



ENVIRONMENTAL LAW FOUNDATION



January 25, 2016

**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,

On behalf of Environmental Law Foundation, As You Sow, Center for Environmental Health, Center for Food Safety, Lexington Law Group, and Mateel Environmental Justice Foundation, we submit the following comments on the proposed changes to Proposition 65's warning regulations.

In general, we find these changes to be an improvement on both existing regulations and the regulations proposed in early 2015. We also believe that the proposed regulations still contain serious flaws that OEHHA must address to avoid weakening Proposition 65's protections. This coalition pointed out many of these flaws in our comments to the previous draft.

As we did with our previous draft, we are submitting the bulk of our comments as annotations to the text of the regulations. We incorporate those comments by reference here. To the extent the current draft retains problems we identified in the previous draft, we also incorporate by reference the comments we previously submitted on April 8, 2015 in connection with the last draft. Our comments emphasize the following themes:

- In general, we support several major concepts embodied in these regulations. Several of the changes to the warning's content make it more visible and clear to the consumer. The triangle symbol, the emphasis on reaching non-English speaking populations, and the identification of specific chemicals are all positive steps for Proposition 65.
- We still have significant problems with section 25600.2, which deals with retailers' responsibility to provide warnings. Although there are slight changes in the text, the fundamental problem remains that this regulation will allow too many products to fall through the cracks. It also rewards passivity on the part of the retailers, allowing them to wait until they receive a 60-day notice to take action rather than

incentivizing proactive compliance. We cannot support these regulations unless this section is eliminated or substantially re-drafted.

- We also maintain our opposition to allowing companies to provide warnings at or after the point of sale. We believe that Proposition 65 requires companies to give the warning as early in the purchasing process as possible to promote informed consumer behavior through comparison shopping.
- In the same vein, we support adding a provision that requires companies to target their warnings towards consumers, rather than intermediate purchasers. The person who purchases a product is not always the same person who consumes it. Thus warnings that only target the “purchaser” will not reach all consumers.
- While the current draft continues to clarify that any supplemental information provided to individuals cannot contradict or substitute for a clear and reasonable warning, we believe it is important to add back language that has been eliminated from the last draft that would have also made it clear that any supplemental information cannot dilute or diminish the warning.
- At the public hearing held on January 13, 2016, several commenters representing the business community supported the use of product manuals to provide warnings. Because consumers typically do not read product manuals at all, let alone before purchasing a product, the coalition strongly opposes the use of product manuals to provide Proposition 65 warnings.
- We are also pleased to see that this set of regulations is better drafted than the previous one. In several instances, better drafting has reduced ambiguity and removed potential opportunities for strategic behavior.

We thank you for your hard work on these regulations and we look forward to working with you as the process moves forward.

Sincerely,



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**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, and Mateel Environmental Justice Foundation (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

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## **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 consumer product is required under the Act. Subarticle 2 provides “safe harbor” content and methods 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. 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.

**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 consumer product, area, or chemical in Section 25607, 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. In order to comply with this article, supplemental information may not *dilute, diminish, or* contradict the warning. Supplemental information may not be substituted for the warning required by Section 25249.6 of the Act.

**COMMENT: The coalition objects to OEHHA’s removal of language prohibiting warnings that “dilute” or “diminish” the regulatory warning text. Without that language, companies are free to provide information that severely undercuts the warning’s message without directly contradicting it. This is a serious step back from the previous draft.**

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

(f) A person that is a party to a court-ordered settlement or final judgment establishing a method or content for a consumer product or environmental warning is deemed to be providing a “clear and reasonable” warning for ~~that~~ exposure to the particular products and exposures covered by such settlement for purposes of this article, if the warning fully complies with the order or judgment.

**COMMENT: We suggest removing subsection (f). Many settlements allow for weaker warnings than those provided for by these regulations. OEHHA should not codify those weaker warnings.**

**At the very least, we suggest adding language making clear that non-parties to settlements are not allowed to use court-approved language as a safe harbor. Additionally, this provision should make clear that it only applies to the specific products covered by a settlement.**

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 the vicinity of the source of the exposure which an exposure to a chemical known to the state to cause cancer or birth defects or other reproductive harm is at a level that requires a warning.

**COMMENT: We support removing the term “reasonably calculated” from this subsection. The current language is clearer than the last draft because it removes ambiguity about who would be responsible for the calculation and what types of calculation are reasonable.**

**We again suggest adding 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) “Authorized agent” means the person or entity designated by a retail seller to receive notices from product manufacturers, suppliers, and distributors under this article.

