

**Initial Statement of Reasons
Title 27, California Code of Regulations**

**Proposed Amendments to Article 6
Clear and Reasonable Warnings**

**Adoption of Sections 25607.36 and 25607.37:
Rental Vehicle Exposure Warnings**

February, 2019



**California Environmental Protection Agency
Office of Environmental Health Hazard Assessment**

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SUMMARY

Proposition 65¹ requires that persons in the course of doing business give a “clear and reasonable” warning to individuals before knowingly and intentionally exposing them to a chemical listed as known to cause cancer or reproductive toxicity. The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency that implements Proposition 65. OEHHA maintains the list of chemicals known to the state to cause cancer or reproductive toxicity and has the authority to promulgate and amend regulations to further the purposes of the Act.² On August 30, 2016, OEHHA adopted new Article 6 Clear and Reasonable Warnings regulations (Title 27, Cal. Code of Regs., section 25600 et seq.)³ intended to make Proposition 65 warnings more informative and meaningful than the previous Article 6 regulations adopted by OEHHA’s predecessor entity in 1988. The new Article 6 regulations became effective on August 30, 2018, at which time the older Article 6 regulations were no longer operative and were repealed. The new Article 6 regulations include guidance concerning safe harbor⁴ warning methods and content warnings for specific exposure scenarios, i.e., “tailored warnings.”⁵

This proposed rulemaking would add Sections 25607.36 and 25607.37 to Article 6 as safe harbor, tailored warnings for rental vehicle exposures. These new sections would further the “right-to-know” purposes of the statute and provide more specificity regarding the content of safe harbor warnings for rental vehicle exposures, and the corresponding methods for providing those warnings that are specific and appropriate for rental-car businesses. Compliance with the regulations by car rental companies will reduce the potential for litigation concerning the sufficiency of warnings, because the content and methods provided in the regulation are deemed “clear and reasonable” by the lead agency for purposes of the Act.

BACKGROUND

As noted above, the new Article 6 regulations include additional guidance concerning safe harbor warning methods and content warnings for specific exposure scenarios. One such tailored warning covers vehicle exposures.⁶ Under the vehicle exposure regulation, warnings must be provided as follows:

¹ Health and Safety Code Section 25249.5 et seq., The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as “Proposition 65”. Hereafter referred to as “Proposition 65” or “the Act”.

² Health and Safety Code Section 25249.12(a).

³ All further references are to Title 27 of the California Code of Regulations, unless otherwise indicated.

⁴ The term “safe harbor” is used throughout to refer to non-mandatory guidance provided by OEHHA for the methods and content of warnings the agency has deemed to meet the “clear and reasonable” standard required by Section 25249.6 of the Act.

⁵ Title 27, Cal. Code of Regs., section 25607.1, et seq.

⁶ Sections 25607.16 and 25607.17.

- “(1) The warning is printed in the owner’s manual for the passenger vehicle or off-highway motor vehicle, in no smaller than 12-point type enclosed in a box printed or affixed to the inside or outside of the front or back cover of the manual or on the first page of the text; and
- (2) The warning is provided on a label attached to the front window on the driver’s side of the passenger vehicle or off-highway motor vehicle. If the vehicle does not have a driver’s side window, the warning may be provided on a hang tag which is hung from the rear view mirror. If the vehicle does not have a driver’s side window or rear view mirror, the warning may be placed in another prominent location. The label need not be permanently affixed.”⁷

Although the safe harbor warning methods in Sections 25607.16 are appropriate for exposures to listed chemicals from vehicles purchased by consumers, OEHHA has concluded that such is not always the case for rental vehicles. Specifically, complying with the Section 25607.16 vehicle exposure warning methods in the context of rental vehicles poses potential public safety concerns. When placed and maintained on the driver’s side window, the vehicle exposure tailored warning has the potential to flag the car as a rental vehicle. Whereas vehicle purchasers often remove the warning sticker upon purchase, rental-car businesses using the warning stickers to comply with Proposition 65 will maintain them on the car. Recently, rental vehicles have become attractive targets for those who commit automobile burglary because would-be burglars believe that many visitors may be carrying large amounts of money, electronics, and other valuables within their rental vehicles. Furthermore, visitors may be unable or unwilling to initiate a police investigation in a city where they do not live and where they will not remain long. In addition, visitors may be unable or unwilling to return to the city to testify in criminal prosecutions of suspected burglars. For these reasons, in 2017, the City of San Francisco sought to address its automobile-burglary crisis through the passage of Ordinance No. 197-17, which requires rental cars to be less conspicuous.

