspicuously posting those warning materials.
 - (5) The retailer has actual knowledge of the potential product exposure requiring the warning, and either of the following apply:
 - (A) There is no product manufacturer, producer, packager, importer or distributor of the product that is subject to Section 25249.6 of the Act; or
 - (B) The manufacturer, producer, packager, importer or distributor of the product who have the duty to provide warnings for the exposure cannot readily be compelled to comply with Section 25249.6 of the Act because they are foreign persons with no agent for service of process in United States.
 - (C) For purposes of subdivision (5), "actual knowledge" means specific knowledge of the product exposure that the retailer receives from any reliable source. If the source of this knowledge is a notice served pursuant to Section 25249.7 (d)(1) of the Act, the retailer shall not be deemed to

~~have actual knowledge of any product exposure that is alleged in the notice until two business days after the retailer receives the notice;~~

COMMENT: We oppose the inclusion of section 25600.2(d). We believe that, by purporting to create a new exception to the statute’s warning requirement, the regulation exceeds OEHHA’s statutory authority. No other part of the statute contains an “actual knowledge” requirement such as this. In addition, the language rewards passivity: it allows a retailer to sit back and wait for a notice letter before providing a warning, *even if it has “actual knowledge”* that it is selling a product that is causing an exposure to a listed chemical. We believe that such a broad exception does not comport with the purpose of Proposition 65, which is to ensure that *someone* in the distribution chain provides warnings for exposures to listed chemicals.

There are numerous other issues. Having an agent for service in the United States does not necessarily expose a manufacturer to enforcement if the manufacturer has no U.S. or California assets. There may be jurisdictional issues with obtaining enforcement against manufacturers in other states. The definition of “product” in subparagraph (d)(1) is unclear—a manufacturer’s name for a product might be different from a retailer’s private label name or descriptor for the same product, leading to confusion.

We believe that this subsection does not work as drafted. While we understand the desire to lessen the burden on retailers, we believe that this approach will allow too many products to evade meaningful enforcement, resulting in severe under-warning. We therefore strongly urge OEHHA to remove this section.

~~(e) The retailer of a product that can cause a product exposure shall provide the name and contact information for the manufacturer, producer, packager, importer and distributor of the product to the following persons on written request, to the extent that this information is reasonably available to the retailer:~~

~~(1) The lead agency, the Attorney General, any district attorney, or any city attorney with authority to bring an action under the Act.~~

~~(2) Any person who has served notice under Section 25249.7(d)(1) of the Act alleging that the product causes a product exposure that requires a warning under the Act.~~

~~(3) The person or entity making the request must provide a reasonable description of the product so that the retailer can readily identify it.~~

COMMENT: Because we oppose the inclusion of subsection (d), we also oppose the inclusion of subsection (e). The two subsections work together, and if (d) is removed, (e) is unnecessary.

Even if included, this subparagraph raises some concerns for the coalition. This subparagraph should be revised to allow any interested person to request manufacturer information from retailers. We believe that this information is in the public interest and should be available to any interested party. There also needs to be an enforcement mechanism since otherwise there is no remedy for a person requesting this information if the retailer refuses to comply with the request.

Additionally, the coalition suggests that OEHHA insert language making clear that the manufacturer information covered by this subsection is not a trade secret.

- (g) The manufacturer, producer, packager, importer or distributor of a product that may cause a product exposure may enter into a written agreement with the retailer of the product to allocate legal responsibility among themselves for providing a warning for the product, which shall bind the parties to that agreement and which shall supersede the requirements of subparagraphs (b) and ~~(d)~~ to the extent that the warning provided to the purchaser of the product meets the requirements of Section 25249.6 of the Act.

COMMENT: While we approve of the general direction that OEHHA has taken in drafting section 25600.2(a)-(c), which recognizes the unique position that retailers occupy while ensuring that someone in the chain of commerce is responsible for providing warnings. However, we believe that subsections (d) and (e) are not acceptable as written currently and should be removed.

NOTE: Authority cited: Sections 25249.12 and 25249.11(f), Health and Safety Code. Reference: Sections 25249.6 and 25249.7(k), Health and Safety Code.

Subarticle 2: Safe Harbor Methods and Content

§ 25601 Safe Harbor Clear and Reasonable Warnings – Methods and Content

- (a) A warning is “clear and reasonable” within the meaning of Section 25249.6 of the Act if the warning complies with all applicable requirements of this Article.
- (b) Nothing in this section shall be construed to preclude a person from providing a warning using content or methods other than those specified in this Article that nevertheless complies with Section 25249.6 of the Act.
- (c) All warnings must be placed with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.*

COMMENT: We note that this section removes the language in the currently enacted section 25601 that requires any warning to “be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure.” We suggest adding a subsection (c) which would require that any warning, no matter the method used, be reasonably calculated to be read and understood. A good example of such language is found in current section 25603.1, as shown above.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Section 25249.6 Health and Safety Code.

§ 25602 Chemicals Included in the Text of a Warning

COMMENT: In general, the coalition strongly approves of this section of the regulations. We share OEHHA's enthusiasm for making the warnings clearer by specifying which chemicals are the cause for the exposure warning. We believe this change can make Prop 65 a much more useful tool for consumers and can greatly reduce confusion. We include some comments below on how we believe OEHHA can make this section even more clear.

(a) Except as provided in Section 25604(c), a warning meets the requirements of this Article if the name or names of the chemicals listed in this section are included in the text of the warning, to the extent that an exposure to that chemical ~~is reasonably calculated to occur~~ at a level that requires a warning.

