

HYBRID PUBLIC HEARING

STATE OF CALIFORNIA

ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

In the matter of: )  
)  
Notice of Proposed Rulemaking, )  
Title 27, California Code of )  
Regulations, Proposed Amendments to )  
Division 4, Chapter 1, Article 6, )  
Subarticle 2, Clear and Reasonable )  
Warnings, Safe Harbor Methods and )  
Content )  
----- )

ZOOM PLATFORM

CALEPA HEADQUARTERS BUILDING

1001 I STREET

SIERRA HEARING ROOM

SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 13, 2023

10:01 A.M.

JAMES F. PETERS, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

APPEARANCES

STAFF:

Lauren Zeise, PhD, Director

Dave Edwards, PhD, Chief Deputy Director, Hearing Officer

Carolyn Nelson Rowan, Chief Counsel

ALSO PRESENT:

Alex Boesenberg, Motor and Equipment Manufacturers Association

Joseph Daniels, American Chemistry Council

Philip Escobedo, Fluidra

Christopher Finarelli, Household and Commercial Products Association

Thomas Fox, Center for Environmental Health

Nate Herman, American Apparel and Footwear Association

David Marlow, Brunswick Corporation, National Marine Manufacturers Association

Adam Regele, California Chamber of Commerce

Kaitlin Walker, Air-Conditioning, Heating, and Refrigeration Institute

Riaz Zaman, American Coatings Association

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1 today. Before we start, I wanted to go over some  
2 logistics. The emergency exits are located at the front  
3 of the room to the left and the right under the lighted  
4 exit signs and also through the double doors directly in  
5 the back of the room. We do not anticipate anything will  
6 happen during the hearing. But if there is an Emergency  
7 please stay in place and wait for directions from OEHHA  
8 staff.

9 The restrooms are located outside the double  
10 doors and to the left. This hearing is scheduled to start  
11 at 10 a.m. and will continue until everyone who wants to  
12 provide a public comment can do so. We do not have any  
13 scheduled break times. Depending on the number of  
14 commenters, we may take a break after a reasonable amount  
15 of time.

16 If you are in person and have a question or you  
17 need a reasonable accommodation that has not been  
18 requested in advance, please see Monet Vela for  
19 assistance. If you are online and have technical  
20 difficulties during the webinar, please send an email to  
21 monet.vela - V-e-l-a- @oehha.ca.gov and we will have  
22 someone from our IT Department assist you.

23 The Director of OEHHA has designated me to  
24 conduct this hearing on her behalf and I will be doing so  
25 in accordance with the Administrative Procedures Act.

1 This hearing is being held for the presentation of public  
2 comments regarding the proposal. OEHHA considers this  
3 proceeding to be a quasi-legislative hearing, because it  
4 is carrying out a rulemaking function delegated to it by  
5 statute. The proceeding is being recorded and transcribed  
6 by a certified court reporter. The transcript will be  
7 included in the administrative record for this rulemaking.

8 Because this is a formal rulemaking, we will  
9 essentially be in listening mode today. We may be able to  
10 answer procedural questions, if you have any, or we may  
11 ask very simple clarifying questions of commenters, but  
12 formal public hearings are not set up for the kinds of  
13 discussions you may have seen at other kinds of  
14 Proposition 65 related meetings and workshops. We are  
15 here to listen.

16 If we adopt final regulations, we will provide a  
17 written response to all relevant comments we receive at  
18 today's hearing as well as written comments. The public  
19 comment period for the proposed amendments is scheduled to  
20 close on December 20th, 2023. There are a few ways to  
21 share your comments today. Those people who are present  
22 in the room, if you haven't done so, please fill out a  
23 blue speaker card located on the table in the back of the  
24 room. When called on, you will come to the podium to  
25 provide your comment.

1           For those people who are in the Zoom webinar,  
2 when asked, you will raise your virtual hand and you will  
3 be called on unmuted to provide your public comment.  
4 Depending on the version of Zoom you are running, the  
5 raise hand button may be an icon located on the menu bar  
6 that says "raise hand" or it may be one of the options  
7 under the "reactions" button. For those who are joining  
8 on the "view only" link from the CalEPA webpage, if you  
9 would like to provide public comment, you need to join the  
10 Zoom webinar. Please go to the OEHHA webpage at  
11 [www.oehha.ca.gov](http://www.oehha.ca.gov) and register to join the Zoom webinar to  
12 provide public comment. In the interest of time, please  
13 limit your comments to under five minutes per person.

