

March 29, 2021

Ms. Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95812-4010

Submitted via web portal at: <https://oehha.ca.gov/comments>

Re: Comments of ISSA in Response to the Proposed Amendments to Article 6, Clear and Reasonable Warnings, and Related to Short-Form Warnings

Dear Ms. Vela:

ISSA, the worldwide association for the cleaning industry, greatly appreciates this opportunity to comment on the Notice of Proposed Rulemaking: Amendments to Article 6, Clear and Reasonable Warnings Short-Form Warnings, issued by the Office of Environmental Health Hazard Assessments (OEHHA) on January 8, 2021 (hereinafter “Proposed Rule”).

With over 10,500 members across the globe, ISSA represents every segment of the cleaning industry including manufacturers, distributors and cleaning service providers. Over 700 of our members are located in California actively working to supply Californians with the cleaning products, disinfectants and services needed to fight the COVID-19 pandemic and reopen our doors for business. Our members perform a critical and essential role in reducing the transmission of infectious diseases, including COVID-19, thereby ensuring a safe and healthy indoor environment for all whether it be where we work, live, learn or play.

In brief, ISSA and its members stand in strong opposition to the Proposed Rule because it will:

- Drastically reduce the ability to use and substantially revise the short-form warning only a few short years after the short-form warnings were established in the regulations;
- Impose a substantial and unreasonable adverse economic burden upon the hundreds of ISSA member companies who adopted short-form warnings in good faith reliance on the previous rulemaking, only to have to once again revise their labels at significant expense to comport with the Proposed Rule;
- Impose additional stress on the cleaning industry supply chain at a time during which it is already facing unprecedented challenges in its efforts to supply cleaning products and services to combat the pandemic; and
- Not produce any significant health or safety benefits to users and others that might be exposed to products subject to Proposition 65.

## **I Background and Adoption of Short-Form Warnings**

Just a few short years ago, OEHHA repealed and replaced the Article 6 warning requirements as a result of a protracted, multiple year process that ultimately created the short-form warnings, among other revisions. These changes represented arguably the most substantial amendments to the Proposition 65 warning regulations in decades.

The cleaning industry embraced the short-form warnings in good faith reliance on the rulemaking process conducted by OEHHA, who promised the business community “more certainty and confidence” in the new warning requirements. The short-form warnings have been widely adopted and used on cleaning products for a variety of reasons, one of which being the crowded “real estate” on a cleaning product label.

The labeling of cleaning products is highly regulated by multiple federal agencies including the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, the Department of Transportation and others in addition to multiple state requirements, all of which add to a very cluttered label that is hard pressed for space. For example, in addition to Proposition 65 warnings, effective January 1, 2021, cleaning product labels must also now display ingredient information pursuant to the California Cleaning Product Right to Know Act.

The short-form warning, therefore, was seen by the cleaning industry as a welcome alternative to the traditional Prop 65 warning; and it has been added to many product labels of varying sizes in order to accommodate all the other labeling obligations attendant with such products. Consequently, manufacturers and distributors of cleaning products invested substantial time, human resources, and capital to revise their Proposition 65 warning programs to comport with the new short-form regulations. Today the short-form warning is widely used in the cleaning industry for this reason, along with the use of the short-form warning on respective websites promoting such products and as allowed under current law.

## **II The Proposed Revisions to Short-Form Warnings are Substantial and Will Require Widespread Revisions to Existing Labels**

Contrary to OEHHA’s claim, the Proposed Rule is far from simply “clarifying” in nature; and in fact would severely restrict the ability to use and substantially change the content of short-form warnings. As a consequence, virtually all cleaning product manufacturers and distributors presently using the short-form warning would be required to revise their product labels and website warnings, all at great economic burden to an industry still reeling from the unprecedented demands placed upon it by the COVID-19 pandemic. Consider the following:

**A. Use of Short-Form Warning is Severely Restricted by the Proposed Rule.** The Proposed Rule limits the use of the short-form warning to only those labels for which the total surface area of the product label available for consumer information is 5 square inches or less without any justification why the 5 square inches limitation is the “right” cutoff. In imposing this new, substantive and unjustified limitation, OEHHA would radically limit the use of the short-form warning.

The labels of cleaning products are regulated by multiple federal and state agencies. The combined requirements of these governmental bodies severely shrinks the “total surface area of the product label” that is available for additional consumer information, such as contemplated in the Proposed Rule. As a consequence, many companies have adopted the current short-form warnings on labels of varying sizes when appropriate in order to meet their legal labeling obligations that derive from multiple federal and state agencies.

This arbitrary and capricious size limitation of 5 square inches would severely and radically limit the ability of manufacturers and distributors of cleaning products to use the short-form warning. In effect, the severe size limitation effectively acts as a “repeal” of the short-form warning in many cases and will require manufacturers and distributors to revise and otherwise alter their labels, imposing an unreasonable and adverse economic impact upon these companies.

**B. The Proposed Rule Makes Substantive Revisions to the Content of the Short-Form Warning.** Manufacturers and distributors that continue to use the short-form warning under the Proposed Rule also will be required to revise their product labels at considerable expense because of the substantive revisions the Proposed Rule would make to the content of the short-form warning requirements. In brief, OEHHA proposes to “throw out” the old short-form language and replace it with significantly more content including but not limited to including the name of the carcinogen or reproductive toxin on the label.

