

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
PROPOSITION 65

NOTICE OF PROPOSED RULEMAKING
AND ANNOUNCEMENT OF PUBLIC HEARING

AMENDMENTS TO TITLE 27 CCR § 25601, 25602, 25603, 25607.2 AND
NEW SECTIONS 25607.50, 25607.51, 25607.52, AND 25607.53 –
CLEAR AND REASONABLE WARNINGS,
SAFE HARBOR METHODS AND CONTENT

OCTOBER 27, 2023

Publication Date: October 27, 2023
Public Hearing (Hybrid): December 13, 2023
Deadline for Public Comment: December 20, 2023

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Title 27 of the California Code of Regulations, Sections 25601, 25602, 25603, and 25607.2 and adopt new Sections 25607.50, 25607.51, 25607.52, and 25607.53.¹ The proposal intends to make the Proposition 65 short-form warning more informative to consumers, clarify existing safe harbor warning requirements for products sold on the internet and in catalogs, add signal word options for food warnings, clarify that short-form warnings may be used to provide safe harbor warnings for food products, and provide new tailored safe harbor warnings for passenger or off-highway motor vehicle parts and recreational marine vessel parts.

A copy of the proposed amendments is available on the OEHHA Website at [Notices - OEHHA \(ca.gov\)](#).

PUBLIC HEARING

OEHHA has scheduled a public hearing on December 13, 2023, at 10:00 a.m. (PST) in the Sierra Hearing Room located at the CalEPA Headquarters at 1001 I Street in Sacramento to receive comments about this action. The hearing will be hybrid,

¹ All further references are to sections of Title 27 of the California Code of Regulations, unless otherwise indicated.

conducted both remotely and in person. Information concerning how to participate in the hearing remotely will be posted on our website prior to the hearing.

If you have special accommodation or language needs, please contact Monet Vela by telephone at (916) 323-2517 or [by email](mailto:monet.vela@oehha.ca.gov) at monet.vela@oehha.ca.gov. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

PUBLIC COMMENTS

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. To be considered, **OEHHA must receive comments by December 20, 2023**, the designated close of the written comment period. All written comments will be posted on the OEHHA website after the close of the public comment period.

OEHHA strongly recommends that the public submit written information electronically, rather than in paper form. Comments may be submitted electronically through our website at <https://www.oehha.ca.gov/comments>. Alternatively, comments can be mailed to the address below.

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1001 I Street, 23rd Floor
P. O. Box 4010
Sacramento, California 95812-4010
Telephone: 916-323-2517

OEHHA encourages commenters to submit their comments in a format compliant with the accessibility requirements of the Americans with Disabilities Act, so that they can be read using screen reader technology to ensure that people with visual impairments are able to listen to the comments.

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that written and oral comments, attachments and associated contact information (e.g., your name, address, and e-mail etc.) become part of the public record and can be released to the public upon request.

CONTACT

Please direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela at (916) 323-2517, or by e-mail to monet.vela@oehha.ca.gov.

Kristi Morioka is a back-up contact person for inquiries concerning processing of this action and is available at (916) 322-5624 or kristi.morioka@oehha.ca.gov.

AUTHORITY

Health and Safety Code section 25249.12.

REFERENCE

Health and Safety Code sections 25249.6 and 25249.11.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BACKGROUND

OEHHA is the lead agency that implements Proposition 65² and has the authority to promulgate and amend regulations to further the purposes of the Act. The Act requires businesses to provide a clear and reasonable warning before they cause an exposure to a chemical listed as known to the state to cause cancer or reproductive toxicity.³ The Act also prohibits the discharge of listed chemicals to sources of drinking water.⁴ Article 6 of OEHHA's regulations includes safe harbor warning methods and content that businesses can use to comply with the Act. OEHHA's safe harbor regulations are non-mandatory guidance. The proposed amendments would adopt new safe harbor warning content for short-form warnings, clarify existing safe harbor warning requirements for products sold on the internet and in catalogs, add signal word options for food warnings, clarify that short-form warnings may be used to provide safe harbor warnings for food products, and provide new tailored safe harbor warnings for passenger or off-highway motor vehicle parts and recreational marine vessel parts.