**COMMENT: While we approve of this attempt to clarify the meaning of a retailer’s authorized agent, this provision does not solve a problem that we identified in the previous draft. The regulations contain no requirement that a retailer actually designate an agent. If the retailer does not do this, this definition will not prevent a retailer from avoiding receiving the notice from a manufacturer or distributor required by section 25600.2(b) and thus avoiding the warning requirement. As we discuss again in our comment to that section, a better solution is to simply require the distributor or manufacturer to contact a retailer at the address to which it customarily directs correspondence.**

- (c) “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 consumer product exposures or occupational exposures are environmental exposures.
- (d) “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.
- ~~(e) “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.**

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

**COMMENT: We again object to any warning at the point of sale. And again we suggest distinguishing “signage” from “labeling.” This definition is outside of the ordinary use of the word “labeling”, and is therefore confusing. Further, the use of the term “accompanies the product” is vague.**

**The phrase “tags at the point of sale or display of a product” is also vague. Are only “tags” on the “display of a product” included in the definition, or is the entire display included? If this definition allows for warnings to be provided in a product’s display, we object. We believe that warnings should be placed on the products themselves so that end users receive the benefit of the warnings. Because this definition is so unclear, it must be redrafted.**

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

**COMMENT: We approve of using the term “consumer product” rather than just “product.” We applaud OEHHA for making this change.**

- (j) “Retail seller” means a person or business that sells consumer products, including foods, directly to purchasers by any means, including via the internet. For purposes of this article, a retail seller includes those functions of a business involved in the sale of consumer products, including foods, directly to purchasers, even if the business or facility is primarily devoted to non-retail activities.

**COMMENT: Again, we believe that “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.**

- (k) “Sign” means a physical presentation of written, printed, graphic or electronically provided communication, including shelf signs, other than a label or labeling, posted in a conspicuous manner that is associated with the exposure requiring a warning under the Act, is clearly visible under all lighting conditions normally encountered during business hours and under such conditions as to make it likely to be seen, read, and understood by an ordinary person.

**COMMENT: We suggest adding a definition for “consumer information.” This term, as we point out below, is used throughout the regulations. Without a definition tying it to specific elements on the label, such as nutrition facts, there is nothing preventing a manufacturer from providing one very small item of “consumer information” and then placing a warning in the same tiny type.**

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 Consumer Product Exposure Warnings**

- (a) Section 25249.11 of the Act requires the lead agency to minimize the burden on retail sellers of consumer 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 by providing a written notice directly to the ~~authorized agent~~ for a address to which the manufacturer, producer, packager, importer, or distributor customarily directs correspondence to the retail seller who is subject to Section 25249.6 of the Act, which:

**COMMENT: As in our last set of comments, we believe that this language gives too much discretion to manufacturers and distributors to shift the warning responsibility to retailers. The regulation should specify that upstream companies should provide the warning unless it is unfeasible to do so. Without this language, those companies will simply shift the burden**

**downstream to the retailers, which would contradict the intent of section 25249.11 of the Act. Where retailers are not themselves introducing a listed chemical into a product, they should only be required to provide the warning if it is unfeasible for another party higher up in the stream of commerce to do so.**

**We also again note that the term “authorized agent” is unclear and could lead to confusion and strategic behavior. In the worst case, a retailer could avoid compliance by simply refusing to authorize an agent. We suggest requiring a supplier to simply provide notice to the address to which it customarily directs correspondence to 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 retail seller;
- (4) Has been sent to the retail seller and the manufacturer has obtained confirmation of receipt of the notice; and
- (5) Has been renewed and receipt confirmed by the retail seller at least every 180 days for the first year after the effective date of the regulation, then annually during the period in which the product is sold in California by the retail seller. An additional notice is required within 90 days if a new chemical name or endpoint (i.e. cancer or reproductive toxicity) is required to be included in the warning.

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

**Additionally, we again 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.**

**We support the requirement to send an additional notice and warning materials if a new chemical or endpoint is required to be included.**

**There also needs to be some mechanism to address a situation in which an upstream entity provides warning materials to a retail seller, but those warning materials are not clear and reasonable.**

- (c) The placement and maintenance of warning materials that the retail seller receives pursuant to subsection (b) is the responsibility of the retail seller.

~~(d) The retail seller is responsible for providing the warning required by Section 25249.6 of the Act for a consumer product exposure only when one or more of the following circumstances exist:~~

- ~~(1) The retail seller is selling the product under a brand or trademark that is owned or licensed by the retail seller or an affiliated entity;~~
- ~~(2) The retail seller has knowingly and intentionally introduced a listed chemical into the product, or caused a listed chemical to be created in the product;~~
- ~~(3) The retail seller has covered, obscured or altered a warning label that has been affixed to the product pursuant to subsection (b);~~
- ~~(4) The retail seller has received warning information and materials (or an offer to provide warning materials) for the exposure pursuant to subsection (b) and the retail seller has sold the product without conspicuously posting those warning materials; or~~
- ~~(5) The retail seller has actual knowledge of the potential consumer product exposure requiring the warning, and there is no manufacturer, producer, packager, importer or distributor of the product who:
  - ~~(A) Is a “person in the course of doing business” under Section 25249.11 (b) of the Act, and~~
  - ~~(B) Has designated an agent for service of process in California, or has a place of business in California.~~~~

