



January 25, 2016

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Re: Clear and Reasonable Warning Regulations

Dear Ms. Vela:

The American Coatings Association (“ACA”) submits these comments to the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment (“OEHHA” or “Agency”) in response to the proposed amendments to Article 6: Clear and Reasonable Warning regulations under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Prop 65”). ACA submitted written comments to the Agency on June 13, 2014, in response to OEHHA’s initial release of its pre-regulatory proposal to amend Article 6 of Prop 65,¹ and again on April 8, 2015, in response to OEHHA’s revised proposal.² ACA, once again, appreciates the opportunity to comment on OEHHA’s latest proposal to repeal Article 6 and adopt a new Article 6, Clear and Reasonable Warnings regulations.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 approximately 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.

ACA appreciates OEHHA’s efforts to 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 previous draft was released, particularly the inclusion of a sell-through period, by grandfathering all products that complied with the September 2008 revision of Article 6. ACA greatly appreciates OEHHA’s adoption of this provision in section 25600 part (b)⁴ as it will

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

² See http://oehha.ca.gov/prop65/CRNR_notices/WarningWeb/pdf/comments/AmCoatingsAssocWebcoms.pdf.

³ Proposed Regulation, “Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings,” November 27, 2015,

http://www.oehha.ca.gov/prop65/CRNR_notices/WarningWeb/pdf/112715WarningRegText.pdf.

⁴ “A warning for a consumer product manufactured prior to the effective date of this article is deemed to be clear and reasonable if it complies with the September 2008 revision of this article.”

ensure that labeled products already in the distribution chain before the two-year effective date that are compliant with the previous iteration of the regulations will remain compliant under the amended regulations, and provide certainty for companies that manufacture products, such as paint, with long shelf lives.

However, ACA strongly urges OEHHA to consider and respond to the remaining concerns our industry has over certain provisions in this proposal. The following areas are still problematic, potentially costly, and will lead to an increase in Prop 65 litigation:

1. Chemical specific warnings
2. Internet and catalog sales
3. Font and foreign language requirements for consumer product warnings
4. Pictogram requirements
5. On-product warnings for industrial products labeled pursuant to OSHA HCS 2012, and
6. Sell through period scope

1. Chemical(s) Required to be Included in the Text of Warnings

Section 25601(c) under “Safe Harbor Clear and Reasonable Warnings-- Methods and Content” states that “a warning meets the requirement of this article if the name of one or more of the listed chemicals for which the warning is being provided is included in the text of the warning, to the extent that an exposure to that chemical or chemicals is at a level that requires a warning.” This new policy would require businesses to choose one or more chemicals to include on a Prop 65 warning, and also determine whether the chemical(s) they choose to list on the warning are present in the product at a level that causes an exposure requiring a Prop 65 warning. The intent of this provision is to be consistent with Governor Brown’s goals for reform, to “require more useful information to the public on what they are being exposed to.”⁵

ACA has argued in its previous public comments and continues to argue that OEHHA’s proposed chemical-specific warning approach—whether it is the formerly proposed list of 12 chemicals, or the current proposal in which companies must select chemicals to put on Prop 65 warnings—will go against the goals of Prop 65 reform. The purposes of Prop 65 reform were to reduce the flood of frivolous litigation from private parties under the statute, provide more certainty to businesses regulated under Prop 65, and to provide more meaningful warnings to the public. This proposal will go against all three of these goals.

First, requiring companies to choose one or more chemicals to include on a warning will only confuse consumers given that there are no criteria companies are supposed to follow in selecting what chemical(s) to list on a warning, and will create a potentially misleading or unfair market advantages if only certain chemicals are warned about and others are not. While OEHHA states that a majority of the participants in its UC Davis Study thought that chemical specific warnings were more helpful, the warnings will not be helpful to consumers if different companies choose different chemicals to include on a warning for the same product. Also, not every chemical that a company chooses to include on a warning will be understood by consumers, and listing chemical

⁵ Initial Statement of Reasons (ISOR), Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6 Regulations for Clear and Reasonable Warnings, November 27, 2015, page 8.

names on a warning will not provide a meaningful warning because the consumer still would not know anything else about the chemical or its use in the product. Also, consumers will be led to believe that because certain chemicals are on a product warning, that they are predominant or present at a higher level than other chemicals in the, or that they present a higher risk of exposure or harm than other chemicals in the product. All of these consequences will confuse or mislead consumers, counter to OEHHA's intent.