SUMMARY OF THE EFFECT OF THE PROPOSED AMENDMENTS

OEHHA's regulations include safe harbor warning methods and content that businesses can use to warn for consumer product exposures to listed chemicals. In adopting the existing warning regulations, OEHHA determined that an alternative to the general consumer product warning was needed for use on small packages or labels. The existing short-form warnings do not require identification of a specific chemical exposure for which a warning is being given. Not requiring a specific chemical to be included in the short-form warning has led to its over-use, and many businesses are using the short-form warning prophylactically because it protects from potential litigation. The

² The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65" (Health and Saf. Code section 25249.5 et seq.) (hereafter referred to as "Proposition 65" or "the Act").

³ Health and Saf. Code section 25249.6.

⁴ Health and Saf. Code section 25249.5.

proposal would require identification of a specific chemical exposure for which the warning is being given. OEHHA has determined that the proposed changes to the short-form warnings will provide sufficient information for consumers to make informed choices about their exposures to listed chemicals in consumer products and are necessary to further the purposes of the Act and comply with the “clear and reasonable” warning requirement. The proposed changes would also provide clarity for businesses regarding other aspects of short-form warnings and regarding existing safe harbor warning requirements for internet and catalog purchasers.

The proposal would also add new sections 25607.50, 25607.51, 25607.52, and 25607.53 to create tailored warning methods and content for exposures to listed chemicals from passenger or off-highway vehicle parts and recreational marine vessel parts. The regulations would ensure that California consumers buying these parts receive a warning about their exposure and information about reducing the risk of exposure to listed chemicals.

SPECIFIC BENEFITS OF THE PROPOSED AMENDMENTS

The proposal would facilitate compliance with the Act by providing guidance regarding safe harbor warnings for consumer product exposures to listed chemicals. The health and welfare of California residents would likely benefit by increasing the public’s ability to understand the warnings they receive for consumer products they may choose to purchase.

COMPARABLE FEDERAL REGULATIONS

Proposition 65 is a California law that has no federal counterpart. OEHHA has determined that the regulations do not duplicate and will not conflict with federal regulations.

NO INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS

OEHHA has conducted an evaluation and has determined that Article 6 is the only regulation concerning Proposition 65 warnings. Therefore, the proposed regulatory action is neither inconsistent nor incompatible with existing state regulations. The action does not change the existing mandatory requirements on businesses subject to Proposition 65, state or local agencies and does not address compliance with any other law or regulation.

NO FORMS OR DOCUMENTS INCORPORATED BY REFERENCE

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

LOCAL MANDATE/FISCAL IMPACT

Because Proposition 65 by its terms does not apply to local agencies or school districts,⁵ OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts would result from the proposed regulatory action, nor would there be any costs or savings to the state or in federal funding to the state because of the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has initially determined that the proposed regulatory action would have no effect on housing costs because it is limited to guidance concerning warnings for consumer product exposures to listed chemicals and because it does not impose any new mandatory requirements on any business.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The proposed regulatory action would provide non-mandatory compliance assistance to businesses subject to the Act by providing optional safe harbor warning methods and content for short-form warnings, guidance regarding general consumer product exposure warnings, and additional safe harbor warning options for passenger and off-highway motor vehicle and recreational marine vessel parts. To the extent some businesses currently using the existing short-form safe harbor warning will choose to modify their warnings to comply with the amended short-form safe harbor warning or to use the new tailored warning options, OEHHA estimates the overall total cost to businesses is well below the threshold that would trigger a Standardize Regulatory Impact Analysis (SRIA). OEHHA has therefore made an initial determination that the adoption of this action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS (Gov. Code section 11346.3(b))

CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

This regulatory action would not impact the creation or elimination of jobs within the State of California. The proposed amendments would help businesses comply with the

⁵ See Health and Saf. Code section 25249.11(b).

requirements of Proposition 65 by providing non-mandatory guidance for businesses concerning how safe harbor warnings can be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts. The proposed regulatory action would not impact the creation or elimination of jobs within California because the proposed regulatory action would not impose any mandatory requirements on small businesses. The regulations are non-mandatory guidance that businesses *may* use, but are not required to use, to comply with Proposition 65's "clear and reasonable" warning requirements.

