

April 20, 2022

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

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

**SUBJECT: COMMENTS TO SECOND MODIFICATION OF TEXT,  
PROPOSED AMENDMENTS TO ARTICLE 6, CLEAR AND REASONABLE  
WARNINGS SHORT-FORM WARNINGS**

Dear Ms. Vela:

The Consumer Brands Association, the California Chamber of Commerce, and the below-listed organizations (hereinafter, “Coalition”) thank you for the opportunity to submit comments regarding the Office of Environmental Health Hazard Assessment’s (“OEHHA”) Second Modification of Text Title 27, California Code of regulations Proposed Amendments to Article 6 Clear and Reasonable Warnings - Short Form dated April 5, 2022 (“Proposed Rulemaking”). The Coalition consists of numerous California-based and national organizations and businesses of varying sizes that collectively represent nearly every major business sector that would be directly impacted by OEHHA’s Proposed Rulemaking.

The Coalition hereby incorporates by reference its March 26, 2021 comment letter and its January 21, 2022 comment letter. The Coalition again renews its significant concerns about the need for and timing of this proposed regulation in the midst of a continuing global public health crisis and unprecedented challenges detrimentally impacting the supply chain, including the war in Ukraine and the most recent lockdowns in China. In light of these issues and the issues raised below, this Proposed Rulemaking should be withdrawn.

- As a preliminary manner, the Coalition was not provided adequate time to review and comment on these latest significant modifications to the Proposed Rulemaking. The Coalition requested a short extension of time to submit comments, and OEHHA rejected that request. The Coalition notes that the 15-day comment period coincides with spring break, Holy Week, Easter, Passover and Ramadan -- a time when many people are on vacation and unavailable to analyze the latest modifications for the Proposed Rulemaking.
- The Proposed Rulemaking will cause significant disruption and costs on small and large businesses alike because it will necessitate label changes on every product that currently bears a short-form warning. Each short-form warning label will have to be reviewed and updated to identify a chemical for each toxicity endpoint. In addition, the Proposed Rulemaking will necessitate website, marketplace listing, and catalog updates, as well as communications with all retailers regarding the label changes. In 2016, businesses

invested significant time and capital to overhaul their Proposition 65 warning programs. The Proposed Rulemaking will require a similar investment just a few short years later and at a time when resources are stretched thin.

- The Proposed Rulemaking does not serve consumers. Consumers face skyrocketing inflation for consumer goods, including food. The Proposed Rulemaking increases the costs of producing those products and creates significant disruption by necessitating label changes to products bearing warnings.
- The Proposed Rulemaking’s short-form warning text continues to create litigation risk. In the Coalition’s January 21, 2022, comment letter, the Coalition pointed out that the new short-form regulatory text appeared to require the identification of all chemicals to which the warning applied, and the Coalition proposed text to clarify that the safe harbor short-form warning requires the identification of a single chemical. OEHHA rejected the Coalition’s proposed revision. OEHHA’s modification in the Proposed Rulemaking now changes the bracketed text in the short-form warning from “[name of one or more chemicals known to cause cancer]” to “[name of chemical].” The litigation risk still remains very high with this latest modification, which does not clarify the prior ambiguity.
  - The Coalition recommends that the word “exemplar” be inserted into each of the short-form warnings set forth in proposed Section 25603(b). For example, the carcinogen short-form warning at Section 25603(b)(2)(A)(1) would read: “(A) For exposures to listed carcinogens, the words, 1. “Cancer risk from exposure to [name of exemplar chemical] – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”
  - In addition, the Coalition recommends that Section 25601(b) be modified to read as follows: “(b) Except as provided in Section 25603(c), a warning meets the requirements of this subarticle if the name of one or more of the listed chemicals in the consumer product or affected area for which the warning is being provided is included in the text of the warning. Where a warning is being provided for more than one endpoint (cancer and reproductive toxicity) the warning must include the name of one or more chemicals for each endpoint, unless the named chemical is listed as known to cause both cancer and reproductive toxicity and has been so identified in the warning. Nothing in this subarticle requires any warning to identify more than one chemical for any endpoint (cancer or reproductive harm).”]
- The Coalition previously requested that OEHHA provide 36 months to comply with any modifications resulting from the Proposed Rulemaking. Given the current labor shortages and supply chain issues, the 24 month time frame is simply too short. The April 5, 2022, notice for this modification of the Proposed Rulemaking states that “The two-year timeframe between the effective and operative dates (being proposed in this modification) is the same as provided in the 2016 warning regulation that made major changes to the safe harbor warnings.” April 5<sup>th</sup> Notice at pp. 5-6. The Coalition notes that the current situation is vastly different from 2016 due to the current labor shortages,