- (1) Acrylamide
- (2) Arsenic
- (3) Benzene
- (4) Cadmium
- (5) Carbon monoxide
- (6) Chlorinated Tris
- (7) Formaldehyde
- (8) Hexavalent Chromium
- (9) Lead
- (10) Mercury
- (11) Methylene Chloride
- (12) Phthalate[s]

COMMENT: We suggest adding asbestos to this list.

(b) For purposes of this section, the general chemical name includes all chemicals in the same category or group that are listed as known to cause cancer or reproductive toxicity under Section 25249.8 of the Act.

COMMENT: We are concerned that subsection (b) is vague and ambiguous as read in light of the list contained in subsection (a). Subsection (a) refers to "names of chemicals," while subsection (b) refers to chemicals in a "category or group." We believe that the term "category or group" should be clarified to make sure that all of the desired chemicals are covered by the list in subsection (a). One option would be to closely track the way that chemicals are named in the Prop 65 List. For instance, lead should be listed here as "lead and lead compounds," chlorinated tris should be given its full chemical name, and mercury should be denoted as including methylmercury. All phthalate compounds should be listed in full.

(c) A person may voluntarily include in a warning the names of other chemicals, substances or

mixtures that are listed under Section 25249.8 of the Act.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Section 25249.6, Health and Safety Code.

§ 25603 Consumer Product Exposure Warnings – Methods of Transmission

- (a) Unless otherwise specified in Section 25608, a warning *for a consumer product* meets the requirements of this Article if it complies with the content requirements in Section 25604, *is provided in a manner that clearly associates it with the consumer product causing the potential exposure*, and is provided using one or more of the following methods:
- (1) A product-specific warning provided on a shelf tag or on a shelf sign for the *consumer product* at each point of display of the product. The entire warning message must be in a font no smaller than the largest type size used for other information on the shelf tag or shelf signs for the same or similar products. *If there is no such information, the warning message must be in a minimum of 10 point font.*
 - (2) A product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to ~~or during~~ the purchase of the product, without requiring the purchaser to seek out the warning.

COMMENT: As discussed above, we support clarifying that product warnings are appropriate for *consumer* products, not products sold in an industrial or institutional context. We believe this change makes the regulation more clear and effective.

Additionally, we are opposed to any warnings being given at the point of sale. Subparagraph (a)(2) allows such warnings and therefore should be removed. Point of sale warnings, or warnings given at the cash register, deprive customers of the ability to comparison shop because the warnings do not appear until the customer has already chosen a product and has taken it to the cash register. This subverts the purposes of Proposition 65, one of which is to allow informed purchasing decisions by consumers.

Additionally, point of sale warnings can interrupt the flow of business for retailers themselves. Because customers will only see a warning when they are in the process of paying, with other customers lined up behind them, a point of sale warning will cause delays for the business and for other customers. Better to require the warning to be on the product itself or on the shelf, where the customer can view the warning without needing to rush and without pressure from other customers in line. We strongly request that any language allowing point of sale warnings be removed.

- (3) A label on the *consumer* product that includes all the elements specified in Section 25604.
- (b) For internet purchases, the warning message must be provided ~~by a clearly marked hyperlink on the product display page~~, or otherwise prominently displayed to the purchaser before the purchaser ~~completes his or her purchase of the~~ *enters his or her payment information for the purchase of the consumer* product. For purposes of this

Article, a warning is not prominently displayed if the purchaser must scroll down in order to see the warning, search for it in the general content of the website, or if the purchaser must click on a hyperlink before viewing the warning.

COMMENT: We do not agree that it is appropriate to allow retailers to place the warnings on a different webpage from the product itself. We believe that subsection (b) should be revised to require that, like purchases from a catalog, the warning should be provided in a manner that clearly associates it with the product, and which does not require a separate click or other action from the customer to view the warning.

Further, the term “a clearly marked hyperlink” is vague and ambiguous. It is unclear what language a hyperlink must use in order to be “clearly marked.” Also, online retailers may exploit this ambiguity to hide warnings behind vague links, or to lump them in with more innocuous warnings and messages.

As a model, we suggest the following language as a potential replacement for subsection (b):

The warning statement shall be displayed in such a manner that it is likely to be read and understood prior to the authorization of or actual payment. For internet sales, the warning statement shall: (a) be displayed before a consumer commits to purchasing the product and without the need for the consumer to follow any additional hyperlinks beyond those required as part of the ordinary purchasing process; (b) be set out in a text, box on a separate line or in a separate paragraph; (c) be displayed in a font size in which the smallest character is no less than the equivalent of the height of the equivalent characters in 12 point Arial font; and (d) be displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual. The warning statement shall not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness to an ordinary individual, or that qualifies or interprets the required text, such as “legal notice required by law.”

(c) For catalog purchases, the warning message must be provided in the catalog in a manner that clearly associates it with the item being purchased.

COMMENT: Subsection (c) could be made stronger by making it clear that a warning must be associated with specific products so that it is clear when certain products have warnings associated with them, but others do not. This facilitates comparison shopping, which is one of purposes of the statute.

(d) If any label, labeling or sign about a consumer product is provided in a language or languages other than or in addition to English, then a warning for that product meets the requirements of this Article only if the warning is also provided in the same language or languages on the label, labeling or sign.

COMMENT: We agree strongly with all moves to provide warnings to non-English speakers.

(e) To the extent any consumer product warning is provided by any method other than a warning on the product’s label, the warning must be provided in a method that enables

consumers to differentiate products to which the warning applies from those to which it does not apply.

COMMENT: At a minimum, a warning should always enable consumers to discern the products to which it applies. This will enable consumers to make informed choices and minimize overwarning, a problem the Administration has indicated it wishes to address.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Section 25249.6, Health and Safety Code.