As for the negative impact on the regulated community, businesses will be faced with the significant burden, for the first time, of having to decide which chemical(s) to include on a Prop 65 warning. This decision would be very challenging for companies that use Prop 65 warnings for a variety of products and that have no criteria to use to select those chemicals, and who could face negative market impacts based on the choice of chemical(s) they select to list on their warning. Even companies that choose to list every chemical on their warning would face the burden of being able to fit all of that information on warnings and labels, incur huge costs of from having to redo and reprint labels, and further confuse the public. Further, because the proposal says that chemicals that are selected to be on a warning must be "at a level requiring a warning," this language in effect would require businesses to incur the burden of having to test the chemical(s) to ensure that they are present in the product at a level requiring warning. It was never the intent of Prop 65 to require that businesses conduct testing, and yet this proposed new requirement would effectively require businesses to do so to make sure they are compliant with the law. It would be a departure from current practice and open businesses up to more potential litigation if they now have to demonstrate that a warning is required.

Overall, chemical specific warnings will be contradictory to OEHHA's goal of providing certainty for businesses regulated under Prop 65 and will not reduce bounty hunter lawsuits. ACA reinforces its previous position and urges OEHHA to abandon chemical specific warning requirements altogether.

If OEHHA decides, in a final regulation, to require that chemical(s) be listed on certain warnings, ACA encourages the Agency to adopt the California Chamber of Commerce's ("Cal Chamber") recommendations outlined in its public comments so that the regulatory text remains consistent with the intent of the statute, technically feasible, and resolves potentially problematic ambiguities. Specifically, ACA supports the Cal Chamber's concern that the current language can be interpreted to suggest that a warning must specify *all* of the chemicals for which a warning is being provided if the business determines to warn for exposures to multiple listed chemicals. Also as drafted, the language will create confusion given that consumers will not know if the chemical on the warning is listed as a carcinogen or because it is a reproductive toxicant. Also, as noted, the language imposes an unlawful burden on businesses to demonstrate—meaning test—that a warning is required, which is against the intent of the statute. Therefore, the phrase "to the extent that an exposure to that chemical or chemicals is at a level that requires a warning" must be deleted in the final regulation.

Also, if OEHHA requires chemical specific warnings in a final regulation, ACA would encourage OEHHA to retain the currently proposed provision that on-product warning labels are

not required to include within the text of the warning the name or names of a listed chemical.⁶ OEHHA acknowledges in the Initial Statement of Reasons (“ISOR”) that having a shorter warning for on-product warnings strikes an appropriate balance between the concern of longer warnings not fitting on a label or packaging of small products, and a person receiving a warning before exposure.⁷ ACA agrees and strongly urges OEHHA to retain the shorter warning requirement for on-product warning labels because of the legitimate, practical concern our members have of limited label space. As we will discuss in the font and foreign language requirement section, in order to assist the business community with compliance, it is critical that OEHHA craft regulations that accommodate for limited label space on products, particularly small packages. Many companies already have large amounts of marketing and warning information that is required to be included on a label, so an abbreviated form of a Prop 65 warning that does not require a chemical to be listed will provide necessary flexibility to make compliance cost-effective and technically feasible.

2. Internet and Catalog Sales

Under Section 25602, 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 burden of providing Prop 65 warnings outside of OEHHA jurisdiction—the state of California.

Further, ACA believes OEHHA does not have the authority to require warnings for products sold online or in catalogs. The original ballot initiative states “25249.6. Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity. No person in the course of doing business shall knowingly and intentionally **expose** any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10” (emphasis added). OEHHA has acknowledged that putting a Prop 65 warning on a label is the preferred way to ensure that a consumer receives a warning prior to exposure, and wants to encourage the use of on-product warnings.

While OEHHA has the authority to adopt regulations to further the purposes of Prop 65, this authority is not without limits. The purpose of Prop 65 is to provide warnings to individuals prior to exposure, not prior to purchase. Therefore, an on-product warning would be legally sufficient for the consumer even if they make the purchase on the internet or from a catalog sale. Any

⁶ Proposed Regulation, “Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings,” November 27, 2015, section 25603(c).

⁷ Initial Statement of Reasons (ISOR), Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6 Regulations for Clear and Reasonable Warnings, November 27, 2015, page 31.

citizen of California would be warned, via the on-product warning, prior to exposure to the chemical product. Beyond the legal concerns, ACA members are concerned with the practical challenges of being able to comply with the internet and catalog sales requirements. Manufacturers do not always have control over how and when the downstream customers and distributors sell their products online or in catalogs, so compliance will be difficult if not infeasible. Downstream customers could have product sitting in a warehouse for years and then one day choose to sell the products and would not have the proper Prop 65 warnings. Further, ACA agrees with the Cal Chamber's argument that requiring warnings prior to purchase rather than prior to exposure (as the law requires) would invalidate several effective warning methods now employed by businesses such as user manuals, care guides, warnings on internal packaging, and as we discussed, on-product warnings that are then sold online. Implementing warnings that are prior to purchase will be unduly expensive, burdensome for businesses, certainly increase frivolous litigation. ACA continues to object to OEHHA mandating internet and catalog sale Prop 65 warnings.

