

January 25, 2016

Via Email: [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov)

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, California 95814

Re: CTA Concerns With “Double Warning” Under New Prop. 65 Proposal, Use of Warnings  
In Product Owner’s Manuals, and Support for Jan. 25 CalChamber Coalition Comments

Dear Ms. Vela:

On behalf of the Consumer Technology Association (CTA)™, I am writing to express concerns over the “double warning” issue under the new Prop. 65 warning proposal released on November 27, 2015, and to reiterate the need to expressly allow companies to provide warnings in product owner’s manuals. I am also writing in support of the industry coalition comments on these and other issues in a letter submitted to the Office of Environmental Health Hazard Assessment (OEHHA) by CalChamber on January 25, 2016.

CTA (formerly the Consumer Electronics Association) is the trade association representing the \$287 billion consumer technology industry. Every day, our more than 2,200 member companies are busy innovating extraordinary products and services and creating jobs nationwide and in California. At CTA, we work to advance government policies that encourage innovation, job creation, and business growth.

Regarding the “**double warning**” issue, Section 25603 (b) of the proposal incentivizes the use of on-product warnings by allowing businesses to use shortened warnings as a safe harbor. Subsection (c) of that same section provides that a business using a shortened warning is not required to include in the text of the warning the name or names of a listed chemical.

While the required safe harbor language for shortened warnings is clear, the proposal is silent and thus ambiguous on whether internet or mail order catalog retailers who sell products bearing on-product warning labels must also warn online or within the catalog using the methods of transmission outlined in proposed Section 25602 (b) and (c). This is of major concern to our member companies, which include the world’s largest technology manufacturers and retailers that sell millions of consumer electronics online and via mail order catalogs in California.

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As drafted, the proposal can be interpreted to require products with on-product warnings to have two Prop. 65 warnings, simply because they are sold online or in catalogs. If on-product warnings in brick-and-mortar stores are deemed clear and reasonable under Prop. 65, then on-product warnings for products sold online or in mail order catalogs should receive equal treatment. In either case, consumers would receive a warning prior to any potential exposure.

To avoid such “double warning,” which will create a disincentive to provide on-product warnings, the proposal should expressly state that a business providing an on-product warning label pursuant to Section 25603 (b) need not provide an additional warning for that product using the methods of transmission found in Section 25602 (b) or (c).

Specifically, CTA supports adding the following suggested language recommended by the CalChamber Coalition to 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 mail order 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).**

Concerning **owner’s manuals**, CTA wishes to reiterate the point raised repeatedly at the public hearing on January 13, 2016 by CTA and other associations that it makes sense to allow companies to provide warnings in product owner’s manuals. Consumers buying products, especially sophisticated consumer electronics, often read the owner’s manual to understand and use all the features of the product, and to also find important information such as electrical safety hazard information, manufacturer contact information, and warranty details. Boxes and stray pieces of paper inside consumer electronics packaging are often discarded and not retained by consumers, whereas manuals are generally read before product usage and kept for future reference. Manuals are commonly the one place consumers know to look to readily find product information. Thus, we cannot overstate the importance that the proposal incorporate the term “labeling” so that companies can provide Prop. 65 warnings in product owner’s manuals.

Thank you for considering CTA’s comments. We look forward to working further with OEHHA in developing a thoughtful regulation that ultimately provides meaningful warnings to California consumers.

Sincerely,

THE CONSUMER TECHNOLOGY ASSOCIATION

/s/

Allison Schumacher

Senior Manager, Environmental Policy & Sustainability

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CC: Carol Monahan-Cummings, Chief Counsel, OEHHA  
Mario Fernandez, Staff Counsel, OEHHA  
Gina Solomon, Deputy Secretary for Science and Health, CalEPA