~~(e) For purposes of paragraph (d)(5) of this section, “actual knowledge” means specific knowledge of the consumer product exposure that the retail seller 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 retail seller shall not be deemed to have actual knowledge of any consumer product exposure that is alleged in the notice until two business days after the retail seller receives the notice. So that the recipient may assess the nature of the alleged violation, the notice must provide a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Article 9, section 25903(b)(2)(D).~~

**COMMENT: We oppose the inclusion of subsections 25600.2(d)-(e). 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.**

**This section is also likely to lead to more uncertainty and litigation, which runs contrary to OEHHA’s stated intent. For instance, what if an upstream entity has a designated agent for service of process or 10 or more employees for only some portion of the relevant time period?**

~~(f) The retail seller of a product that may cause a consumer 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 retail seller:~~

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

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

**COMMENT: We continue to oppose the inclusion of subsection (f) because it is only necessary if OEHHA adopts subsections (d) and (e).**

**Further, if it is included, this subparagraph raises concerns for the coalition. Any interested person should be able 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 again suggests that OEHHA insert language making clear that the manufacturer information covered by this subsection is not a trade secret.**

(g) A person or entity making a written request pursuant to subsection (f) must provide a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Article 9, section 25903(b)(2)(D).

(h) The manufacturer, producer, packager, importer or distributor of a product that may cause a consumer product exposure may enter into a written agreement with the retail seller 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 subsections (b), (c) 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.

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 subarticle 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) ~~Except as provided in Section 25603(e)~~, a warning meets the requirements 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.

(e) All warnings must be placed with such conspicuousness, as compared with other words, statements, designs, or devices in the label, or labeling as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

**COMMENT: We approve of the new subsection (c). Requiring companies to state at least one chemical known to cause cancer or reproductive toxicity will promote informed consumer choice. OEHHA should, however, remove the first clause of subsection (c). There is no reason to restrict the requirement to name a chemical to off-product warnings.**

**We also suggest that OEHHA explore the possibility redrafting subdivision (c) to discourage including a laundry list of chemicals for which there is no evidence that a warning is required. Such a warning would not be clear and reasonable.**

**Additionally, we continue to 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.” It is critical retain language 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 Consumer Product Exposure Warnings – Methods of Transmission**

**COMMENT: We support many of the changes made to this subsection. Here, and throughout the new draft, OEHHA has appropriately clarified that the regulations apply to “consumer products.” This is a positive step as compared to the previous draft. We also approve of subsection (a)(1)’s specification of a minimum font size. We suggest, however, that 10-point be the minimum size. In many fonts, 8-point is unreasonably small and will be illegible to consumers.**

(a) Unless otherwise specified in Section 25607, a warning meets the requirements of this article if it complies with the content requirements in Section 25603 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 must be in a type size no smaller than one half the largest type size used for other consumer information on the shelf tag or shelf sign for the same or similar consumer products. In no case shall the warning appear in a type size smaller than 810-point type.

- (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 consumer product, without requiring the purchaser to seek out the warning.

**COMMENT: We continue to oppose 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, has taken it to the cash register, and has waited in line. 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. Customers will only see a warning when they are in the process of paying, with other customers lined up behind them, if they see it all. Thus 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 to consider its meaning and without pressure from other customers in line or the cashier. We strongly request that any language allowing point of sale warnings be removed because such warnings are contrary to the purpose of the law.**

- (3) A label that complies with the content requirements in Section 25603(a). The entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 8-point type.
- (4) An on-product label that complies with the content requirements in Section 25603(b). The entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

**COMMENT: There is no definition for “consumer information,” as the term is used in subsection (a)(3)-(4), in the definitions section. It is currently unclear whether “consumer information” refers to other required text, such as nutrition facts, or includes the title of the product itself, which is often quite large. This could be a source of confusion and strategic behavior by manufacturers. We do appreciate the specification of a minimum font size, however, which should prevent the worst kind of game-playing.**

- (c) For internet purchases, the warning must be provided by a clearly marked hyperlink using the word “**WARNING**” on the product display page, or otherwise be prominently displayed to the purchaser before the purchaser completes his or her purchase of the product. The warning must be in a type size no smaller than the largest type size used for

other consumer information on the page. For purposes of this article, a warning is not prominently displayed if the purchaser must search for it in the general content of the website *and must not be required to scroll down to view the warning*.