§ 25604 Consumer Product Exposure Warnings – Content

(a) Unless otherwise specified in Section 25608, a warning *for a consumer product* meets the requirements of this Article if it is provided using one or more of the methods required in Section 25603 and includes all the following elements.

- (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where other signage or labeling for the product is not provided in color, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

COMMENT: We strongly support the use of the exclamation mark/triangle symbol. A symbol makes a warning more prominent, and does not require English literacy in order to be understood. We believe that the regulations should be revised to require the symbol for *all* warnings covered by this article.

(2) The word “WARNING” in all capital letters and bold print, and:

- (A) For exposures to listed carcinogens, the words, “This product *contains and* can expose you to a chemical [or chemicals] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov/product.”

COMMENT: We support changing the warning’s wording. Our first choice would be to specify that the product “will expose you to a chemical.” This could not be clearer: it informs the consumer that the product contains the chemical at a level that will result in an exposure.

If OEHHA is not willing to go this far, we suggest that the agency require a warning that states that the product “contains and can expose you to a chemical.” This language, while not as strong as “will expose,” emphasizes that the product does contain the listed chemical, yet allows for some doubt about whether exposure will occur.

We believe that a strong warning statement comports with Proposition 65’s purposes: the stronger the warning language, the greater the incentive for companies to test their own products and remove chemicals from circulation. Weak, watered-down language incentivizes companies to do the opposite—include warnings on more products than necessary, thus decreasing the warning’s effectiveness. We believe that a stronger warning language requirement incentivizes better science, more responsible behavior by business,

and gives the consumer greater clarity. We also believe that by encouraging more testing by industry, it furthers the Governor's goals of decreasing over-warning.

- (B) For exposures to listed reproductive toxicants, the words, "This product *contains and* can expose you to a chemical [or chemicals] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/product."
- (C) For exposures to listed carcinogens and reproductive toxicants, the words, "This product *contains and* can expose you to a chemical [or chemicals] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/product."
- (D) Where the name or names of chemicals are ~~required to be included in the warning pursuant to~~ Section 25602, or the person providing the warning includes the name or names of other chemicals, the words, "This product *contains and* can expose you to *the [a]* chemical [or chemicals] ~~such as~~ *including* [name or names of chemicals] that is [are] known to the State of California to cause cancer [or birth defects or other reproductive harm or cancer and birth defects or other reproductive harm]. For more information go to www.P65Warnings.ca.gov/product."

COMMENT: We suggest replacing the words "such as" with "including." This confirms that the chemical in question is actually in the product, but does not foreclose the possibility that there are other chemicals in the product as well. The words "such as" imply that the named chemical may not in fact be present in the product. We believe that using "including" is therefore clearer. We also suggest eliminating the phrase "required to be" here and wherever else it appears as the regulatory warnings are all safe harbor warnings that are not mandatory.

- (b) An on-product warning label ~~may~~ *shall* be provided using all the following elements:
 - (1) The symbol required in subsection (a)(1).
 - (2) The word "WARNING" in all capital letters, in bold print and no smaller than 10-point type.
 - (A) For products that cause exposure to a listed carcinogen, the words, "Cancer- www.P65Warnings.ca.gov/product," in no smaller than 8-point type.

COMMENT: We suggest requiring the exclamation mark/triangle symbol here. There is no reason to make on-product warnings less noticeable than other types of warnings. This would frustrate OEHHA's purpose in using the symbol.

- (A) For products that cause exposures to a listed reproductive toxicant, the words, "Reproductive Harm - www.P65Warnings.ca.gov/product," in no smaller than 8-point type.

COMMENT: We suggest adopting a sliding scale for the size of warnings on products. For a very large product (e.g., a refrigerator or a piece of furniture), an 8-point font is quite small.

(C) For products that cause exposures to both a listed carcinogen and a reproductive toxicant the words, “Cancer and Reproductive Harm - www.P65Warnings.ca.gov/product,” in no smaller than 8-point type.

~~(e) A person providing an on-product warning label pursuant to subsection (b) is not required to include within the text of the warning the name or names of listed chemicals required under Section 25602.~~

COMMENT: Because these are regulatory “safe harbor” warnings, no one is required to include any particular language in any warning.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25605 Environmental Exposure Warnings – Methods of Transmission

~~(a) Unless otherwise specified in Section 25608, a warning meets the requirements of this Article if it includes all the elements specified in Section 25606 and is provided using one or more of the following methods: The warning must be provided in a conspicuous manner and under such conditions as to make it likely to be read, seen and understood by an ordinary individual in the course of normal daily activity; must clearly identify the area for which the warning is being provided; and must be reasonably associated with the location and source of the exposure. The warning must be provided in English and in any other language used on other signage in the affected area.~~

~~(4a) A sign posted at all public entrances to the affected area in no smaller than 72-point type that clearly identifies the area for which the warning is being provided. ~~The warning must be provided in a conspicuous manner and under such conditions as to make it likely to be read, seen and understood by an ordinary individual in the course of normal daily activity, must clearly identify the area for which the warning is being provided and must be reasonably associated with the location and source of the exposure. The warning must be provided in English and in any other language used on other signage in the affected area.~~~~

COMMENT: We suggest moving the second and third sentences of paragraph (a)(1) to the opening paragraph. This would make it clear that these requirements—conspicuousness, clarity, and the requirement to provide the warning in other languages where applicable, apply to all environmental exposure warnings.

Additionally, we suggest renumbering the subsections, as there is no subsection (b) as written.