CREATION OF NEW BUSINESSES OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

This regulatory action would not impact the creation of new businesses or the elimination of existing businesses within the State of California. The proposed amendments do not impose new regulatory requirements on businesses. Instead, the proposed amendments will help businesses comply with the requirements of Proposition 65 by providing non-mandatory guidance for businesses concerning how safe harbor warnings should be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts. No new businesses will be created because the proposed amendments do not impose a new regulatory requirement, and no businesses will be eliminated.

Some businesses currently using the existing short-form safe harbor warning will choose to modify their warnings to comply with the amended short-form safe harbor warning or use the new tailored warning options for passenger or off-highway motor vehicle parts or recreational marine vessel parts, OEHHA estimates the overall total cost per business to be: \$4,273.46 (to change existing short-form labels, internet, and catalog warnings); \$697.30 (to use the new tailored warning sign for passenger or off-highway motor vehicle parts); and \$81.82 (to use the new tailored warning sign for recreational marine vessel parts).

EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE

This regulatory action would not impact the expansion of businesses within the State of California. The proposed amendments would provide non-mandatory guidance for businesses concerning how safe harbor warnings should be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts.

BENEFITS OF THE PROPOSED AMENDMENTS TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKER SAFETY, AND THE STATE'S ENVIRONMENT

The proposed regulatory action would benefit the health and welfare of California residents by providing more meaningful information regarding their exposures to listed chemicals and help eliminate over-warning for non-existent exposures to listed chemicals. The proposed action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety by providing consumers with information that can assist them in making informed choices about their exposures to listed chemicals. OEHHA has concluded that the public would benefit from the proposed amendments because they will provide a more specific warning option for businesses to use when they provide warnings for passenger or off-highway motor vehicle and recreational marine vessel parts. The action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

To the extent some businesses currently using the existing short-form safe harbor warning will choose to modify their warnings to comply with the amended short-form safe harbor warning, and some businesses will choose to use the new tailored warning options for passenger or off-highway motor vehicle parts or recreational marine vessel parts, OEHHA estimates the overall total cost to businesses to be approximately \$14,694,927.67. OEHHA estimated that:

- the short-form amendment will result in costs associated with changing existing short-form warning labels and internet and catalog warnings totaling approximately \$14,538,327.67, or \$4,273.46 per business;
- the new passenger or off-highway motor vehicle parts tailored warning will result in costs associated with adoption of new tailored warning signs totaling approximately \$154,800.00, or \$697.30 per business; and
- the new recreational marine vessel parts warning will result in costs associated with the adoption of new tailored warning signs totaling approximately \$1,800.00, or \$81.82 per business.

The basis for these calculations is described in more detail in the Economic Impact Statement (STD 399).⁶

⁶ OEHHA, Economic and Fiscal Impact Statement (Regulations and Orders) STD 399, Amendments to Title 27 CCR § 25601-25603, 25607 et. seq. – Clear and Reasonable Warnings, Safe Harbor (August 2023).

EFFECT ON SMALL BUSINESSES

While the proposal provides non-mandatory guidance, it may affect some small businesses as defined by Government Code section 11342.610. The Act does not apply to small businesses employing less than ten people.⁷ The proposed regulatory action will assist small businesses subject to the Act in determining whether or not a given warning satisfies the “clear and reasonable” warning criteria specified in the Act.

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

Pursuant to Government Code section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF DOCUMENTS

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the proposed regulation, all the information upon which the regulation is based, and the text of the proposed regulation. These documents are available on OEHHA’s web site at www.oehha.ca.gov/Proposition-65.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any proposed regulation that is changed or modified from the express terms of this proposed action will be made available to the public at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on the revised proposed regulation and the full text of the proposal will be provided to individuals who submitted oral or written comments at the public hearing, if any, whose comments were received by OEHHA during the public comment period, and anyone who requests notification from OEHHA of the availability of such change. Copies of the notice and the changed regulation will also be available on the OEHHA Web site at www.oehha.ca.gov/Proposition-65.

⁷ Health and Saf. Code section 25249.11(b).

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons for this action may be obtained, when it becomes available, from Monet Vela at the e-mail or telephone number indicated above. The Final Statement of Reasons will also be available on OEHHA's web site at www.oehha.ca.gov/Proposition-65.