**COMMENT: Although we support the requirement that the word “WARNING” appear on the product page, we object to the use of a hyperlink in lieu of a text warning. A hyperlink requires affirmative consumer action to view the full warning. This is undesirable because many consumers will not click on the hyperlink and thus will not receive the full text. The regulation should clearly require that the full warning text appear on the page before the consumer commits to purchasing the product.**

**And it is critical to place the warning such that a consumer does not have to scroll down to see it. We again provide model text for this subsection that we believe is more clear and complete than the current text:**

**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 or in its own 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.”**

- (d) For catalog purchases, the warning must be provided in the catalog in a manner that clearly associates it with the item being purchased. The entire warning must be in a type size no smaller than the largest type size used for other consumer information in the catalog for the same or similar consumer products. *In no case shall the warning be smaller than 8-point font.*

**COMMENT: We support the changes to this subsection that require the warning to be clearly associated with the product. We suggest adding a font-size minimum, however, to avoid game playing with the definition of “consumer information.”**

- (e) If any label, labeling or sign that provides consumer information 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 that label, labeling or sign.

**COMMENT: We continue to support all attempts to provide warnings to non-English-speaking populations.**

*(f) 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: Again, we suggest that at a minimum, a warning should always enable consumers to differentiate 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.

### **§ 25603 Consumer Product Exposure Warnings – Content**

(a) Unless otherwise specified in Section 25607, a warning meets the requirements of this article if it is provided using one or more of the methods required in Section 25602 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 the sign, label or labeling for the product is not printed using the color yellow, 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 continue to support the use of the triangle symbol. 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 [name of one or more chemicals], a chemical [or chemicals] known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).”

**COMMENT: We still 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—to 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.**

**That said, we believe that the “can expose” language is still stronger than the current regulations and we support that change. This comment is also applicable to (B) and (C) below.**

(B) For exposures to listed reproductive toxicants, the words, “This product *contains and* can expose you to [name of one or more chemicals], 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](http://www.P65Warnings.ca.gov/product).”

(C) For exposures to listed carcinogens and reproductive toxicants, the words, “This product *contains and* can expose you to [name of one or more chemicals] 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](http://www.P65Warnings.ca.gov/product).”

(b) An on-product warning label *shall* ~~may~~ 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.

(A) For consumer products that cause exposure to a listed carcinogen, the words, “Cancer - [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).”

(B) For consumer products that cause exposures to a listed reproductive toxicant, the words, “Reproductive Harm - [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).”

(C) For consumer products that cause exposures to both a listed carcinogen and a reproductive toxicant, the words, “Cancer and Reproductive Harm - [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).”

**COMMENT: We support OEHHA’s choice to require the symbol for on-product warnings. We also urge OEHHA to require companies to provide the name of at least one chemical along with the words “cancer” and/or “reproductive harm.”**

~~(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 a listed chemical.~~

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

and 25249.11, Health and Safety Code.

#### **§ 25604 Environmental Exposure Warnings – Methods of Transmission**

- (a) Unless otherwise specified in Section 25607, a warning meets the requirements of this article if it complies with the content requirements in Section 25605 and is provided using one or more of the following methods:
- (1) 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:
    - (A) Be provided in a conspicuous manner and under such conditions as to make it likely to be seen, read, and understood by an ordinary individual in the course of normal daily activity.
    - (B) Clearly identify the area for which the warning is being provided, including the location and source of the exposure.
    - (C) Be provided in English and in any other language used on other signage in the affected area.

**COMMENT: We approve of the reorganization of this subsection. It is much clearer than the previous draft.**

**We still 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.**

- (2) A warning provided in a notice mailed, sent electronically, or otherwise delivered to each occupant in the affected area. The notice must:
  - (A) Include a map that clearly identifies the affected area.
  - (B) Be provided at least every three months.
  - (C) Be provided in English and in any other language ordinarily used by the business to communicate with the public.
- (3) A warning published in the main or local news section of a newspaper with the largest circulation in the area for which the warning is given, at least once every three months. The warning must:
  - (A) Be at least a quarter-page in size in the print version.
  - (B) Include a map that clearly identifies the affected area.
  - (C) Also be published in the electronic version of the publication, if any.
  - (D) 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 was 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.**

**We do acknowledge that the requirements to place the warning in the “main or local news” section and to provide a map are improvements, but they are only very slight improvements.**

**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 (D), 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.

## **§ 25605 Environmental Exposure Warnings – Content**

(a) Unless otherwise specified in Section 25607, a warning meets the requirements of this article if it is provided using one or more of the methods required in Section 25604 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) For exposures to listed carcinogens, the words, “Entering this area can expose

you to [name of one or more chemicals], a chemical [or chemicals] known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov/environmental](http://www.P65Warnings.ca.gov/environmental).”