If in the final regulation OEHHA mandates internet and catalog warnings, **ACA urges OEHHA to clarify that if a manufacturer provides an on-product warning, that they do not have to also provide the longer safe harbor warnings if the product is sold online by either the manufacturer or a downstream distributor.** As the proposal is currently written it is unclear if on-product warnings meet the requirements of internet and catalog sales. ACA believes this clarification will be necessary to provide certainty to businesses who provide Prop 65 warnings on on-product warnings. When pursuing clarification, ACA urges OEHHA to adopt the interpretation and state in the text that a manufacturer that uses an on-product Prop 65 warning—which is the shorter warning without the requirement to include a listed chemical—would NOT also have to provide an internet warning—which would require the longer warning and a listed chemical.

To interpret the provision otherwise would place a burden on companies to provide not only one, but *two* Prop 65 warnings for the same product, and both with different requirements. As the Cal Chamber notes, absent a regulatory clarification, the proposed rule can be interpreted to promote an unprecedented warning regime wherein certain products would require two Prop 65 warnings merely because of the manner in which they are sold. While internet sales may not have been contemplated when Prop 65 was initially adopted, this does not warrant requiring two different warnings for the same product, and creates practical challenges for the business community attempting to comply with Prop 65. As discussed, not every company will know what downstream seller is selling their product, which has a Prop 65 label, online.

Finally, requiring an additional warning for online or catalog sales would contradict Governor Brown's proposal to reduce unnecessary litigation under Prop 65. Requiring manufacturers to ensure that products sold online, outside of their control, by a downstream distributor adds more confusion to an already overly complicated process and leaves them vulnerable to frivolous litigation. Manufacturers can ensure they are compliant by providing a warning on the product label – OEHHA's preferred method – but they cannot ensure compliance by downstream distributors. Inevitably, retailers and manufacturers will face lawsuits. With this proposed online and catalog requirement, OEHHA has essentially opened an entire new market for Prop 65 litigation.

ACA encourages OEHHA to make clear that a business providing an on-product warning label pursuant to section 25603 (b) need not provide a warning using any other method. ACA supports the Cal Chamber’s recommendation to add a newly proposed subdivision (d) to section 25603:

(d) A retail seller that sells a product containing an on-product warning label pursuant to subsection (b) via catalog or the internet is not required to provide an additional warning for that product using the methods of transmission identified in Section 25602 subsection (b) or (c).

If in a final regulation OEHHA requires two Prop 65 warnings for products with on-product warnings that also are sold online or in a catalog, ACA would encourage the Agency to consider requiring that the internet or catalog warnings be the shorter warning that is prescribed for on-product warnings. This approach would allow manufacturers of products that have an on-product warning to not have to go through the burden of coming up with a different, separate warning for the internet or catalog sales for the same product. Also, consumers can see the exact same warning on the label as they see associated with the product on the internet site or catalog. The same text that is on the on-product warning label can be simply copied onto the internet website or catalog, so no additional, longer warning—and the inclusion of a listed chemical—would need to be required of manufacturers, alleviating a significant burden.

Additionally, OEHHA should confirm that an on-product warning label is consistent with the term “affixing a label” under section 25600.2(b). Therefore, manufacturers would have no additional requirements if they chose to provide an on-product warning label. By providing the Prop 65 warning on the product label, downstream customers and retailers will have all the information they need to provide an internet or catalog warning since they will be copying the same warning that is already on the label.

3. Font Size and Foreign Language Requirement

Section 25602 states that on-product warnings be in a type size no smaller than the largest type size used for other consumer information on the product, and in no case smaller than 6-point type. Similarly, warnings on other labels must be in a type size no smaller than the largest type size used for other consumer information, and no smaller than 8 point font. As ACA stated in its previous comments, for the purposes of considering the space limitations on on-product warnings (particularly small packages), ACA strongly recommends that rather than prescribing specific font sizes, OEHHA should adopt a more flexible approach to accommodate smaller container sizes.

Further, 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 larger than the federally mandated language, there may be confusion by the multitude of signal words that may appear on a label.

