

June 28, 2024

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:

On behalf of the American Apparel & Footwear Association (AAFA), thank you for the opportunity to submit comments regarding the Office of Environmental Health Hazard Assessment's (OEHHA) Modification to Proposed Amendments to Regulations for Clear and Reasonable Warnings, Safe Harbor Methods and Content, dated June 13, 2024 ("Modified Proposal").

I am writing in strong opposition the modified proposal to change the short form warning. The modified proposal, as written, would create consumer confusion and increase litigation, while doing nothing to advance consumer safety or provide the consumer more information before they purchase a product.

The American Apparel & Footwear Association (AAFA) is the national trade association representing apparel, footwear, and other sewn products companies. Representing more than 1,000 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its more than 3.2 million U.S. workers, including hundreds of thousands of workers in California, and its contribution of more than \$490 billion in annual U.S. retail sales.

With our members engaged in the production and sale of clothing, footwear, and accessories, we are on the front lines of product safety. It is our members who design and execute the quality and compliance programs that stitch product safety into every garment, shoe, and accessory we make.

We strongly oppose OEHHA's modified proposal for two fundamental reasons:

The Modified Proposal Will Not Protect Consumers

In your modified proposal, you claim that the proposed warning would better inform consumers than the current short form warning. In fact, the opposite is true. The proposed warning does not give the consumer any meaningful information with which to make an educated choice in purchasing products. With more than 900 chemicals on the Prop 65 list, listing only one or two specific chemical names on a warning label represents an arbitrary selection of chemicals to which a consumer could be exposed in using that product.

If a consumer wants to avoid, for example, Prop 65 listed chemical A, and they purchase a product that warns of potential exposure to Prop 65 listed chemical B, then they would have no specific way to know if the product could also expose them to chemical A, or any of the 900 plus other Prop 65 chemicals. On the other hand, if a consumer wants to avoid all Prop 65 listed chemicals, then the current short form warning most efficiently and effectively supports that goal. The express purpose of the law is, in fact, to educate consumers so that they can avoid exposure to **all** chemicals OEHHA has deemed harmful, if they so choose.

The proposed revision would shift the burden to consumers to require them to become educated about all 900 plus chemicals – an impractical task – rather than allow them to be educated through a far simpler warning construct. In short, adding more information to the warning label – in this case one or two chemical names – would mislead the consumer by implying that the chemical(s) on the warning label are the only chemicals to which a consumer could be exposed, which is not true.

The proposed warning would make the consumer feel like they have complete information about the risk of the product, when, in reality, it gives no context about the actual risk. The proposed warning would only serve to mislead and confuse the consumer.

The current short form warning, on the other hand, clearly and succinctly warns the consumer, in no uncertain terms, that they will be exposed to chemicals deemed harmful by OEHHA if they purchase the product.

The Modified Proposal Will Increase Litigation

The modified proposal creates a situation where the manufacturer, distributor, or seller must choose a chemical to list on the warning label. However, the modified proposal provides no guidance or safe harbor for how to choose the chemical. As noted above, listing one chemical makes no sense. OEHHA has made clear that all 900 plus chemicals on its list are potentially dangerous to consumers. As such, there can be no rationale or guidance that would make sense to choosing only one or two chemicals.

As a result, the modified proposal would leave manufacturers, distributors, and sellers exposed to a whole new set of litigation, with plaintiffs arguing that the manufacturer, distributor, or seller chose to list the “wrong” chemical on its warning label.

Because the modified proposal provides no guidance or safe harbor, the decision on which is the appropriate chemical to list would be left to the courts, leading to endless litigation.

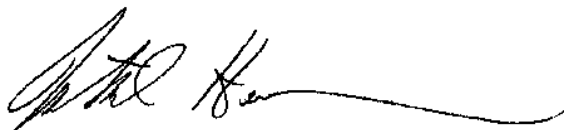
In conclusion, the modified proposal would create only more, not less, confusion among consumers. The purpose of prop 65 is to protect consumers by giving them the information they need to make informed purchasing decisions. The modified proposal would not further that goal. The modified proposal would instead lessen that protection by misleading consumers and giving them a false sense of security.

Further, the modified proposal would exponentially increase the litigation under Prop 65, which is already one of the most litigated statutes in history. And this new litigation would do absolutely nothing to protect consumers.

That is why a very similar proposal was discarded over two years ago in the face of overwhelming opposition, including the opposition of the American Apparel & Footwear Association. We again urge OEHHA to reject this modified proposal.

Thank you for your time and consideration in this matter. Please contact me if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Nate Herman", with a long horizontal flourish extending to the right.

Nate Herman
Senior Vice President, Policy
American Apparel & Footwear Association