



January 21, 2022

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

Via portal at: <https://oehha.ca.gov/comments>

SUBJECT: December 17, 2021 Notice of Extension of the Public Comment Period for Proposed Modification of Text Title 27, California Code of Regulations Proposed Amendments to Article 6 Clear and Reasonable Warnings – Short Form

Dear Ms. Vela:

The American Supply Association (ASA) thanks you for the opportunity to submit comments regarding the Office of Environmental Health Hazard Assessment's (OEHHA) Notice of Proposed Rulemaking: Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings dated December 17, 2021. **ASA continues to be opposed to proposed amendments** to Article 6 of Title 27 of the California Code of Regulations.

ASA is the national trade association representing distributors, manufacturers and manufacturer representative agencies serving the plumbing, heating, cooling and industrial pipe system industries. ASA represents 525 company members throughout the U.S. In California, ASAs membership is comprised of 85 company members having over 310 distribution and manufacturing locations. In addition, a significant number of our company members outside of California do e-commerce business with customers in California. ASA also represents its affiliate regional partners, the South West Pacific Distributors Association and the Western Supply Association.

ASA opposed the original notice of proposed rulemaking issued by OEHHA on January 28, 2021 as provided in oral testimony given at a hearing held by OEHHA on March 11, 2021 and documented in a letter sent to OEHHA on March 22, 2021 (attached). ASA is appreciative of OEHHA's efforts to address some of our concerns through the proposed rulemaking amendments issues on December 17, 2021:

**Implementation Time Frame and Unlimited Sell-through Date.** ASA appreciates OEHHA including what we understand to be an unlimited sell through date of one-year after adoption of the proposed rule to allow for a transition period to new labeling if the proposed rule amendments are adopted. However, we are concerned that the proposed one-year time frame will not be sufficient, especially with the current supply-chain issues impacting the marketplace and other negative impacts from the pandemic. If the proposed amendments are adopted, we request OEHHA consider a thirty-six (36) month unlimited sell through implementation period.

**Demarcation for Warning Label Content.** ASA recognizes the OEHHA's efforts to address our concerns related to the arbitrary label size for determining use of the short form label by increasing the size demarcation from 5 square inches to 12 square inches. However, we would prefer OEHHA stand by its previous commitment to implement "no size limitations for which products could utilize short-form warnings."<sup>1</sup>

In addition to the above comments, ASA continues to be opposed to the proposed amendments for the following reasons:

**Lack of Justification for the Proposed Changes.** OEHHA continues to provide no data documenting the alleged issues nor data to support the potential value of the proposed changes.

**Potential Increased Prices for the Consumer.** OEHHA incorrectly states there is no financial impact from the proposed changes. Some of the cost impacts include significant labor and material costs in scrapping existing labels, packaging, product manuals and catalogues, designing and printing new material, updating internet sales sites and managing the increased variety of labels. The impact of these increased costs will be passed along to the consumer.

**Creates Inconsistent Messaging in the Supply Chain.** The proposed changes would place an added burden on the supply-chain by having warnings in the store or on-line sales that are not consistent with the warnings provided on product packaging leading to confusion in the marketplace.

**Unclear Regulatory Language.** Section 25602(b) states that for internet purchases a compliant warning must be provided by including either a warning or a clearly marked hyperlink using the word "WARNING" "CA WARNING" or "CALIFORNIA WARNING" on the product display page. It is not clear where the hyperlink should take the consumer. In addition, the modified rulemaking is not clear how a business should select which Prop 65-listed chemical(s) to warn for. The newly proposed section 25603 appears to require that

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<sup>1</sup> OEHHA's Proposition 65 Clear and Reasonable Warnings Questions and Answers for Businesses, Revised May 2019, available at: <https://oehha.ca.gov/media/downloads/crn/art6businessqa.pdf>



the short form warning identify all chemicals to which the warning applies, thus inferring that any chemical exposures not listed in the warning would not provide safe harbor protection for businesses. This would be a radical departure from existing law that provides a safe harbor for a business that warns for a single chemical per toxicity in the current long-form warning. We urge OEHHA not to adopt this revision.

ASA is appreciative of the OEHHA's efforts to resolve some of our concerns with the proposed amendments however, we continue to oppose the proposed amendments to Article 6 of Title 27 of the California Code of Regulations for the reasons noted above.

ASA members take consumer safety seriously and have dedicated significant resources to ensure their products and distribution channels are compliant with nationally recognized industry standards addressing both safety and public health while also staying compliant with current Proposition 65 labeling requirements. OEHHA has shown no data to support changing the current requirements nor has it properly conducted any financial analysis of the impact of the proposed requirements being proposed.