- (4) For exposures to listed reproductive toxicants, the words, “Entering this area can expose you to [name of one or more chemicals], 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](http://www.P65Warnings.ca.gov/environmental).”
- (5) For exposures to listed carcinogens and reproductive toxicants, the words, “Entering this area can expose you to [name of one or more chemicals], 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](http://www.P65Warnings.ca.gov/environmental).”
- (6) In all cases the affected 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.

#### **§ 25606 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 oppose this provision because it endorses quite weak warning regimes. For example, the Pesticide and Worker Safety regulation requires providing pesticide handlers with only the names of the pesticides, their EPA registration number, and the active ingredients. (Cal. Code Regs., tit. 3, § 6723.1(a).) The regulation does not require any warning about carcinogenicity or reproductive toxicity. This does not comport with the purposes of Proposition 65.**

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

#### **§ 25607 Specific Product, Chemical and Area Exposure Warnings**

- (a) Sections 25607.1-25607.29 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 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 subarticle.
- (b) If a person does not cause an exposure to a listed chemical required to be identified in a

warning set out in this section, the name of that listed chemical need not be included in the warning in order to meet the requirements of this subarticle. The name of at least one listed chemical requiring a warning must be included in all warnings.

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

### **§ 25607.1 Food Exposure Warnings – Methods of Transmission**

- (a) Except as provided in subsection (b), a warning for food exposures, including dietary supplements, meets the requirements of this article if it complies with the content requirements in Section 25607.2 and is provided using one or more of the methods required in Section 25602. The type size shall be no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 8-point.

**COMMENT: Because OEHHA has not defined “consumer information,” this provision presents the possibility for confusion. OEHHA should clarify what it means by “consumer information” in the definitions section.**

- (b) Where the warning is provided on the product label, it must be set off from other surrounding information, enclosed in a box and comply with the content requirements specified in Section 25607.2.
- (c) If any label, labeling or sign about a food is provided in a language or languages other than or in addition to English, then a warning for that food 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.

**COMMENT: We approve of the decision to require the warning to be placed in a box. This will make the warning more visible to consumers. We believe OEHHA should require the use of the triangle symbol for food. There is no reason to treat food as different from other products that cause cancer or reproductive toxicity. This comment also applies wherever the symbol is not required under these proposed regulations.**

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

### **§ 25607.2 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 Section 25607.1 and includes all the following elements:
  - (1) The word “**WARNING**” in all capital letters and bold print in a font no smaller than the largest type size used for other consumer information on the product.
  - (2) For exposure to a listed carcinogen, the words, “Consuming this product ~~can~~

will expose you to [name of one or more chemicals], a chemical [or chemicals] known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”

- (3) For exposure to a listed reproductive toxicant, the words, “Consuming this product ~~can~~ will expose you to [name of one or more chemicals], 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](http://www.P65Warnings.ca.gov/food).”
- (4) For exposure to chemicals listed as carcinogens and reproductive toxicants, the words, “Consuming this product ~~can~~ will expose you to [name of one or more chemicals], 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](http://www.P65Warnings.ca.gov/food).”

**COMMENT: We again suggest replacing the word “can” with “will” in this subsection. This language makes it clear that an exposure will occur. This point is especially crucial in the case of food. 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.**

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

### **§ 25607.3 Alcoholic Beverage Exposure Warnings – Methods of Transmission**

- (a) A warning for exposures to alcoholic beverages meets the requirements of this article if it complies with the content requirements in Section 25607.4 and is provided using one or more of the following methods:
  - (1) An 8½ by 11 inch sign in no smaller than 22-point type, placed at eye level so that it is readable and conspicuous to customers 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 type 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 in a type size no smaller than the largest type size used for other consumer information on the food. In no case shall the warning appear in a type size smaller than 8-point. 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 in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 8-point.

- (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 type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 8-point. The warning message must be readable and conspicuous to the ~~recipient~~consumer prior to consumption of the alcoholic beverages.

**COMMENT: We again 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.**

**In the alternative, OEHHA should consider a global policy stating that warnings targeted at intermediate purchasers are not sufficient. Warnings should be directed at the person actually exposed: 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.

#### **§ 25607.4 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 25607.3 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](http://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.

## § 25607.5 Food and Non-Alcoholic Beverage Exposure Warnings for Restaurants – Methods of Transmission

- (a) A warning for foods or non-alcoholic beverages that are sold or served by restaurants or other food facilities, as defined in Health and Safety Code Section 113789, and that are intended for immediate consumption, meets the requirements of this article if it complies with the content requirements in Section 25607.6 and is provided using one or more of the following methods:
- (1) An 8½ by 11 inch sign, printed in no smaller than 28-point type placed so that it is readable and conspicuous to customers as they enter each public entrance to the restaurant or facility where food or beverages may be consumed.
  - (2) A notice or sign no smaller than 5 by 5 inches, printed in no smaller than 20-point type placed at each point of sale so as to assure that it is readable and conspicuous.
  - (3) On any menu or list describing food or non-alcoholic beverage offerings, in a type size no smaller than the largest type size used for the names of general menu items.
- (b) The warning must be provided in English and in any other language used on other signage or menus provided on the premises.