14           At this time, I would like to introduce Carolyn  
15 Nelson Rowan, OEHHA's Chief Counsel, to provide some  
16 background information about the proposed amendments to  
17 the regulations and the scope of this hearing.

18           (Thereupon a slide presentation).

19           CHIEF COUNSEL NELSON ROWAN: Thank you, Dave.

20           To save time -- to save the time required to read  
21 into the record each provision of the proposed amendments,  
22 I've provided a copy of the text of the proposed  
23 amendments, together with the public notice, and the  
24 Initial Statement of Reasons to the court reporter to have  
25 them included in the hearing record.

1           As required by the Administrative Procedure Act,  
2 the public and interested parties were notified of these  
3 proposed regulations more than 45 days prior to today's  
4 hearing. The notice of these proposed amendments was  
5 published in the California Regulatory Notice Register and  
6 on OEHHA's website on October 27th, 2023.

7           The proposal, Clear and Reasonable Warnings, Safe  
8 Harbor Methods and Content, has five main components.

9           And can you advance --

10                           --o0o--

11           CHIEF COUNSEL NELSON ROWAN: There you go.

12 Thanks.

13           First, the short-form warning amendments; second,  
14 the short-form warning on food; third, additional  
15 California specific signal word options for consumer  
16 products; fourth, internet and catalogue warning  
17 amendments; and fifth passenger or off-highway motor  
18 vehicle parts and recreational marine vessel parts  
19 warnings.

20           The Initial Statement of Reasons provides the  
21 background and details of OEHHA's intent in proposing  
22 these amendments. Today's hearing and the written comment  
23 period give OEHHA opportunities to hear from the public.

24           Next slide, please.

25                           --o0o--



1 CHIEF COUNSEL NELSON ROWAN: The short-form  
2 warning amendments would require that the name of at least  
3 one chemical per end point be included in the short-form  
4 warning. There are several different options for the  
5 warning content for different scenarios when a warning is  
6 required for: A product containing a listed carcinogen or  
7 a listed reproductive toxicant; or for a product  
8 containing a chemical that is listed for both endpoints;  
9 or for a product containing multiple carcinogens and  
10 reproductive toxicants.

11 I will go through the examples of specific  
12 warning content in the next slide. These proposed  
13 amendments allow businesses to use the new warning content  
14 immediately once the regulations are adopted. There is  
15 also a two-year phase-in period to allow a smooth  
16 transition to the new warning content. The current  
17 short-form warnings will be phased out two years following  
18 the effective date. The State will be part of the  
19 regulation text itself, so there's no confusion, and the  
20 proposal includes an unlimited sell-through period for  
21 products that had compliant warnings when they were  
22 manufactured and labeled, thus allowing businesses to  
23 avoid recalling items in the stream of commerce to apply  
24 the modified short-form warning.

25 --o0o--

1 CHIEF COUNSEL NELSON ROWAN: So this slide has  
2 examples of the existing short-form warning and of  
3 short-form warnings under the proposal using example  
4 chemicals. The existing short-form warning for cancer  
5 you'll see is, "Warning: Cancer," and the Prop 65 warnings  
6 website. An example of one of the proposed warnings for  
7 the cancer endpoint is, "Warning: can expose you to  
8 formaldehyde, a carcinogen", see the Prop 65 website.

9 The existing short-form warning for reproductive  
10 harm is, "Warning: Reproductive Harm," and the Prop 65  
11 website. And an example of one of the proposed warnings  
12 for exposures to reproductive toxicants is, "Warning: risk  
13 of reproductive harm from exposure to lead", see the Prop  
14 65 website.

15 And the existing short-form warning for both  
16 endpoints is, "Warning: cancer and reproductive harm," and  
17 the Prop 65 website.

18 Can we back a slide, please.

19 Thank you.

20 And an example of one of the proposed warnings  
21 for exposures to a chemical that is listed for both  
22 endpoints is, "Warning: can expose you to formaldehyde, a  
23 carcinogen, and led, a reproductive toxicant," see the  
24 Prop 65 website.

25 --o0o--

1 CHIEF COUNSEL NELSON ROWAN: Thank you.  
2 Short-form warnings on food. So the next component of the  
3 proposal is a change to the safe harbor warning for food.  
4 It would allow short-form warnings for food products as  
5 safe harbor. So differences -- there are a few  
6 differences in short-form warnings for food versus other  
7 consumer products. They're listed on the slide.  
8 Warning -- the warning symbol is not required for foods.  
9 Food warning must be enclosed in a box and there is a food  
10 specific URL in the warning.

