



Innovative Products For **Home. Work. Life.**

March 28, 2021

via electronic transmission

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
P.O. Box 4010
Sacramento, California 95812-4010

Re: Proposed Amendments to Article 6 Clear and Reasonable Warnings

Dear Ms. Vela,

On January 8, 2021, the Office of Environmental Health Hazard Assessment (OEHHA) published a notice¹ proposing to amend Title 27, California Code of Regulations, Sections 25601, 25602, 25603, and 25607.1 to clarify certain provisions of the regulations addressing Proposition 65 warnings for food products and to provide additional guidance on the safe harbor warning content for short-form warnings. The Household & Commercial Products Association² (HCPA) appreciates the opportunity to provide these comments.

HCPA represents a wide range of trusted and familiar household and commercial products, including, but not limited to, the cleaning and disinfecting products that consumers and workers depend on. HCPA member companies hold their products to the highest safety standards and ensure every ingredient's safety through rigorous science-based analysis and evaluation. Safety is always our first priority, which is why companies invest significant time and resources to make products that are better for human health and the environment. Formulators and manufacturers are continuously improving their products to account for new science and technology, everchanging regulations, consumer demand, sustainability goals, and a host of other factors that change what's possible as the marketplace evolves.

Still, formulators and manufacturers must sometimes use materials and substances that are or contain chemicals that California identifies as causing cancer or reproductive harm. In that case, companies use the "Clear and Reasonable" safer harbor warning regulations. HCPA has a proud history of promoting product transparency and believes that consumers and workers

¹ Available at <https://oehha.ca.gov/media/downloads/cnr/p65noticeshortformoald2021.pdf>

² The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

deserve to know what ingredients are in their products. In fact, HCPA played a lead role in negotiating the Cleaning Product Right to know Act of 2017 in California, which requires manufacturers, distributors, and marketers to disclose information about the chemicals in cleaning products, both on the label and their website. That being said, HCPA believes the short-form label warning proposal is a fundamental change that goes beyond providing consumers and workers with the information they deserve to know. We also argue that it does not provide any tangible benefit and that an Economic Impact Analysis is necessary. OEHHA has stated that their original intent for the short-form warning was to truncate the warning for use only on small labels that could not fit the full warning. However, the proposed amendments go beyond limiting the short-form warning's usage by now proposing for the short-form warning to list at least one chemical that requires the warning. This requirement was not part of the 2015 Initial Statement of Reasoning (ISOR) or the 2016 Final Statement of Reasoning (FSOR). The plain language from Section 25601(b) makes it clear that the warning requirement is product specific, not chemical specific. Indeed, both the current long-form and short-form warnings provide a product-specific warning, i.e., the long-form warning uses the phrase "chemicals including," while the short-form does not enumerate specific chemicals. However, the proposed new short-form warning is a chemical-specific warning. This inconsistency significantly increases the burden and compliance risks on companies that have not been adequately addressed in the proposal and further supports that this is a significant change to the regulation.

The short-form warning's purpose is to balance the requirement of including the warning with the limited space available on the label. According to the ISOR published in 2015, OEHHA believed the approach of incorporating a URL into the short-form warning would allow businesses to provide a short warning message that complies with the Act, while still pointing interested persons to a location where they could obtain more information. The concern over label space is further increased by the proposed requirement that labels that have a maximum area of five square inches are able to use the new short-form warning. Depending on the chemical (or chemicals if a product needs to warn of both a cancer and reproductive risk), the new short-form warning may be too much text for such a small label size. Further, with other labeling requirements, such as the Federal Hazardous Substances Act, Fair Packaging and Labelling Act, and California Cleaning Product Right to Know Act, along with a range of other state and federal requirements it is going to be impossible to fit all that information on such a small area. All of this information, in addition to the Clear and Reasonable Warnings under Article 6, is important for consumers and workers as it provides critical safety information to avoid misuse and potential unnecessary exposure.

As a rationale for amending Article 6, OEHHA states a concern around businesses utilizing the short-form warning without a justifiable need for it. HCPA would appreciate more information regarding this reasoning since an appliance manufacturer and a guitar manufacturer are not representative of the household and commercial products industry. HCPA does not believe that businesses are using the short-form warning without a reason for doing so (i.e., a product in which the consumer is exposed to a chemical or chemicals that require the warning). As

previously stated, label space is a premium. Companies do not want to waste that space on a warning that is not needed and would rather utilize it in a more productive manner, such as proper product use, consumer safety, or including directions in multiple languages. For products that need to comply with the California Cleaning Product Right to Know Act of 2017, products have to list all intentionally added ingredients on the Prop 65 list on the label by January 1, 2023, making the listing of the chemical in the warning redundant. Further, the intent of right-to-know laws and regulations is to warn consumers and workers that a product presents a potential cancer or reproductive risk to help them make informed decisions, so a company is not going to include this warning unless it is warranted. There are products that clearly require a warning due to the intentional inclusion of certain substances, but product manufacturers also have to be cognizant of impurities within the chemicals that are used to formulate products. Those impurities will vary in their levels between different sources and different lots, whether they are from natural sources or synthetic. As such, companies typically take a conservative approach in calculating the potential exposure of various chemicals when the product is used in a reasonable manner because it is not feasible to test and modify each product to determine which batch will or will not require the warning. Additionally, HCPA does not believe that the two companies mentioned in the ISOR published in January 2021 are representative of the entire industry.

OEHHA also expresses a concern that the current short-form warning limits the usefulness of the warning to consumers. HCPA also disagrees with this and would appreciate more information on the informal tally of public inquiries. How many inquiries does this include and do the consumers inquiring contact the manufacturer or go online for more information? It is difficult for stakeholders to understand any potential benefit of the proposed fundamental change in the short-form warning without having more information on the sample size of the informal information provided by OEHHA.

With the proposed modifications to Article 6, companies that would still be allowed to use the short-form warning because their label size is less than five square inches and companies that used the short-form warning due to limited label space but have small products with a label larger than five square inches will all have to update their labels. A one-year phase-in period is not a realistic transition period under normal circumstances, let alone during the COVID-19 pandemic. For example, disinfectants are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These labels must be approved not only by the U.S. Environmental Protection Agency (EPA) – which does not want to approve labels with the Clear and Reasonable Warnings – but also by the California Department of Pesticide Registration (DPR). If everything goes smoothly, label approval through both agencies can easily take more than a year, and with the EPA not wanting to approve the warning, it makes it nearly impossible for these products to comply.

HCPA members will continue to expend resources to meet the needs of Californians during this pandemic as we all move into recovery. We all remain focused on the goal to ensure that everyone has the technology and products needed so that Californians have clean homes and

workplaces for the months and years to come. But committing the time, human capital, and resources to new label changes as a result of this proposal would mean fewer resources dedicated to helping Californians live and work in clean and healthy environments.

For these reasons and more, HCPA respectfully requests OEHHA withdraw the revised short-form proposal. HCPA appreciates the opportunity to comment on OEHHA's proposed amendments to Article 6 Clear and Reasonable Warnings. If you have any questions about our comments, please do not hesitate to contact me at ngeorges@thehcpa.org.

Respectfully submitted,

A handwritten signature in cursive script that reads "Nicholas Georges".

Nicholas B. Georges

Vice President, Scientific & International Affairs