Therefore, OEHHA is proposing an amendment to the regulations that would provide methods and content a business can use to provide a warning specific to the rental car industry. The proposed safe harbor warning content generally follows the existing tailored warning for vehicle exposures with minor changes tailored to the specific type of exposure the renter of a vehicle may encounter; similarly, the methods of transmission provide flexibility to rental car companies to provide warnings in ways that reflect the many different ways and platforms through which consumers rent vehicles. The methods would address the public safety issue by identifying safe-harbor methods for

⁷ Section 25607.16(a).

car-rental businesses to provide compliant warnings to their customers that are less conspicuous and do not indicate to would-be thieves that the vehicle is likely a rental vehicle.

In proposing this regulatory action, OEHHA intends to provide safe harbor guidance on warning content and methods for providing warnings for rental vehicles. These provisions will provide information that is useful to consumers in California about their potential exposures to listed chemicals that may occur from use of a rental vehicle, by providing more guidance to affected businesses on specific methods and content for these warnings, thereby furthering the purposes of the Act. This proposed action does not provide guidance on whether or not a warning is required under the Act. That determination must be made by the business itself. Each provision of the proposed amendments to the warning regulations is discussed below.

§ 25607.36 Rental Vehicle Exposure Warnings – Methods of Transmission

Proposed Section 25607.36 sets forth the methods a business can use to provide safe harbor warnings for exposures to listed chemicals from the use of rental vehicles. The proposed regulation applies to “motor vehicles,” which the California Vehicle Code Section 415 broadly defines as “a vehicle that is self-propelled,” to ensure that it encompasses the various types of vehicles that may be rented, including passenger vehicles, pickup trucks, commercial trucks, and cargo vans.

In addition, this proposed regulation provides several options for providing rental vehicle warnings to accommodate the many different ways and platforms through which consumers rent vehicles. Specifically, subsection (a) provides that a warning must be provided to the renter prior to the renter’s use of a vehicle. The warning must be prominently displayed using a font size no smaller than the largest type size used for other important consumer information, as defined in Section 25600.1(d)⁸, in the method selected. This could be other warning or directions for use of the vehicle. In order to ensure the warning is read and understood prior to exposure, in no event should the warning be printed in smaller than 6 point type.

The warning must be provided using one or more of the following methods:

1. A warning printed in the rental agreement or on the rental ticket jacket.
2. A warning provided on a hang tag which is hung from the rear view mirror in the rental vehicle.

⁸ Section 25600.1(c) provides as follows: “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional information. “Consumer information” does not include the brand name, product name, company name, location of manufacture, or product advertising.

3. A warning provided on a sign, in no smaller than 22-point type, that is posted at the counter or similar area of the rental facility where rental transactions occur, where it will be likely to be seen, read, and understood by the renter during the process of renting the vehicle.
4. A warning provided in an electronic rental contract.
5. A warning provided in a confirmation email that is sent to the renter's email address.
6. A warning provided through a clearly marked hyperlink using the word "**WARNING**" on the on-line reservation page, or by otherwise prominently displaying the warning to the renter prior to completing the on-line reservation.

These methods are intended to reflect the various ways through which consumers rent vehicles. For example, consumers who are members of a rental car company's preferred customer program may not reserve a vehicle online and may not even stop at a kiosk or confer with a representative at the rental vehicle location. Rather, some rental car companies allow members to go directly to the rental vehicle without having to go through the steps other customers may need to take. In such circumstances, the proposed regulation allows rental car companies to provide the warning via a hang tag which is hung from the rear view mirror in the motor vehicle where it is likely to be seen, read and understood upon entering the vehicle. The customer could then remove the hang tag prior to driving the vehicle.

For customers who reserve their rental vehicles online, as many customers do, the proposed regulation allows for the rental car company or third-party provider to provide the warning via email confirmation sent to the renter's email address, which would occur before exposure to a listed chemical.

Alternatively, subsection (b) allows a business to provide a safe harbor warning for a rental vehicle by using the safe harbor methods and content for vehicle exposure warnings described in Sections 25607.16 and 25607.17.

§ 25607.37 Rental Vehicle Exposure Warnings – Content

Proposed Section 25607.37 provides the safe harbor warning content for rental vehicle exposures. This language is similar to the vehicle exposure warning content in Section 25607.17, but eliminates references and directions pertaining to maintaining and servicing vehicles. Vehicle owners are typically responsible for maintaining and servicing their vehicles, whereas vehicle renters are not ordinarily required to do so, and as such, striking that language for purposes of this tailored warning is appropriate.