ACA recommends that OEHHA should require that the font size be no smaller than the font being used for the precautionary statements provided on the warning rather than prescribing specific font sizes that may not work for certain products. As the proposal stands, where OEHHA is determining font size based on the font size used for “other consumer information” on the shelf tag, shelf sign or label, the term “other consumer information” is vague. ACA recommends that the focus not be on the broad term “consumer information,” but rather other hazard communication or health-related warnings, so that the Prop 65 warning is consistent with similar information and does not predominate the label space. 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.

In a similar vein, OEHHA must take a holistic view of the new proposal impacts the limited space on labels, particularly if they want to encourage the use of on-product warnings for Prop 65. ACA encourages the Agency to review how its new foreign language requirement in section 25602(d)⁸ burdens manufacturers by requiring more information in a finite section of product labels. While ACA understands OEHHA’s interest in accommodating to non-English speakers, OEHHA also acknowledges manufacturers’ concerns with being required to provide warnings that will not fit on or will crowd labels, which are already being pushed to their limits. This was OEHHA’s justification for creating a shorter safe harbor warning for on-product warnings.⁹ Still, the proposed new font requirements in addition to the new foreign language requirement would create significant challenges for manufacturers that are already struggling to fit all required components on a product warning label. In addition to space considerations, the foreign language requirement will likely cause confusion for consumers who do not purchase the product in the United States and who are not affected by Prop 65. Oftentimes, manufacturers include a foreign language on a label because the product is being sent to a foreign country. If the final regulation retains the foreign language requirement, then these foreign consumers will see Prop 65 warnings in their language and not understand what they mean since Prop 65 does not exist in that country.

ACA urges OEHHA to not apply its foreign language requirement to Prop 65 warnings, particularly on-product warnings or small packages. It is important to ACA members that OEHHA provide the necessary flexibility, both in content and type size, to manufacturers who warn on product labels so that the new requirements are technically feasible, particularly for small packages. OEHHA can satisfy its interest in educating the public about warnings by supplying translations of warnings on its website in lieu of requiring businesses to provide them whenever another language is present on a label. Furthermore, it will significantly alleviate the burden on businesses from having to fit a Prop 65 warning in multiple languages on one label or other method of warning, and from the risk of businesses being sued due to, arguably, not properly translating warnings in foreign languages in a way that is “clear and reasonable.”

⁸ “If any label, labeling or sign that provides consumer information about a 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 that label, labeling or sign.” Proposed Regulation, “Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings,” November 27, 2015, section 25602(d).

⁹ ISOR at pg. 31.

If OEHHA adopts the foreign language requirement in a final regulation, at the minimum, ACA encourages OEHHA to only require one Prop 65 pictogram per warning if both English and additional languages are required. ACA would like OEHHA to clarify that if the warning is being provided in multiple languages, that does not mean multiple pictograms are also required accompanying each foreign language Prop 65 warning. Additionally, ACA recommends that OEHHA clearly explain in the regulatory text what is meant by “consumer information.” Since the proposed regulation applies the foreign language requirement to labels, labeling or signs that provide “consumer information” in a foreign language, OEHHA needs to specify what that means. ACA would agree with the Cal Chamber’s recommendation that the foreign language requirement should only be triggered if other health-related warnings for a product are given in multiple languages, not just on the mere use of multiple languages on a label related to consumer information.

4. Pictogram Requirements

ACA agrees with the Cal Chamber’s comments regarding the use of the American National Standards Institute (ANSI) symbol. The ANSI symbol is intended to provide warnings for immediate hazards rather than chronic hazards such as reproductive toxicity and carcinogenicity. While OEHHA asserts that the UC Davis Study participants interpreted the symbol to mean “warning,” and that the ANSI symbol is in “widespread use by businesses in the U.S. and internationally for general warnings,” ACA believes the requirement that the ANSI symbol be included in Prop 65 warnings could cause confusion to consumers since it is commonly used in other contexts unrelated to Prop 65. As cited in the Cal Chamber’s comments, if OEHHA intends to include a pictogram at all in a warning requirement, ACA supports the creation of a Prop 65-specific pictogram that would be in black and white color.

With regard to the color requirement of the pictogram-- while ACA appreciates OEHHA allowing businesses to use black and white, the proposal only allows for this flexibility if the sign, label or labeling for the product is not printed using the color yellow.¹⁰ ACA continues to urge the Agency to eliminate the mandate that the symbol be in yellow color. This is for practical purposes because, as is the case with many ACA members, businesses often have pre-printed labels that are shipped to facilities. Product labels are typically printed on a contractual basis in large quantities to reduce the cost per label. Traditionally, the branding on the front of the label is colorful for marketing purposes. Generally, on pre-printed labels the product identifier and hazard communication information is left blank. Then, at the manufacturing facility the product identifier and hazard communication is printed using one or two tone printers.

