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Subject: FW: OEHHA Follow up re Clear and Reasonable Warning Regulations Rulemaking

Gina and Allan,

On behalf of both the California Hotel & Lodging Association and the California Apartment Association, we very much appreciate your time and open discussion on Monday. While many issues were covered, we wanted to follow up on a few in particular.

Safe Harbor Warning Sections (§§ 25607.xx and 25607.yy).

OEHHA agrees that individually hotels and apartments should each have their own safe harbor warning language allowing for warnings at public entrances (subject to the carve outs for alcohol, food and garages) to cover the majority of potential exposures that may be encountered. We provided OEHHA with a draft for hotels (also attached here). Please note the version attached here now includes a definition for "Hotel". The Apartment Association will submit a version for apartments next week. OEHHA's view is, however, that it cannot administratively be done by April 11, though would be accomplished well before the two year delayed effective date in proposed § 25600(b). Hopefully, however, if OEHHA decides to extend the current comment period beyond April 11, these provisions could be included.

"Affected Area" (§ 25600.1(a)). We see the definition of "Affected area" as vague and potentially misleading. We understood that in the context of hotels and apartments, OEHHA's intent is that the affected area is the entire facility and not the limited zone within a facility where an exposure to a listed chemical might or does occur. While OEHHA offered to address this in the final statement of reasons, we do not think that is sufficient. The definition of "Affected area" should be modified to make it clear and unambiguous. We are also concerned about the use of the phrase "can occur" because we think it is vague and unclear, but feel that is partly corrected if the following change is made.

We suggest the definition of "Affected area" be modified to read, "means the entire facility area in which an exposure to a listed chemical can or does occur at a level that requires a warning."

"Consumer product" and "Consumer product exposure" (§ 25600.1(d) and (e)). We also discussed concerns about the definition of "Consumer product" as both hotels and apartments have a huge variety of items that fit that definition as currently drafted (e.g., furniture, power cords, soaps, shampoos, window treatments, flooring, cleaning supplies, and on and on), yet have no knowledge of what chemicals may or may not be in such products. As currently drafted, hotel and apartment owners are subject to 60 day notices of violation for consumer products present at their facilities. We appreciate OEHHA's statement that products at hotels and apartments are not intended to be considered to be consumer products and that exposures from such items should not be the subject of 60 day notices of violation. Again, however, the regulatory language is not consistent with that intent, allows more than sufficient room for plaintiffs to exploit these definitions to bring

claims due to the presence of items in hotels or apartment complexes, or both. To fix this we recommend clarifying statements in the final statement of reasons and the following regulatory language changes:

“Consumer product” means any article, or component part thereof, including food, that is produced, distributed, or sold by a person generally engaged in consumer product sales for the personal use, consumption or enjoyment of a consumer.

“Consumer product exposure” means an exposure that results from a person’s acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer product, including consumption of a food.

As for the final statement of reasons, we request that OEHHA convey, along with the concepts above, that an exposure to a consumer product other than food or alcohol that is present at a facility but is not being sold by that facility is an environmental exposure, not a consumer product exposure.

We also appreciate your listening to our concern that, in practice, plaintiffs typically equate the *presence* of a chemical as equivalent to *exposure* requiring a warning and to the extent that can be mitigated by these proposed regulations, that would be a very significant improvement.

We trust that these comments are consistent with and accurately reflect the substance of our discussions. If they do not, please immediately advise us of inconsistencies or other issues. We also assume that these comments are and will be considered as part of the rulemaking record and addressed as such by OEHHA. If needed to ensure these are a part of the public record, of course, we can submit them to P65Public.Comments@oehha.ca.gov and/or Monet Vela at your request.

Regards,

OEHHA MEETING
California Hotel & Lodging Association
California Apartment Association

March 31, 2016

Draft Suggested Warning Requirements

Hotels

§ 25607.XX Hotel Exposure Warnings – Method of Transmission

(a) For hotels, a warning meets the requirements of this article if it complies with the content requirements in Section 25607.xx and is provided as follows:

(1) The warning is provided on a sign posted at the primary public entrance to the facility in no smaller than XX-point type.

(2) The warning is placed so that it is readable and conspicuous to individuals as or before they enter the hotel building.

(3) Where there is open access to the facility with no designated public entrances, the sign shall be posted at the most common area used by the public to access the facility.

(b) “Hotel” includes any type of transient lodging establishment, including but not limited to, hotels, motels, bed and breakfast inns, resorts, spas, ski resorts, guest ranches, agricultural “homestays”, tourist homes, condominiums, timeshares, vacation home rentals, and extended stay establishments in which members of the public can obtain transient lodging accommodations.

(c) 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.

(d) In addition to the warning specified in this section, warnings that comply with this article must also be provided for exposures to chemicals in alcoholic beverages, food, and enclosed parking facilities where such exposures occur on the premises. Other specific warnings in this Subarticle 2 are not required.

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

§ 25607.XX Hotel Exposure Warnings – Content

(a) A warning for hotel exposures meets the requirements of this article if it is provided using the method required in Section 25607.xx and includes all the following elements:

(1) The symbol required in Section 25603(a)(1).

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

(3) The words, “[Name of one or more exposure source(s)] in this hotel can expose you to chemicals such as [name of one or more chemicals] which is [are] known to the State of California to cause cancer or birth defects or other reproductive harm.” For additional information [go to www.P65Warnings.ca.gov/hotels](http://www.P65Warnings.ca.gov/hotels).”

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