Finally, we refer back to our comments on section 25600.1(a). We believe that a tightened definition of “affected area” is absolutely crucial to crafting an effective environmental exposure warning. The current definition of “affected area” is far too loose and could allow severe manipulation by industry.

~~(2b) A warning provided in a notice mailed, or sent electronically or otherwise delivered to each occupant in the affected area. The notice must be provided at least every three months, in English and in any other language ordinarily used by the business to~~

communicate with the public.

~~(3c) A warning published in a newspaper at least once every three months.~~

~~(A1) The warning must be at least a quarter page in size, and must include a map that clearly delineates the affected area.~~

~~(B2) The warning must also be published in the electronic version of the publication, if any.~~

~~(C3) If a newspaper published in a language other than English is circulated in the affected area, the warning must be published in that newspaper and in that language, in addition to being published in English in at least one English-language newspaper that circulates in that area.~~

COMMENT: In general, we do not believe that newspaper notices are sufficient warnings. We believe that warnings published in newspapers do not reach the people that will be affected by the exposure. Newspaper circulation has been in free-fall for decades. And even when circulation was higher, it is unlikely that many people actually read the legal notice section. But even by the standards of newspaper warnings, this regulation is weak. The regulation calls only for notice to be published in a “newspaper,” but does not define any minimum circulation, or even that the newspaper be published in the area of the exposure. A notice printed in the *Chicago Tribune* warning of an exposure in Bakersfield would comply with this regulation as written. If OEHHA is not willing to entirely scrap newspaper warnings, it should implement strict standards governing minimum circulation and geographic scope.

More broadly, we suggest that OEHHA look into developing more advanced and effective methods of reaching people and providing warnings for environmental exposures. Such an approach should be tailored towards the types of media that the affected population actually reads. As an example, many advertisers now use geo-targeted ads to reach particular populations based on the location of their IP address or the location features on their smartphone. While using these techniques would not necessarily reach the many Californians who do not have Internet access, such an approach would certainly be an improvement on newspaper warnings.

Proposition 65’s drafters anticipated the shift away from newspapers by allowing for warnings to be placed in the “news media,” not simply newspapers. (See Pub. Res. Code, § 25249.11(f).)

If OEHHA retains newspaper warnings, we do support retaining the language currently numbered subparagraph (C), requiring warnings to be circulated in newspapers published in languages other than English.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25606 Environmental Exposure Warnings – Content

~~(a)~~ Unless otherwise specified in Section 25608, a warning meets the requirements of this Article if it is provided using one or more of the methods required in Section 25605 and includes all the following elements:

- (1a) The symbol required in Section 25604(a)(1).
- (2b) The word “**WARNING**” in all capital letters and bold print.
- (3c) For exposures to listed carcinogens, the words, “Entering this area can expose you to a chemical [or chemicals] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov/environmental.”
- (4d) For exposures to listed reproductive toxicants, the words, “Entering this area can expose you to a chemical [or chemicals] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/environmental.”
- (5e) For exposures to listed carcinogens and reproductive toxicants, the words, “Entering this area can expose you to a chemical [or chemicals] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/environmental.”
- (6f) Where the name or names of chemicals are ~~required to be included in the warning pursuant to Section 25602~~, or the noticing party wishes to include the name or names of other chemicals, the words, “Entering this area can expose you to a chemical [or chemicals] such as [name or names of chemical or chemicals] that is [are] known to the State of California to cause [cancer or birth defects or other reproductive harm or cancer and birth defects or other reproductive harm]. For more information go to www.P65Warnings.ca.gov/environmental”.

COMMENT: We reiterate our comment to section 25604(a)(2)(D) regarding the words “such as.” We believe they should be replaced with the word “including.”

- (7g) In all cases the specific area in which the exposure can occur must be clearly described in the warning message.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25607 Occupational Exposure Warnings

- (a) A warning to an exposed employee about the chemical in question which fully complies with all information, training and labeling requirements of 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.

COMMENT: We suggest adding language specifying that a person may only receive the benefit of this provision if HCS and/or Pesticides and Worker Safety requirements apply to each specific chemical to which employees are exposed.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code

§ 25608 Specific Product, Chemical and Area Exposure Warnings

(a) ~~This section~~ Sections 25608.1-25608.27 provides warning methods and content for specific types of exposures that are subject to the warning requirements of Section 25249.6 of the Act. Where such warning methods or content are included in this section, a person must use the warnings specified in this section in order to satisfy the requirements of this Article.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code

§ 25608.1 Food Exposure Warnings – Methods of Transmission

- (a) A warning for food exposures, including dietary supplements, meets the requirements of this Article if it is provided using one or more of the methods required in Section 25603 and contains all the elements required in Section 25608.2.
- (b) If any label, labeling or sign about a food or dietary supplement is provided in a language or languages other than or in addition to English, then a warning for that product meets the requirements of this Article only if the warning is also provided in the same language or languages on the label, labeling or sign.

COMMENT: Again, we support all moves to provide warnings to non-English-speaking and English-as-a-second-language populations.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.2 Food Exposure Warnings – Content

- (a) A warning for food exposures, including dietary supplements meets the requirements of this Article if it is provided via one or more of the methods specified in 25608.1 and includes the following elements:
 - (1) The word “**WARNING**” in all capital letters and bold print no smaller than 10-point type.
 - (2) For exposure to a listed carcinogen, the words, “Consuming this product will ~~can~~ expose you to a chemical [or chemicals] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov/food,” in no smaller than 8-point type.
 - (3) For exposure to a listed reproductive toxicant, the words, “Consuming this product ~~can~~ will expose you to a chemical [or chemicals] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food,” in no smaller than 8-point type.