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

## § 25607.6 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 25607.5 and includes all the following elements:
- (1) The word “**WARNING**” in all capital letters and bold print.
  - (2) The words, “~~Certain foods and beverages~~ *The following foods and/or beverages, [LIST PRODUCTS],* sold or served here *contain and* can expose you to chemicals such as acrylamide in many fried or baked foods, and mercury in fish that are 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/restaurant](http://www.P65Warnings.ca.gov/restaurant).”

**COMMENT: This language is better than the previous draft in that it identifies specific foods that contain certain chemicals. But it does not identify which menu items contain chemicals at a level requiring a warning. Not all fish contain mercury, and not all fried or baked foods contain acrylamide at levels requiring a warning. A better regulation would allow for comparison shopping by identifying specific menu items. This would reduce overwarning because the warning would not apply to foods which do not contain chemicals at a level that**

**requires a warning. We request that the warning list the menu items for which warnings are required.**

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

### **§ 25607.7 Prescription Drug Exposure and Emergency Medical or Dental Care 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), no warning is required when any of the following circumstances exists:
  - (1) The patient is unconscious; or
  - (2) The procedure must be undertaken because the licensed medical personnel, licensed dental personnel, or certified emergency medical personnel responsible for administering the care, as these terms are defined in Sections 25102(q), 25102(d), and 25102(b), respectively, reasonably believes that the procedure should be undertaken immediately; and therefore, there is insufficient time to fully inform the patient; or
  - (3) The procedure must be performed on a person legally incapable of giving consent, and the licensed medical personnel, licensed dental personnel, or certified emergency medical personnel responsible for administering the care reasonably believes the procedure should be undertaken immediately; and therefore, 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.

### **§ 25607.8 Dental Care Exposure Warnings – Methods of Transmission**

- (a) A warning for an 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 complies with the content requirements in Section 25607.9 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 no smaller than 20-point type; or

- (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.

### **§ 25607.9 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 25607.8 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, *including* [LIST OF PROCEDURES] 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](http://www.P65Warnings.ca.gov/dental).”

**COMMENT: OEHHA should require dental offices to list the procedures where exposures to chemicals require a warning.**

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

### **§ 25607.10 Raw Wood Product Exposure Warnings – Methods of Transmission**

- (a) A warning for exposures to wood dust by drilling, sawing, sanding or machining raw wood products meets the requirements of this article if it complies with the content requirements in Section 25607.11 and is provided using one or both of the following methods:
  - (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 1/2 by 11 inches and printed in no smaller than 20-point type.
  - (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.
- (b) “Raw wood products” includes logs, sawn lumber, plywood and composite wood panels, engineered structural wood products, and similar wood products that are for the most part uncoated and have not been processed into other useful products and have the strong likelihood to be sawed, sanded, or drilled so as to generate wood dust.

**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. Subsection (b) seems to address this concern, but it does not clear up the question of whether these warnings are intended for consumers or employees.**

**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.**

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

#### **§ 25607.11 Raw Wood Product Exposure Warnings - Content**

(a) A warning for exposures to wood dust by drilling, sawing, sanding or machining raw wood products meets the requirements of this article if it is provided using one or more of the methods required in Section 25607.10 and includes all the following elements:

- (1) The symbol required in Section 25603(a)(1).
- (2) The word “**WARNING**” in all capital letters and 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](http://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.

#### **§ 25607.12 Furniture Product Exposure Warnings – Methods of Transmission**

(a) A warning for *consumer* furniture product exposures meets the requirements of this article if it complies with the content requirements in Section 25607.13 and is provided using the following process:

**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, more likely, an occupational exposure. As we have emphasized**

**throughout, the warning should target the people exposed, not just the person or institution making the purchasing decision.**

- (1) A warning affixed to the furniture product in the same manner as other consumer information or warning materials that are provided on the product. The warning must be printed in a type size no smaller than the largest used for other consumer or warning information on the product, in no case shall the warning be provided in a type size smaller than 12-point; and
  - (A) 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; or
  - (B) A notice printed or stamped in no smaller than 12-point type on each receipt.

