

**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
TITLE 27, CALIFORNIA CODE OF REGULATIONS**

**PROPOSED AMENDMENTS TO ARTICLE 6
CLEAR AND REASONABLE WARNINGS**

January 8, 2021

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend certain sections of Article 6 of Title 27 of the California Code of Regulations.¹ OEHHA adopted new Article 6 Clear and Reasonable Warnings regulations in August 2016, which became operative in August 2018. The Article 6 regulations adopted safe harbor warning methods and content for consumer product exposures that included provisions for a short-form warning. However, there has been widespread use of short-form warnings in ways that were not intended and do not further the purposes of Proposition 65. OEHHA has also received numerous inquiries from businesses seeking clarification as to whether the short-form warning could be used to provide safe harbor warnings for food products, and for additional guidance on the safe harbor warning content for short-form food warnings. OEHHA has therefore determined that further amendments of certain sections of Article 6 are necessary. This rulemaking includes amendments to Section 25601, Safe Harbor Clear and Reasonable Warnings – Method and Content, Section 25602, Consumer Product Exposure Warnings – Methods of Transmission, Section 25603, Consumer Product Exposure Warnings – Content, and Section 25607.1 Food Exposure Warnings – Methods of Transmission.

PUBLIC PROCEEDINGS

Written Comment Period

Any written comments concerning this proposed regulatory action, regardless of the form or method of transmission, must be received by OEHHA no later than March 8, 2021, the designated close of the written comment period. Due to the COVID-19

¹ All further references are to sections of Title 27, Cal. Code of Regs., unless indicated otherwise.

emergency, OEHHA is providing a longer period than required under the Administrative Procedure Act. All written comments will be posted on the OEHHA website at the close of the public comment period.

Because of limited in-office staffing during the COVID-19 emergency, 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://oehha.ca.gov/comments>. Comments submitted in paper form can be mailed, faxed, or delivered in person to the address below, but delays may occur if staff are unable to timely access them.

All non-electronic submissions should be directed to:

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
P. O. Box 4010
Sacramento, California 95812-4010

Telephone: 916-323-2517
Fax: 916-323-2610

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 your name, address, and e-mail may be available to third parties.

Public Hearing

A public hearing on these proposed regulatory amendments will only be scheduled upon request. The hearing would be web-based due to the COVID-19 emergency². To request a hearing, send an e-mail to Monet Vela at monet.vela@oehha.ca.gov or to the address listed above. The request must be received no later than February 22, 2021. If such a request is made, OEHHA will e-mail a notice of the hearing to the requester and interested parties, and the notice will be posted on OEHHA's web site at least ten days before the public hearing date. The notice will provide the date, time, and information for accessing the hearing.

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.

² Executive Orders [N-25-20](#) and [N-29-20](#).

Mario Fernandez is a back-up contact person for inquiries concerning processing of this action and is available at (916) 323-2635 or mario.fernandez@oehha.ca.gov

AUTHORITY

Health and Safety Code section 25249.12.

REFERENCE

Health and Safety Code sections 25249.6, 25249.7 and 25249.11(f).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BACKGROUND

OEHHA is the lead agency that implements Proposition 65³ 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.⁴ The Act also prohibits the discharge of listed chemicals to sources of drinking water.⁵ The proposed amendments would revise the method of transmission and content of short-form warnings for consumer products. In addition, the proposed amendments would eliminate the use of short-form warnings for internet or catalog purchases.

SPECIFIC BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulatory action will facilitate businesses' compliance with the Act by providing clarifying guidance concerning the provision of safe harbor warnings under Proposition 65. The health and welfare of California residents will likely benefit by increasing the public's ability to understand the warnings they receive for certain consumer products they may choose to purchase.

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 any other existing state regulations. The action does not change the existing mandatory requirements on businesses subject

³ 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".

⁴ Health and Safety Code section 25249.6.

⁵ Health and Safety Code section 25249.5.

to Proposition 65, state or local agencies and does not address compliance with any other law or regulation.

LOCAL MANDATE/FISCAL IMPACT

Because Proposition 65 by its terms⁶ does not apply to local agencies or school districts, 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 will result from the proposed regulatory action, nor will 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 will have no effect on housing costs 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 provides compliance assistance to businesses subject to the Act by providing guidance concerning an existing regulation in that it specifies the method of transmitting and the content of safe harbor short-form warnings for consumer products including food products. The proposed action modifies an optional safe-harbor method that businesses may choose to use to provide the required warning. OEHHA has therefore made an initial determination that the adoption of this 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.

⁶ See Health and Safety Code section 25249.11(b).

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

Creation or Elimination of Jobs within the State of California

The proposed regulatory action will not impact the creation or elimination of jobs within California. The action will conform the short-form warning provisions to the original stated intent that a short-form warning should only be used where, due to limited label space on a consumer product, a full-length warning will not fit. The action will also provide clarification and specificity regarding the use of short-form warnings for exposures to listed chemicals from food.

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

The proposed regulatory action will not impact the creation of new businesses or the elimination of existing businesses within California. The action will conform the short-form warning provisions to the original stated intent that a short-form warning should only be used where, due to limited label space on a consumer product a full-length warning will not fit. The action will also provide clarification and specificity regarding the use of short-form warnings for exposures to listed chemicals from food.

The Expansion of Businesses Currently Doing Business within the State

OEHHA does not anticipate any major impact on the expansion of businesses currently doing business within the state. The action will conform the short-form warning provisions to the original stated intent that a short-form warning should only be used where, due to limited label space on a consumer product a full-length warning will not fit. The action will also provide clarification and specificity regarding the use of short-form warnings for exposures to listed chemicals from food.

BENEFITS OF THE PROPOSED REGULATION

The proposed regulatory action will benefit the health and welfare of California residents by providing more meaningful information regarding their exposures to listed chemicals. The action will also provide clarification and specificity regarding the use of short-form warnings for exposures to listed chemicals from food. 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

OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action. The action does not impose any new requirements upon private

persons or businesses. Instead, it modifies an existing, non-mandatory safe harbor warning method.

EFFECT ON SMALL BUSINESSES

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.⁷

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 Proposition 65 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 STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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.

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 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 will be mailed to individuals who testified or submitted oral or written comments at the public hearing, 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.

⁷ Health and Safety Code section 25249.11(b).

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons 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.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

Carol Monahan-Cummings
Chief Counsel

Dated: December 23, 2020