It is unfathomable how OEHHA can characterize such a revision as “clarifying”. The requirement to list the carcinogen or reproductive toxin on the label is a major change in and of itself. But when taken into consideration with the additional language, it clearly represents a distinct and substantive change to the short-form warnings put into effect only a few short years ago.

In effect, manufacturers and distributors of cleaning products that continue to use the short form warning as revised by the Proposed Rule, will still be required to make substantial revisions to their product labels at substantial cost, imposing an unreasonable adverse economic impact on these businesses.

**C. The Proposed Rule Prohibits Use of Short-Form Warning for Use on Product Website.** Lastly, the Proposed Rule goes even further by eliminating the option open to manufacturers and distributors to use the same short-form warning on their website as is used on the product label. In so doing, OEHHA would place an additional economic burden on manufacturers and distributors of cleaning products.

Under the Proposed Rule, manufacturers and distributors of cleaning products that use the short-form warning would also be required to revise and update the warnings that are placed on their websites. Such a requirement would require an additional diversion of already extremely limited human and financial resources to convert website Prop 65 warnings to comport with the requirements of the Proposed Rule.

### **III The Proposed Rule Would Impose a Substantial Economic Burden on the Cleaning Products Industry**

It is clear from the above discussion that the Proposed Rule is not clarifying in nature, but rather would require substantial revisions to product labels related to the short-form warnings all across the cleaning industry. As a consequence, the Proposed Rule would impose substantial costs upon manufacturers and distributors of cleaning products who would be required to revise their labels and website warnings. In this regard, the Proposed Rule would impose an unreasonable and adverse economic impact upon an industry already reeling from the impacts of the COVID-19 pandemic, and the unprecedented stress it has placed on the cleaning industry supply chain.

The process of revising a label is a complicated, labor intensive and expensive exercise. It requires a review of the underlying regulatory requirements, drafting of appropriate content, crafting potential design changes to the label, internal review of content and design, approval by regulatory and marketing departments, and finally the actual printing of the new labels.

The economic impact of such labeling changes upon the cleaning industry is magnified because private label products are extremely popular and have grown in their popularity during the COVID-19 pandemic. A manufacturer of cleaning products may have over one hundred or more formulations in its inventory that are each sold under 20 or more different private labels through distributors. Thus, each individual formulation that is required to have its Prop 65 warning revised, must also be changed for each and every private label it is sold under, an exhausting and expensive process.

The impact of the adverse economic burden upon manufacturers and distributors of cleaning products is further exacerbated by the fact that they have only just recently changed their labels at significant expense to comport with the revamped Article 6 and the promise of the short-form warnings that became effective in August 2018.

The substantial and costly label changes contemplated by OEHHA in the Proposed Rule also come at a time when the cleaning industry is faced with unprecedented demand placed on it for cleaning and disinfecting products, and the stress that this has placed on the entire supply chain. Presently, the cleaning industry is stretched to its limit in providing the products and services our nation needs to ensure its safety and health during the pandemic, and to help our nation safely reopen. At the same time, OEHHA threatens to compromise the cleaning industry's ability to serve our nation's public health by implementing label changes that will divert limited resources to a labeling exercise the benefits of which are nonexistent.

### **IV The Proposed Rule Would Provide No Significant Benefit to Public Health and is Arbitrary and Capricious**

OEHHA's Proposed Rule would impose substantial costs and an unreasonable adverse economic burden upon the cleaning industry. However, at the same time, OEHHA fails to demonstrate that the proposed changes will provide any significant public health benefits. OEHHA simply claims that the Proposed Rule will "benefit the health and welfare of California residents" but has not conducted any analysis to support this conclusion, nor has there been any demonstration that the

current short-form warnings are deficient in any manner or otherwise present a threat to public health.

More specifically, OEHHA provides no explanation or evidence to justify: i) why the 5 square inch limitation is the appropriate limit; ii) why the revised language will benefit public health; or iii) why a different warning must be provided on the website. And perhaps more importantly, there is no justification provided for why OEHHA has decided to act now and propose a rule that will impose a substantial economic burden upon the cleaning industry and other sectors, a little more than 2 ½ years after the short-form warnings became effective.

Stated simply, OEHHA provides no analysis of the costs or benefits of the Proposed Rule on the assumption that its action is merely “clarifying guidance concerning the provision of safe harbor warnings” and “does not impose any new requirements” on businesses or private persons. In failing to conduct such an analysis, OEHHA has failed to establish a foundation that justifies the specific actions set forth in the Proposed Rule, and as a consequence its Proposed Rule is arbitrary and capricious in the new limitations it seeks to impose.

Moreover, if OEHHA successfully implements its Proposed Rule, what will prevent the agency from two years later making further revisions. Businesses need certainty and predictability, which was promised to them during the last rulemaking around the short-form warnings.

## **V Conclusion**

In conclusion, the Proposed Rule would impose a substantial economic burden upon industry but not produce any significant public health or other benefits. ISSA, therefore, respectfully requests that OEHHA withdraw the Proposed Rule.

Respectfully Submitted,



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General Counsel

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