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

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

### **§ 25607.13 Furniture Product Exposure Warnings – Content**

- (a) A warning for furniture product exposures meets the requirements of this article if it is provided using the combination of methods required in Section 25607.12 and it includes all the following elements:
  - (1) An on-product warning label provided pursuant to Section 25607.12(a)(1), must contain all the following elements:
    - (A) The symbol described in Section 25603(a)(1).
    - (B) The word “**WARNING**” in all capital letters and bold print.
    - (C) The words, “This product can expose you to [name of one or more chemical], a chemical [chemicals] 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/furniture](http://www.P65Warnings.ca.gov/furniture).”
  - (2) A notice displayed pursuant to Section 25607.12(a)(1)(A) or stamped on a receipt pursuant to Section 25607.12(a)(1)(B) must contain all the following elements:
    - (A) The word “**NOTICE**” in all capital letters and bold print.
    - (B) The words, “Some furniture products can expose you to chemicals known to the State of California to cause cancer or birth defects or other reproductive harm. Please check on- product label for warning information.”

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

**§ 25607.14 Diesel Engine Exposure Warnings (Except Passenger Vehicle Engines) – Methods of Transmission**

(a) A warning for exposure to diesel engine exhaust from equipment other than passenger vehicle engines meets the requirements of this article if it complies with the content requirements in Section 25607.15 and is provided using the following combination of methods:

- (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, 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 in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 8-point, ~~or~~*and*

**COMMENT: It is unclear why this subparagraph ends in “or.” It should either be replaced by “and,” or subparagraph (3) should be placed in a different subsection to avoid confusion.**

- (3) If other warnings or operating instructions are provided in an on-screen display, the warning is provided in that manner, using the same type size as other operator warnings, in no case shall the warning appear in a type size smaller than 8-point.

**COMMENT: We again note that “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. Section 25607.16 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.

**§ 25607.15 Diesel Engine Exposure Warnings (Except Passenger Vehicle Engines) – Content**

(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 the combination of methods required in Section 25607.14 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, “Breathing diesel engine exhaust exposes you to chemicals known

to the State of California to cause cancer or 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](http://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.

### **§ 25607.16 Vehicle Exposure Warnings – Methods of Transmission**

- (a) A warning for exposures that occur during the operation, service and maintenance of a “passenger vehicle,” as defined in Vehicle Code Section 465, or an “off-road vehicle” as defined in Vehicle Code Section 38012(b) meets the requirements of this article if it complies with the content requirements in Section 25607.17 and is provided using both of the following methods:
- (1) The warning is printed in the owner’s manual for the passenger vehicle or off-road vehicle, in no smaller than 12-point type enclosed in a box printed or affixed to the inside or outside of 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 passenger vehicle or off-road vehicle printed in a type size no smaller than the largest type size used for other consumer information affixed to the vehicle. In no case shall the warning appear in a type size smaller than 8-point. If the vehicle does not have a driver’s side window, the warning may be provided on a hang tag which is hung from the rear view mirror. If the vehicle does not have a driver’s side window or rear view mirror, the warning may be placed in another prominent location. The label need not be permanently affixed.

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

### **§ 25607.17 Vehicle Exposure Warnings – Content**

- (a) A warning for exposures that occur during the service, operation, and maintenance of a passenger vehicle or off-road vehicle meets the requirements of this article if it is provided using the methods required in Section 25607.16 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, “Operating, servicing and maintaining a passenger vehicle or off-road vehicle can expose you to chemicals such as, engine exhaust, carbon monoxide, phthalates and lead, that are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, service your vehicle in a well-ventilated area and wear gloves or wash your hands frequently when servicing your vehicle. For more information go to [www.P65Warnings.ca.gov/passenger-vehicle](http://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.

#### **§ 25607.18 Recreational Vessel Exposure Warnings – Method of Transmission**

- (a) A warning for exposures that occur during the operation or maintenance of a recreational vessel as defined in Cal. Harb. & Nav. Code Section 651(t) meets the requirements of this article if it complies with the content requirements in Section 25607.19 and is provided as follows:

- (1) The warning is printed in the owner’s manual for the specific recreational vessel, in no smaller than 12-point type enclosed in a box printed or affixed to the inside or outside of the front or back cover of the manual or on the first page of the text, and;
- (2) The warning is provided on a hang tag readily visible from the helm of the vessel printed in no smaller than 12-point type.

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

#### **§ 25607.19 Recreational Vessel Exposure Warnings – Content**

- (a) A warning for exposures that occur during the operation or maintenance of a recreational vessel meets the requirements of this article if it is provided using the method required in Section 25607.18 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, “Operating, servicing and maintaining a recreational marine vessel can expose you to chemicals such as engine exhaust, carbon monoxide, phthalates, and lead that are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, service your vessel in a well-ventilated area and wear gloves or wash your hands frequently when servicing this vessel. For more information go to [www.P65warnings.ca.gov/marine](http://www.P65warnings.ca.gov/marine).”

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

and 25249.11, Health and Safety Code.