COMMENT: We suggest replacing the word “can” with “will” in this subsection. This language makes it clear that an exposure will occur. For food exposures, if a person eats the

food, they *will* be exposed to the chemical. Again, stronger warning language leads to better science and less over-warning.

- (4) For exposures to chemicals listed as carcinogens and reproductive toxicants, the words, “Consuming this product ~~will~~ expose you to a chemical [or chemicals] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food,” in no smaller than 8-point type.
- (5) Where the name or names of chemicals are ~~required to be included in the warning pursuant to~~ Section 25602, or the noticing party wishes to include the name(s) of other chemical(s) the words, “Consuming this product ~~will~~ expose you to a chemical [or chemicals] such as [name or names of chemical or chemicals] that is [are] known to the State of California to cause [cancer or birth defects or other reproductive harm]”. For more information go to www.P65Warnings.ca.gov/food” in no smaller than 8-point type.

- (b) The warning may be provided in the form of a label on the product that is ~~set off from other surrounding information~~ and enclosed in a box. *The warning should be placed as near as is feasible to the nutrition facts and other information that the label is required to contain, so long as the warning does not conflict with any federal requirements for labels or labeling.* The label must include the elements and text size specified in Section 25604(b)(2).

COMMENT: We note that the exclamation mark/triangle symbol will not be required for food exposures under this regulation. We strongly suggest adding a requirement that the symbol be used here. There is no difference between food exposures and other product exposures: both types of exposures are to chemicals known to the state to cause cancer or reproductive harm. Requiring a symbol for non-food exposures but not for food implies that food exposures are somehow less dangerous, which is untrue. Further, this approach is not in keeping with the purpose of the statute, which is to inform the public of potential exposures. This comment also applies to sections 26508.4, .5, .6, .9, .13, .18, .21, and all other contexts where the regulation does not require the symbol.

We also suggest removing the words “set off from other surrounding information.” We believe that this could be interpreted to require the warning to be placed on the bottom of the box or in another inconspicuous location.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.3 Alcoholic Beverage Exposure Warnings – Methods of Transmission

- (a) A warning for exposures to alcoholic beverages meets the requirements of this Article if it contains the minimum elements specified in Section 25608.4 and is provided using at least one of the following methods:
 - (1) An 8½ by 11 inch sign placed at eye level so that it is readable and conspicuous to patrons as they enter the area or areas where, by permit or license, alcoholic beverages are served.

- (2) A notice or sign no smaller than 5 by 5 inches placed at each retail point of sale or display so as to assure that it is readable and conspicuous. The warning message must be in a legible print size no smaller than 20-point type and be enclosed in a box.
- (3) For alcoholic beverages provided for consumption on the premises served by food or beverage persons, or sold through an over-the-counter service, the warning message is provided on a menu or list identifying the alcoholic beverages served on the premises. If there is no menu or list identifying the alcoholic beverages served on the premises, then the warning message is provided on the menu or list identifying the food or other beverages sold on the premises.
- (4) For alcoholic beverages sold or distributed to ~~purchasers~~consumers within California through package delivery services, a warning provided by incorporating or placing the warning message on or in the shipping container or delivery package in a manner that ensures the warning message is readable and conspicuous to the recipient prior to consumption of the alcoholic beverages.

COMMENT: We recommend replacing “purchasers” with “consumers.” Not all consumers of alcoholic beverages are the individuals who purchased the beverage, and yet the consumer is the one exposed. The warning should focus on the consumer.

Additionally, we believe that a warning placed in the shipping container or delivery package is not sufficient. The warning should be given *before* the purchase. For Internet and catalog sales of alcohol, sellers should be required to comply with section 25603(b) and (c), governing those purchases.

- (b) The warning must be provided in English and in any other language used for labeling or advertising the product on the premises.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.4 Alcoholic Beverage Exposure Warnings – Content

- (a) A warning for alcoholic beverages, including beer, malt beverages, wine and distilled spirits, complies with this Article if it is provided using one or more of the methods required in Section 25608.3 and includes all the following elements:
 - (1) The word “**WARNING**” in all capital letters and bold print.
 - (2) The words, “Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects. For more information go to: www.P65Warnings.ca.gov/alcohol.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.5 Food and Non-Alcoholic Beverage Exposure Warnings for Restaurants – Methods of Transmission

(a) A warning at restaurants or other facilities that sell food or beverages primarily for on-site consumption, not including alcoholic beverages, meets the requirements of this Article if it contains the minimum elements specified in Section 25608.6 and is provided using one or more of the following methods. All signs or notices must be displayed so that they are clearly visible under all lighting conditions normally encountered during business hours.

(1) An 8½ by 11 inch sign, placed so that it is readable and conspicuous to customers as they enter each public entrance to the restaurant or facility printed in no smaller than 28-point type.

(2) A notice or sign no smaller than 5 by 5 inches placed at each point of sale so as to assure that it is readable and conspicuous printed in no smaller than 20-point type.

(b) The warning must be provided in English and in any other language used on other signage on the premises.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.6 Food and Non-Alcoholic Beverage Exposure Warnings for Restaurants – Content

(a) A warning at restaurants or other facilities that sell food or beverages primarily for on-site consumption, not including alcoholic beverages, meets the requirements of this Article if it is provided using one or more of the methods required in Section 25608.5 and includes all the following elements:

(1) The word “**WARNING**” in all capital letters and bold print.

(2) The words “Certain foods and beverages sold or served here can expose you to chemicals such as acrylamide or mercury that are known to the State of California to cause cancer or birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/restaurant.”