Many of ACA’s members’ products are subject to the federal revised Hazard Communication Standard (“HCS 2012”). ACA members have invested in two-tone printers that can only print red and black to accommodate the new requirements for the red border for the Globally Harmonized System of Classification and Labeling (GHS) pictograms. These two-tone printers would be used to print all of the hazard communication information including the Prop 65 warning and cannot accommodate the yellow pictogram. The remaining section of products, subject to the Federal Hazardous Substances Act (FHSA) would have the hazard communication

¹⁰ Proposed Regulation, “Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings,” November 27, 2015, section 25603(a)(1).

information printed solely in black, using a one tone printer, which again cannot accommodate the yellow pictogram.

In practice, OEHHA's proposed color requirement will pose significant costs and burdens for ACA members and other companies that use pre-printed labels. Using a black and white pictogram would also not go against OEHHA's goal to provide meaningful warnings to consumers because, according to OEHHA's UC Davis Study, the study tested participants' reaction to the proposed warning symbol in both yellow and in black and white. OEHHA states that people interpreted the ANSI symbol to mean "warning" and few expressed confusion.¹¹ Since OEHHA does not indicate that the study participants expressed a preference for yellow, nor were they more confused by the symbols that were in black and white versus in yellow, that the yellow color is not a necessary component that consumers need to understand the warning, and therefore should not be a requirement in the safe harbor provisions.

ACA requests that OEHHA simply allow manufacturers to print the pictogram in 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.

5. On-Product and Safety Data Sheet (SDS) Warnings for Occupational Exposures

Section 25606, which prescribes warnings for Occupational Exposures, says that if a warning fully complies with all information, training and labeling requirements of the federal Hazard Communication Standard, then the warning is "clear and reasonable" under the law.

During a discussion on January 14, 2016, with representatives from OEHHA, OEHHA stated that the provisions for Occupational Exposures was intended to cover both occupational exposure *area* warnings provided by employers as well as industrial *product* exposure warnings provided by a manufacturer to downstream users of chemical products. The intent of Section 25606 was to carry over from the existing regulations. This intent is significant for ACA members because some industrial coatings manufacturers provide Prop 65 warnings either on the product label or on the Safety Data Sheet (SDS).

However, this intent is currently unclear in the current proposal given that "occupational exposure" is defined as simply "an exposure to any employee at his or her place of employment."¹² This does not specify that this applies to exposures coming from the occupational area as well as the industrial products. And, "consumer product exposure" is defined as "an exposure that results from a person's acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a **product**, including consumption of food" (emphasis added).¹³ By saying "product" and not "consumer product" in that definition, it is unclear that the consumer product exposure warning requirements do not apply to products used in an occupational setting. In contrast, the current Clear and Reasonable Warnings regulation (versus this proposed draft language) does specify in its "Consumer products exposure" definition that

¹¹ ISOR at page. 28.

¹² Proposed Regulation, "Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings," November 27, 2015, section 25600.1(h).

¹³ *Id.* at Section 25600.1(i).

this includes “an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a **consumer good**, or any exposure that results from receiving a **consumer** service” (emphasis added).¹⁴

ACA urges OEHHA to clarify in the proposed language that, consistent with OEHHA’s intent, that the warning requirements for occupational exposures applies to warnings not only in the occupational area, but also to the products used in the occupational setting. Therefore, products that comply with OSHA’s hazard communication standard would have warnings that are deemed in the regulations to be clear and reasonable.

ACA appreciates that it is OEHHA’s intent that Prop 65 warnings are not required for industrial products labeled according to HCS 2012. In order to clarify OEHHA’s intention in the proposed Occupational Exposure Warnings section, ACA suggests the following changes to section 25606:

§ 25606 Occupational Area and Industrial Product Exposure Warnings

(a) A product or area warning to an exposed employee or downstream professional user 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.

6. Sell Through Provision

Section 25600(b) states that the sell-through period applies to consumer products. As discussed, some industrial product manufacturers also use on-products warnings. ACA recommends the following changes to section 26500(b) in order to clarify that the sell through period applies to all products and not only consumer products:

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. A warning for a ~~consumer~~ product manufactured prior to the effective date of this article is deemed to be clear and reasonable if it complies with the September 2008 revision of this article

¹⁴ Article 6, Clear and Reasonable Warnings, Section 25602(b).

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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