PROBLEMS BEING ADDRESSED BY THIS RULEMAKING

The rental car industry recently brought to OEHHA's attention the unique challenges that the current vehicle exposure warning method poses in the context of rental vehicle exposures. Specifically, as discussed above, in some locations, the vehicle exposure warning may result in public safety issues because rental vehicles -- which would generally carry a sticker warning on the driver's side window -- will be more easily identifiable and thus potentially more vulnerable to break-ins. Providing rental car companies with a specific safe harbor with alternative methods of providing a warning will avoid this result. Accordingly, this proposed rulemaking would respond to these concerns by providing specific safe harbor warning methods and content for providing meaningful warnings for exposures that can occur from rental vehicles.

NECESSITY

The current vehicle exposure safe harbor may be difficult to apply to the rental car industry in some locations, for the reasons discussed above. A tailored warning for rental vehicles, therefore, is necessary to help protect public safety, ensure that rental-car customers are provided with clear and reasonable warnings as required, and provide certainty for the rental car businesses that must comply with the warning requirements of the Act for exposures that can occur in California while also complying with local ordinances such as the one recently adopted by the City of San Francisco discussed above.

BENEFITS OF THE PROPOSED REGULATIONS

These proposed regulations would benefit the public by identifying methods and content for rental-car businesses to provide clear and reasonable chemical-exposure warnings to their customers without flagging the vehicles as rentals to would-be thieves, thereby protecting public safety. These benefits further the "right-to-know" purposes of the statute. Access to more detailed information within the warning and via the provided hyperlink would further promote public health and safety. The proposed regulations would benefit businesses by providing clarity on how to provide a clear and reasonable warning for rental vehicle exposures; businesses would also benefit from the added assurance of a safe harbor from potential enforcement actions.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON

OEHHA did not rely on any technical, theoretical, and/or empirical study, reports, or documents as part of this rulemaking.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

One alternative considered would be to not propose safe harbor warning methods. If OEHHA does not propose safe harbor warning methods, many rental companies will use window sticker warnings and thus, in certain locations potentially violate local ordinances designed to reduce car thefts and break-ins. OEHHA is not aware of any other reasonable alternatives to the proposed regulation that would better further the purposes of the Act.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed regulatory action will not adversely impact very small businesses because Proposition 65 is limited by its terms to businesses with 10 or more employees (Health and Safety Code Sections 25249.5, 25249.6, and 25249.11(b)).

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation does not impose any new requirements upon private persons or businesses because it provides non-mandatory guidance and a voluntary safe harbor process for providing warnings already required under the Act that businesses can choose to follow. A business still has the option of providing the warnings required by Section 25249.6 of the Act in any manner and with any content it can show is "clear and reasonable" under the law.

EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS ADDRESSING THE SAME ISSUES

Proposition 65 is a California law that has no federal counterpart. OEHHA has determined that, the proposed regulations do not duplicate and will not conflict with federal regulations. In fact, the statute specifically provides that warnings are only required to the extent they do not conflict with federal law.⁹

⁹ Health and Safety Code Section 25249.10(a) (Exempting warnings governed by federal law).

ECONOMIC IMPACT ASSESSMENT
Gov. Code section 11346.3(b)

OEHHA finds there will be no significant economic impact related to this proposed regulatory action. The proposed regulations would not impose any significant costs because businesses are already subject to the warning requirements of Proposition 65. The proposed regulations do not impose any mandatory requirements that would significantly increase costs for businesses. The proposed regulations interpret and make specific certain provisions of the Act and provide guidance for safe harbor warnings that a business may use. A business may also choose not to take advantage of the safe harbor provisions and provide an otherwise “clear and reasonable” warning that complies with the Act.

Creation or Elimination of Jobs within the State of California

This proposed regulatory action will not impact the creation or elimination of jobs within the State of California. The proposed regulation provides more specific and detailed guidance for safe harbor warning methods and content for rental car companies that decide to take advantage of this guidance.

Creation of New Businesses or Elimination of Existing Businesses within the State of California

This proposed regulatory action will not impact the creation of new businesses or the elimination of existing businesses within the State of California. The proposed regulation provides more specific and detailed guidance for safe harbor warning methods and content for rental car companies that decide to take advantage of this guidance.

Expansion of Businesses Currently Doing Business within the State of California

This proposed regulatory action will not impact the expansion of businesses within the State of California. The proposed regulation provides more specific and detailed guidance for safe harbor warning methods and content for rental car companies that decide to take advantage of this guidance.

Benefits of the Proposed Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The proposed regulations will further the purposes of Proposition 65 by providing more informative warnings to the public and reducing uncertainty for businesses that must

comply with the warning requirements of the Act. These proposed changes will benefit the health and welfare of California residents by providing more information to the public and facilitating the rental car industry's compliance with the Act.