COMMENT: We do not believe the language in subparagraph (a)(2) complies with Proposition 65’s clear and reasonable warning requirement. The language is vague to the point of meaninglessness, in that it does not specify which foods pose the risk of exposure, and thus prevents consumers from comparison shopping. The group suggests scrapping this approach, which essentially mimics the current regulations, and urges OEHHA to instead adopt regulations requiring the same type of product-specific warnings established above for exposures to listed chemicals in foods.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.7 Prescription Drug Exposure Warnings

- (a) For prescription drugs the labeling approved or otherwise provided under federal law or the prescriber's accepted practice of obtaining a patient's informed consent complies with this Article.
- (b) For exposures resulting from emergency or urgent medical or dental care as defined in Article 1, section 25102(g), a warning is not required if the medical or dental care is undertaken on a person legally incapable of giving consent, because the licensed medical personnel, licensed dental personnel, or certified emergency medical personnel responsible for administering the care, as these terms are defined in Article 1, section 25102, subsections (q), (d), and (b), respectively, reasonably believes that the procedure should be undertaken immediately; and therefore, there is insufficient time to fully inform the patient and there is insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.8 Dental Care Exposure Warnings – Methods of Transmission

- (a) A warning for exposure that occurs during delivery of dental care, including an exposure from the use of dental appliances, meets the requirements of this Article if it includes all the elements required by Section 25608.9 and is provided using either of the following methods.
 - (1) A sign posted at all public points of entry to the dental office or in each location within the office where an exposure is reasonably likely to occur. The notice or sign must be no smaller than 5 by 5 inches and printed in nosmaller than 20-point type. All signs or notices must be displayed so that they are clearly visible under all lighting conditions normally encountered during business hours.
 - (2) A warning provided with or in an informed consent form signed by the patient prior to exposure.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.9 Dental Care Exposure Warnings – Content

- (a) A warning for exposures that occur during the delivery of dental care services meets the requirements of this Article if it is provided using one or both of the methods required in Section 25608.8 and contains all the following elements:
 - (1) The word “**WARNING**” in all capital letters and bold print.
 - (2) The words, “Certain dental procedures performed in this office can expose you to chemicals known to the State of California to cause cancer or birth defects or other reproductive harm or both. Those procedures can include sedation

with nitrous oxide, root canals, placement or removal of crowns, bridges, and restorations such as mercury-containing fillings and use of dental appliances. Consult your dental care provider about these exposures and which materials are appropriate for your treatment. Additional information is also available at www.P65Warnings.ca.gov/dental.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.10 Raw Wood Product Exposure Warnings – Methods of Transmission

(a) A warning for exposures to wood dust by drilling, sawing, sanding or machining wood products meets the requirements of this Article if the warning message is provided using one or both of the following methods and includes the elements required in Section 25608.11:

(1) The warning is displayed either at the ~~point of sale~~ or display of the wood products in a manner likely to be seen by the purchaser. The notice or sign must be no smaller than 8 ½ inches by 5 inches and printed in no smaller than 20-point type. All signs or notices must be displayed so that they are clearly visible under all lighting conditions normally encountered during business hours.

~~(2) Where the product is sold in bulk form, the warning may be provided on an invoice or receipt for the wood products in no smaller than 12 point type.~~

COMMENT: We reiterate our concerns noted above relating to warnings given after purchase. We do not believe that this warning complies with the statute.

We believe that the confusion stems from an ambiguity about whether this regulation is aimed at consumer purchasers of wood (for instance at a lumberyard, big-box store, or hardware store, with the end goal of using the wood for a home-improvement project), at contractors purchasing wood for use on a job site, or at large deliveries of wood to a construction site. All of these different scenarios entail different exposure routes, and straddle the lines between consumer product, occupational, and environmental exposures. We believe that in order to make this regulation clear and effective, OEHHA should completely rewrite this section to make it clear what kinds of wood purchases it is envisioning.

We recognize that OEHHA has attempted to do this by including subparagraph (2), but we believe this section needs a lot more work.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.11 Raw Wood Product Exposure Warnings - Content

(a) A warning meets the requirements of this Article if it is provided using one or more of the methods required in Section 25608.10 and includes all the following elements:

- (1) The symbol required in Section 25604(a)(1).
- (2) The word “**WARNING**” in all capital letters, in bold print.
- (3) The words, “Drilling, sawing, sanding or machining wood products can expose you to wood dust, a substance known to the State of California to cause cancer. Avoid inhaling wood dust or use a dust mask or other safeguards for personal protection. For more information go to www.P65Warnings.ca.gov/wood.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.12 Furniture Product Exposure Warnings – Methods of Transmission

(a) A warning *for the consumer purchase of furniture* meets the requirements of this Article if it is provided using the following:

- (1) A notice or sign no smaller than 8 ½ by 11 inches, displayed either at each public entrance or point of display printed in no smaller than 28-point type using the content provided in section 25608.13(a)(1), or;

COMMENT: This regulation appears to be aimed at the consumer purchase of furniture. We point out that for institutional purchases, such as furniture for a hospital waiting room, this regulation would not provide a warning to the end user of the furniture. In this situation, the exposure would not be to the purchaser of the furniture. Rather, the scenario would be either an environmental or an occupational exposure.

- (2) A notice printed or stamped in no smaller than 12-point type on each receipt using the content provided in subsection 25608.13(a)(1).

COMMENT: Again, we do not support the use of post-purchase warnings.

