



December 14, 2023

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>

Dear Ms. Vela:

The Color Pigments Manufacturers Association (CPMA) appreciates 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 October 27, 2023 ("Proposed Rulemaking").

**1. The Proposed Rulemaking is a Change that is Highly Disruptive and Burdensome to Businesses**

OEHHA's proposed changes are not mere clarifications to non-binding "guidance." OEHHA is proposing changes that will require all businesses currently using the short form warning to change that form everywhere it is used. This could potentially be hundreds of thousands of discrete "displays" of the warning on products and packaging, online, and in Safety Data Sheets (SDSs). Many businesses referencing the current short form warning in their SDSs would also need to change those, magnifying the fiscal impact. For example, for just one ACC member company, a change to the short-form warning would also require changes to hundreds of SDSs currently in use – changes that are not valuable from an information communication standpoint since SDSs already contain substantial health and safety information. The requested regulatory impact analysis should take these compounded costs and burdens on business into account. For a given chemical manufacturer, the potential burden of just making the short-form label changes themselves is substantial. For example:

- For on-demand labels, a manufacturer would need to reprogram labeling templates to accommodate the new requirement.
- For pre-printed labels, all labels would need to be revised. If chemical names are also added, this adds another layer of complexity to the process of managing labels, because it is not just a function of adding a chemical name. A manufacturer will also then need to monitor for changes to those names (both due to formulation changes, as well as to newly added Prop 65 chemicals).

Clarity and consistency with respect to the Warning Regulation is important. It serves an important purpose. Proposition 65 is an extremely burdensome program for businesses across the U.S., in no small part due to the ambiguity related to how to achieve compliance built into the statute itself. Many chemistries on the Proposition 65 list are essential or inherent to products and cannot simply be formulated out of them, meaning that the only de facto compliance option is to issue a warning. To be able to issue a compliant warning, the rules must be clear upfront. This is basic due process: a person or business who will be affected by a government decision, or enforcement action, must be given advance notice of what the government plans to do – in other words, what the government requires and how to comply with that requirement. In the case of Proposition 65, there is no other readily available option to businesses to achieve this level of compliance certainty; to date, few Safe Use Determinations have been issued, and when they have, they are limited in scope. OEHHA has acknowledged the need for warning requirements to provide certainty for businesses who must comply with the warning requirements of the Act.

## **2. OEHHA Does Not Justify the Proposed Change with Respect to the Content of the Short-Form Warning**

OEHHA appears to be making several assumptions that underlie its regulatory proposal to reach a conclusion that the addition of a specific chemical exposure for which a warning is being given will deliver meaningful improvements to the information conveyed. That said, it appears that the agency is making mere assumptions without any underlying fact-based review or analysis. The agency has undertaken no analysis to evaluate whether consumers will pay more attention to the newly proposed short-form warning; better understand the information; gain actionable information in a manner that will support better decision making; actually, act on that information; and how they will understand and interpret the differences between the long-form and short-form warning text.

Including the name of a specific chemical in a hazard-based warning does not by itself provide meaningful or actionable information to consumers where the risk presented from the chemical is in fact insignificant. Providing the name of a specific chemical may be outright misleading and counterproductive, as it could imply that there is a significant risk presented from the chemical where no such risk is in fact presented. A given product could present actual significant risks from composition, assembly, or use that are then disregarded or not recognized by a consumer. Given that specific chemicals have been included in long-form warnings for several years now, OEHHA should survey against the long-form warning language to better understand how consumers understand and act on the information before proposing changes to the existing short-form warning. Such a survey might reveal, for example, that the short-form warning is more effective in gaining attention, comprehension, or driving consumers to request more information about specific products. We recommend that this work be conducted in accordance with accepted principles and best practices in the fields of consumer risk perception and decision making.

### **3. If OEHHA proceeds with Changes to the Short-Form Warning, the Sell-Through Date Should Also Apply to Pre-printed Label Stock**

Many manufacturers purchase an advance supply of pre-printed label stock. It is very costly, and environmentally wasteful, to toss them out every time a regulation changes. If OEHHA ultimately proceeds with changes to the short-form warning, manufacturers should be allowed a grandfather period to be able to use, rather than discard, existing label stock. The sell-through period should thus apply to not only product manufactured and labeled before the operational date, but also to the label stock that was produced before the operational date.

### **4. Additional Labeling Requirements Can Be Restrictive on Small Packaging**

The proposal to add a requirement to identify a specific chemical exposure on the short form label would be prohibitive to companies that market their products in small packaging. The current font size regulations limit companies in the amount of information they can display on outer packaging. Adding an additional statement to these labels while also complying with font size regulations may not be possible.

CPMA requests that the Proposed Rulemaking amending the short form warning requirements under Article 6 be withdrawn.

Sincerely,

A handwritten signature in cursive script that reads "David J. Wawer".

David J Wawer  
Executive Director