### **§ 25607.20 Enclosed Parking Facility Exposure Warnings – Method of Transmission**

- (a) A warning for exposures that occur in an enclosed parking facility meets the requirements of this article if it complies with the content requirements in Section 25607.21, is provided on a 20 by 20 inch sign posted at each public entrance to the enclosed parking facility in no smaller than 72-point type, and is placed so that it is readable and conspicuous to individuals before they enter the facility.
- (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.

### **§ 25607.21 Enclosed Parking Facility Exposure Warnings – Content**

- (a) A warning for exposures that occur in an enclosed parking facility meets the requirements of this article if it is provided using the method required in Section 25607.20 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, “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 and 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](http://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.

### **§ 25607.22 Amusement Park Exposure Warnings – Method of Transmission**

- (a) For amusement parks, including any permanent facility or park providing amusement rides for use by the public, a warning meets the requirements of this article if it complies with the content requirements in Section 25607.23 and is provided as follows:
  - (1) The warning is provided on a sign posted at each public entrance to the facility in no smaller than 72-point type.
  - (2) The warning is placed so that it is readable and conspicuous to individuals before they enter the facility or park.
  - (3) 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 or park.

- (b) For purposes of this section, “amusement ride” includes any type of ride, such as a mechanical or aquatic device, which carries passengers over a fixed or restricted route primarily for the passengers’ amusement; and includes any ride propelled by its passengers or gravity if it is located in an amusement park.
- (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 consumer products, alcoholic beverages, food, and enclosed parking facilities where such exposures occur on the premises.

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

#### **§ 25607.23 Amusement Park Exposure Warnings – Content**

- (a) A warning for amusement park exposures meets the requirements of this article if it is provided using the method required in Section 25607.22, 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, “Some areas in amusement parks can expose you to [name of one or more chemical] a chemical [chemicals] 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/amusement parks](http://www.P65Warnings.ca.gov/amusement_parks).”

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

#### **§ 25607.24 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 complies with the content requirements in Section 25607.25 and is provided using one or more of the methods required in Section 25604.
- (b) If other signage at the facility is provided for the public 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.

### **§ 25607.25 Petroleum Products Warnings (Environmental Exposures) – Content**

(a) A warning for 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 the methods required in Section 25607.24, and includes all the following elements:

- (1) The symbol described in Section 25603(a)(1).
- (2) The word “**WARNING**” in all capital letters and bold print.
- (3) 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 and 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: [NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.](http://www.P65Warnings.ca.gov/petroleum.”</a>”</li></ol></div><div data-bbox=)

### **§ 25607.26 Service Station and Vehicle Repair Facilities Warnings (Environmental Exposures) – Methods of Transmission**

(a) A warning for environmental exposures from service stations meets the requirements of this article if it is posted on a sign at each gas pump that complies with the content requirements in Section 25607.27. The sign must be printed in no smaller than 22-point type and be enclosed in a box. *The warning must face the consumer when he or she is operating the pump.*

**COMMENT: OEHHA should not allow the warning to be placed on the back or sides of the pump where the consumer cannot easily read it.**

- (b) A warning for environmental exposures from vehicle repair facilities meets the requirements of this article if it is posted at each public entrance to the repair facility on a sign that complies with the content requirements in Section 25607.27. The sign must be printed in no smaller than 32-point type and be enclosed in a box.
- (c) If other signage at the service station or facility is provided for the public 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.

### **§ 25607.27 Service Station and Vehicle Repair Facilities Warnings (Environmental**

## **Exposures) – Content**

- (a) A warning for environmental exposures from service stations meets the requirements of this article if it is provided using the methods described in Section 25607.26 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, “Breathing the air in this area or skin contact with petroleum products can expose you to chemicals such as benzene, motor vehicle exhaust and carbon monoxide that are 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/service station](http://www.P65Warnings.ca.gov/service%20station).”
- (b) A warning for environmental exposures from vehicle repair facilities meets the requirements of this article if it is provided using the methods described in Section 25607.26 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, “Breathing the air in this area or skin contact with petroleum products can expose you to chemicals such as benzene, motor vehicle exhaust, and carbon monoxide that are 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/vehicle repair](http://www.P65Warnings.ca.gov/vehicle%20repair).”

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

## **§ 25607.28 Designated Smoking Area Exposure Warnings (Environmental Exposures) – Method of Transmission**

- (a) A warning for environmental exposures from a designated smoking area meets the requirements of this article if it complies with the content requirements in Section 25607.29 and is provided on an 8 ½ by 11 inch sign posted both at the entrance to and within the area in which the exposure occurs. The sign must be printed in no smaller than 22-point type and be enclosed in a box.

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

## **§ 25607.29 Designated Smoking Area Exposure Warnings (Environmental Exposures) - Content**

- (a) A warning for environmental exposures from a designated smoking area meets the

requirements of this article if it is provided using the method described in Section 25607.28 and includes all the following elements:

- (1) The symbol described in Section 25603(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 and 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%20areas)”

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