- (3) In addition to one of the methods for providing the notice described in subsection (a)(1) and (2), a warning containing all the elements provided in Section 25608.13(a)(2), that is affixed to the furniture product in the same manner as other information or warning materials provided on the product. The warning message must be printed in a font size no smaller than those used for other *information or* warning information on the product.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.13 Furniture Product Exposure Warnings – Content

(a) A warning message for *consumer-purchased* furniture products meets the requirements of this Article if it is provided using the combination of materials required in Section 25608.12 and it includes the following elements.

- (1) A notice displayed pursuant to Section 25608.12(a)(1) or stamped on a receipt pursuant to Section 25608.12(a)(2) must contain all the following elements:

(A) The word “~~NOTICE~~WARNING” in all capital letters and bold print.

COMMENT: We note that the word “NOTICE” is not the same as the word “WARNING,” which is used elsewhere in the regulation. We suggest OEHHA change this to “WARNING.”

(B) The words “Some furniture products can expose you chemicals known to the State of California to cause cancer, birth defects or reproductive harm. Please check on-product labeling for warning information.”

(2) An on-product warning label provided pursuant to Section 25608.12(a)(3), must contain all the following elements:

(A) The symbol described in 25604(a)(1).

(B) The word “**WARNING**” in all capital letters and bold print.

(C) The words “This product contains and can expose you to chemicals such as [name or names of chemicals listed in Section 25602 that are present in the product], which are known to the State of California to cause cancer, birth defects or other reproductive harm, or both. For more information go to www.P65Warnings.ca.gov/furniture.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.14 Diesel Engine Exposure Warnings (Except Passenger Vehicle Engines) – Methods of Transmission

(a) A warning for exposure to diesel engine exhaust from products other than passenger vehicle engines meets the requirements of this Article if it is provided using all of the following methods and includes the elements required in Section 25608.15.

(1) The warning is printed in the owner’s manual for the specific vehicle, engine or other equipment. Such notice must be printed in no smaller than 12-point type and be enclosed in a box and appear inside or outside the front or back cover of the manual or on the first page of the text, and;

(2) The warning is provided on a label permanently attached to the product in a location that is easily visible to the operator and any passenger of the vehicle, engine or other equipment when it is being operated, and;

(3) If other warnings or operating instructions are provided in an on-screen display, the warning is provided in that manner, using the same size and font as other operator warnings.

COMMENT: “Passenger vehicle” is undefined. Unless it means a vehicle where the carrying of passengers is physically impossible, then this regulation must structure the method of transmission so that passengers receive it. The subsequent section defines “passenger vehicle” by reference to Vehicle Code § 465, which excludes buses. If OEHHA intends this section to cover buses and other vehicles that are capable of carrying passengers we

strongly suggest OEHHA rewrite it to ensure that passengers receive a warning before boarding. An even stronger regulation would require a warning before booking a bus ticket.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.15 Diesel Engine Exposure Warnings (Except Passenger Vehicle Engines) – Content

(a) A warning meets the requirements of this Article if it is provided using the methods described in Section 25608.14 and includes all the following elements.

- (1) The symbol required in Section 25604(a)(1).
- (2) The word “**WARNING**” in all capital letters and bold print.
- (3) The words: “Breathing diesel engine exhaust can expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.”
 - Always start and operate the engine in a well-ventilated area.
 - If in an enclosed area, vent the exhaust to the outside.
 - Do not modify or tamper with the exhaust system.

For more information go to: www.P65warnings.ca.gov/diesel.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.16 Passenger Vehicle Exposure Warnings – Method of Transmission

(a) A warning for exposures that occur during the operation of a passenger vehicle, ~~as defined in Vehicle Code section 465,~~ meets the requirements of this Article if it is provided using both of the following methods and includes the elements required in Section 25608.17.

- (1) The warning is printed in the owner’s manual for the specific passenger vehicle, printed in no smaller than 12 point-type enclosed in a box printed or affixed to the inside or outside the front or back cover of the manual or on the first page of the text, and;
- (2) The warning is provided on a label attached to the front window on the driver’s side of the vehicle.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.17 Passenger Vehicle Exposure Warnings – Content

(a) A warning for exposures that occur during the operation of a passenger vehicle meets the requirements of this Article if it is provided using all the following elements.

- (1) The symbol required in Section 25604(a)(1).
- (2) The word “**WARNING**” in all capital letters and bold print.
- (3) The words: “Operating, servicing and maintaining a passenger vehicle can expose you to chemicals such as lead, phthalates, engine exhaust and carbon monoxide that are known to the State of California cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, service your vehicle in a well-vented area and wear gloves or wash your hands frequently when servicing your vehicle. For more information go to: www.P65Warnings.ca.gov/passenger_vehicle.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.18 Enclosed Parking Facility Exposure Warnings – Method of Transmission

- (a) A warning for exposures reasonably calculated to occur in an enclosed parking facility meets the requirements of this Article if it includes the elements required in Section 25608.19, on a sign posted at each public entrance to the enclosed parking facility on a 20 by 20 inch sign in a font no smaller than 72-point type, placed so that it is readable and conspicuous to individuals before they enter the facility.

COMMENT: We suggest specifying that the sign be visible to individuals upon entry either by foot or by vehicle.

- (b) The warning must be provided in English and in any other languages in which other entrance signage is provided at the facility.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.19 Enclosed Parking Facility Exposure Warnings– Content

- (a) A warning for exposures reasonably calculated to occur in an enclosed parking facility meets the requirements of this Article if it is provided using the method required in Section 25608.18 and includes all the following elements.