Sincerely,

A handwritten signature in black ink that reads 'James G. Kendzel'.

James G. Kendzel, MPH, CAE  
ASA Director of Codes and Standards

ATTACHMENT

ASA MARCH 22, 2021 LETTER ON JANUARY 21, 2021 PROPOSED AMENDMENTS TO ARTICLE 6, CLEAR  
AND REASONABLE WARNINGS SHORT-FORM WARNINGS



March 22, 2021

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

*Via portal at: <https://oehha.ca.gov/comments>*

**SUBJECT: Comments on Proposed Amendments to Article 6, Clear and Reasonable Warnings Short-Form Warnings**

Dear Ms. Vela:

The American Supply Association (ASA) thanks you for the opportunity to submit comments regarding the Office of Environmental Health Hazard Assessment's (OEHHA) Notice of Proposed Rulemaking: Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings dated January 8, 2021. **ASA is opposed to the January 2021 proposed amendments** to Article 6 of Title 27 of the California Code of Regulations.

ASA is the national trade association representing distributors, manufacturers and manufacturer representative agencies serving the plumbing, heating, cooling and industrial pipe system industries. ASA represents 525 company members throughout the U.S. In California, ASAs membership is comprised of 85 company members having over 310 distribution and manufacturing locations. In addition, a significant number of our company members outside of California do e-commerce business with customers in California. ASA also represents its affiliate regional partners, the South West Pacific Distributors Association and the Western Supply Association.

ASA's reasons for opposing the proposed changes are provided below:

**Lack of Justification for the Proposed Changes.** OEHHA provided no data documenting the alleged issues nor data to support the potential value of the proposed changes. At the request of the California Chamber of Commerce, OEHHA eventually provided raw data related to consumer calls. ASA conducted an analysis of the raw data and found only 16% of the contacts were related to "warnings lacking chemical names" and "concerns about unnecessary warning"; the two reasons provided in the rationale for the proposed changes. This does not represent a significant number of calls to justify such a wide reaching change.

**Amendments to the Regulation Were Recently Implemented.** Our members spent a significant amount of time and capital to comply with the requirements which went into effect August 2018. The current

proposed changes are a substantial alteration to the 2018 amendments and will require our members to repeat much of this work in an unreasonable timeframe. ASA members conducted significant research and development of new systems and, when appropriate, provided warnings related to the products they distribute in order to comply with the new requirements that went into effect in 2018. To provide an idea of the magnitude of the change, our distributor members carry total SKUs impacted by the proposed changes ranging from 10,000 to over 200,000 SKUs.

**Potential Increased Prices for the Consumer.** OEHHA incorrectly states there is no financial impact from the proposed changes. Some of the cost impacts include significant labor and material costs in scrapping existing labels, packaging, product manuals and catalogues, designing and printing new material, updating internet sales sites and managing the increased variety of labels. The impact of these increased costs will be passed along to the consumer.

**Creates Inconsistent Messaging in the Supply Chain.** The proposed changes would place an added burden on the supply-chain by having warnings in the store or on-line sales that are not consistent with the warnings provided on product packaging leading to confusion in the marketplace.

**Apparent Arbitrary Size Demarcation for Warning Label Content.** It is unclear how OEHHA determined the proposed label size of 5-square inches as the determining size limitation for the shorter warning. OEHHA does not explain nor provide evidence to justify why the 5-square inches or less requirement is the appropriate cutoff. OEHHA's most recent guidance published in May of 2019 expressly told businesses that Article 6 had "no size limitations for which products could utilize short-form warnings."<sup>1</sup>

At the March 11, 2021 virtual public hearing held by OEHHA on the proposed changes, opposition to the proposed changes was unanimous and expressed from a diverse number of product supply chains represented at the hearing. We recommend OEHHA consider bringing together stakeholder representatives to discuss the Proposition 65 issues OEHHA and members of the product supply-chains are facing. ASA would be happy to participate in such a process.

In conclusion, ASA is opposed to the January 2021 proposed amendments to Article 6 of Title 27 of the California Code of Regulations. ASA members take consumer safety seriously and have dedicated significant resources to ensure their products and distribution channels are compliant with the current Proposition 65 requirements and the OEHHA has shown no data to support changing the current requirements nor has it properly conducted any financial analysis of the impact of the proposed requirements being proposed.

Sincerely,



James G. Kendzel, MPH, CAE  
ASA Director of Codes and Standards

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<sup>1</sup> OEHHA's Proposition 655 Clear and Reasonable Warnings Questions and Answers for Businesses, Revised May 2019, available at: <https://oehha.ca.gov/media/downloads/crn/art6businessqa.pdf>