ongoing global pandemic, and supply chain disruptions. In addition, for businesses that built their Proposition 65 compliance programs based upon the short-form warning, the current Proposed Rulemaking is at least as significant as the 2016 amendments.

- If the Proposed Rulemaking is not withdrawn, the Coalition requests that the following typographical errors be corrected in the final regulations.
  - The word “content” in the second to the last sentence of Section 25602(b) should be deleted because (a) the reference to Section 25602(a)(4) is to a safe harbor **method**, not content; and (b) the sentence should be parallel to the same sentence in section 25602(c). Thus, the second to the last sentence of Section 25602(b) should read as follows: “If warning is provided using the short-form warning label ~~content~~ pursuant to Section 25602(a)(4), the warning provided on the website may use the same content.”
  - At the end of Section 25602(d), there is a stray quotation mark (”) that should be deleted.

In conclusion, for the reasons noted above and incorporated by reference in the Coalition’s March 26, 2021 and January 21, 2022 letters, the Coalition respectfully requests that the Proposed Rulemaking be withdrawn in its entirety or at least modified as suggested above.

Respectfully submitted,

Advanced Medical Technology Association, Bobby Patrick  
Air-Conditioning, Heating, and Refrigeration Institute, Marie Carpizo  
American Bakers Association, Rasma Zvaners  
American Beverage Association, Rick Rivas  
American Chemistry Council, Tim Shestek  
American Cleaning Institute, Kathleen Stanton  
American Coatings Association, Riaz Zaman  
American Sportfishing Association, Mike Leonard  
American Supply Association, James G. Kendzel  
Asian Food Trade Association, Timothy Sher  
Association of Home Appliance Manufacturers, Kevin Messner  
Auto Care Association, Aaron Lowe  
California Attractions and Parks Association, Sabrina Demayo Lockhart  
California Automotive Wholesalers’ Association, Rodney Pierini  
California Building Industry Association, Nick Cammarota  
California League of Food Producers, Trudi Hughes  
California Manufacturers & Technology Association, Robert Spiegel  
California Pool and Spa Association, Michael Lasher  
Chemical Fabrics and Film Association, Jennifer Oblock

Chemical Industry Council of California, Lisa Johnson  
Consumer Brands Association, John Hewitt  
Consumer Healthcare Products Association, Jay Sirois, Ph.D.  
Council for Responsible Nutrition, Megan Olsen  
Dental Trade Alliance, Greg Chavez  
Food Industry Association, Dana Mullen Graber  
Hach Company, James Lee  
Household & Commercial Products Association, Steven Bennett, Ph.D.  
Illinois Tool Works Inc., Kevin Washington  
Industrial Environmental Association, Jack Monger  
Information Technology Industry Council, Christopher Cleet  
ISSA, The Worldwide Cleaning Industry Association, John Nothdurft  
National Association of Music Merchants, Mary Luehrsen  
National Confectioners Association, Farida Mohamedshah  
National Shooting Sports Foundation, Michael Findlay  
Outdoor Power Equipment Institute, Inc., Daniel J. Mustico  
Outdoor Power Parts and Accessories Association, Brandon Martin  
Peanut and Tree Nut Processors Association, Jeannie Shaughnessy  
Plumbing Manufacturers International, Jerry Desmond  
Pool & Hot Tub Alliance, Nicholas Capezza  
PRINTING United Alliance, Gary Jones  
SNAC International, Christine Cochran  
Specialty Equipment Market Association, Daniel Inger  
Sporting Arms and Ammunition Manufacturers' Institute, Michael Down  
The Toy Association, Erin Raden  
Vision Council, Ashley Mills