- (1) The symbol required in Section 25604(a)(1).
- (2) The word “**WARNING**” in all capital letters and bold print.
- (3) The words “Breathing the air in this parking garage can expose you to chemicals, such as carbon monoxide and gasoline or diesel engine exhaust, that are known to the State of California to cause cancer or birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information go to www.P65Warnings.ca.gov/parking.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.20 Amusement Park Exposure Warnings – Method of Transmission

- (a) A warning satisfies the requirements of this Article if it includes the elements required in Section 25608.21 and is provided on a sign posted at each public entrance to the facility in a font no smaller than 72-point type, placed so that it is readable and conspicuous to individuals before they enter the premises. Where there is open access to the facility with no designated public entrances, the sign shall be posted at the most common areas used by the public to access the facility.
- (b) If other permanent entrance signage at the facility is provided in any language other than English, the warning must be provided in both English and that language.
- (c) In addition to the warning specified in this section, warnings must be provided for exposures to chemicals in products, alcoholic beverages, food, and enclosed parking facilities where such exposures ~~are reasonably calculated~~ occur on the premises.

COMMENT: We support the specification in subsection (c) that additional warnings are required for more specific exposures. We support removing the words “reasonably calculated.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.21 Amusement Park Exposure Warnings - Content

- (a) A warning for amusement parks meets the requirements of this Article if it is provided using the method required in Section 25608.20, and includes all of the following elements.
 - (1) The symbol required in Section 25604(a)(1).
 - (2) The word “**WARNING**” in all capital letters and bold print.
 - (3) The words “Some areas in amusement parks can expose you to chemicals that are known to the State of California to cause cancer or birth defects or reproductive harm or both. For additional information go to www.P65Warnings.ca.gov/amusement_parks.”
 - (4) Where the name or names of chemicals are required ~~to be included in the warning pursuant to~~ Section 25602, or the person providing the warning includes the name or names of other listed chemicals, the words, “Some areas in amusement parks can expose you to a chemical [or chemicals] such as [name or names of chemicals] that is [are] that are known to the State of California to cause cancer or birth defects or other reproductive harm.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.22 Petroleum Products Warnings (Environmental Exposures) – Methods of Transmission

- (a) A warning for environmental exposures to petroleum products from industrial operations and facilities, other than from service stations and vehicle-repair facilities, meets the requirements of this Article if it is provided using one or more of the methods required in Section 25605 and includes all of the elements required in Section 25608.23.
- (b) If other signage at the facility is provided in any language other than English the warning must also be provided in both English and that language.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.23 Petroleum Products Warnings (Environmental Exposures) – Content

- (a) The symbol described in Section 25604(a)(1).
- (b) The word “**WARNING**” in all capital letters and bold print.
- (c) The words: “Crude oil, gasoline, diesel fuel and other petroleum products can expose you to chemicals such as toluene and benzene that are known to the State of California to cause cancer or birth defects or other reproductive harm. These exposures can occur in and around oil fields, refineries, chemical plants, transport and storage operations such as pipelines, marine terminals, tank trucks and other facilities and equipment. For more information go to: www.P65Warnings.ca.gov/petroleum.”

COMMENT: We support this language. In particular, we support the identification of specific chemicals known to pose exposure risks in petroleum products.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.24 Service Station and Vehicle - Repair Facilities Warnings (Environmental Exposures) – Methods of Transmission

- (a) A warning for environmental exposures to listed chemicals at service stations meets the requirements of this Article if it is posted on a sign at each gas pump using the elements required in Section 25608.23. The sign must be printed in no smaller than 22-point type and be enclosed in a box.

COMMENT: We would support a change specifying that the sign must face the customer when he or she is operating the pump.

- (b) A warning for environmental exposures at vehicle repair facilities meets the requirements of this Article if it is posted at each public entrance to the repair facility on a sign using the elements required in Section 25608.25, printed in no smaller than 32-point type.
- (c) If other signage at the facility is provided in a language other than English the warning must also be provided in both English and that language.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.25 Service Station and Vehicle - Repair Facilities Warnings (Environmental Exposures) – Content

(a) A warning for environmental exposures to listed chemicals at service stations or vehicle repair facilities meets the requirements of this Article if it is provided using the methods described in Section 25608.24 and includes all the following elements.

- (1) The symbol required in Section 25604(a)(1).
- (2) The word “**WARNING**” in all capital letters and bold print.
- (3) The words: “Breathing the air in this area or skin contact with petroleum products can expose you to chemicals that are known to the State of California to cause cancer or birth defects or other reproductive harm, such as benzene, motor vehicle exhaust and carbon monoxide. For more information go to: www.P65Warnings.ca.gov/gasoline.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.26 Designated Smoking Area Exposure Warnings (Environmental Exposures) – Method of Transmission

(a) A warning message for an exposure reasonably calculated to occur within a designated smoking area meets the requirements of this Article if it is provided on a 8 ½ by 11 inch sign posted at the entrance to and within the area in which the exposure is reasonably calculated to occur. The sign must be printed in no smaller than 22-point type and be enclosed in a box and include the elements required in Section 25608.27.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25608.27 Designated Smoking Area Exposure Warnings (Environmental Exposures) - Content

(a) A warning for environmental exposures to tobacco smoke and nicotine in designated smoking areas meets the requirements of this Article if it is provided using the method described in Section 25608.26 and includes all the following elements.

- (1) The symbol described in Section 25604(a)(1).
- (2) The word “**WARNING**” in all capital letters and bold print.
- (3) The words: “Breathing the air in this smoking area can expose you to chemicals such as tobacco smoke and nicotine that are known to the State of California to cause cancer or birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information go to

[www.P65Warnings.ca.gov/smoking areas.](http://www.P65Warnings.ca.gov/smoking_areas)”

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.