11 --o0o--

12 CHIEF COUNSEL NELSON ROWAN: And on this slide,  
13 you'll see an example of a short-form warning on food --  
14 on a food product with specific chemicals with different  
15 endpoints. So this warning says, "The food..." -- so  
16 this -- excuse me. The food product contains two  
17 different phthalates that are listed for two different end  
18 points. So the carcinogen diisononyl phthalate and the  
19 reproductive toxicant diisodecyl phthalate. The example  
20 is there on -- in the box.

21 --o0o--

22 CHIEF COUNSEL NELSON ROWAN: The third component  
23 the of the proposal is the addition of signal word -- a  
24 signal word -- additional signal word options to some safe  
25 harbor warnings. In addition to the standard warning

1 language, OEHHA is proposing to add "CA WARNING" and  
2 "CALIFORNIA WARNING" as signal word options. The proposal  
3 allows the signal word options to be used for several  
4 different warnings providing options to businesses who  
5 want to tailor their warnings for their specific  
6 consumers.

7 So the proposal would add these signal word  
8 options for the full length warning, the short-form  
9 warning, internet warnings, catalogue warnings, and food  
10 warnings.

11 --o0o--

12 CHIEF COUNSEL NELSON ROWAN: The fourth component  
13 of the proposal is intended to clarify and add flexibility  
14 to the existing provisions for internet and catalogue safe  
15 harbor warnings. The proposed amendments to the internet  
16 and catalogue provisions are parallel. The subsection is  
17 divided into two warning provisions that businesses must  
18 meet to claim safe harbor status for internet purchases.

19 So the first component is display the warning  
20 prior to purchase. Examples of this are on the product  
21 display page, a hyperlink on the signal words, "Warning",  
22 "CA WARNING", or "CALIFORNIA WARNING", or otherwise  
23 prominently displaying the warning prior to purchase, for  
24 example a pop-up warning.

25 The second component is to provide the warning on

1 or with the product when it is delivered to the consumer.  
2 Example -- examples are label on the product, a warning  
3 affixed to the immediate packaging or wrapper, or on a  
4 package insert, or provided electronically.

5 --o0o--

6 CHIEF COUNSEL NELSON ROWAN: And the final  
7 component of the proposal are two new tailored safe harbor  
8 warnings, one for passenger or off-highway motor vehicle  
9 parts and one for recreational marine vessel parts. The  
10 proposed tailored warning for passenger or off-highway  
11 motor vehicle parts uses existing definitions from the  
12 Vehicle Code. The warning applies to replacement parts  
13 for passenger and off-road vehicles, such as automobiles,  
14 SUVs, light trucks, motorcycles, snowmobiles and ATVs.

15 The scope of the warning covers replacement parts  
16 such as plastic and metal fittings and housings, bulbs,  
17 nuts and bolts, belts and filters. However, it does not  
18 include package service chemicals, tires, parts containing  
19 asbestos, carpeting, upholstery including fillings and  
20 coverings, textiles, or fabrics.

21 --o0o--

22 CHIEF COUNSEL NELSON ROWAN: So this is an  
23 example of what the tailored warning for passenger or  
24 off-highway motor vehicle parts looks like up on the  
25 screen. "Warning: handling passenger or off-highway motor

1 vehicle parts can expose you to chemicals such as  
2 phthalates and lead, which can cause cancer and  
3 reproductive harm. To minimize exposure, service the  
4 vehicle in a well ventilated area, wear gloves, and wash  
5 your hands. For information see the Prop 65 website."

6 --o0o--

7 CHIEF COUNSEL NELSON ROWAN: The other new  
8 tailored warning is for recreational marine vessel parts.  
9 And this tailored warning uses existing definitions from  
10 the Harbor and Navigation Code. It applies to any part  
11 offered for sale or transferred to a consumer for  
12 installation in or service on a recreational marine  
13 vessel. And it does not apply to packaged service  
14 chemicals, tires, parts containing asbestos, carpeting,  
15 upholstery including fillings and coverings, textiles or  
16 fabrics.

17 --o0o--

18 CHIEF COUNSEL NELSON ROWAN: This is an example  
19 of what the tailored warning for marine vessel parts looks  
20 like.

21 Next slide, please.

22 --o0o--

23 CHIEF COUNSEL NELSON ROWAN: Okay. There are  
24 several different methods to provide the tailored warning  
25 for passenger or off-highway motor vehicle parts and

1 recreational marine vessel parts.

2           Option 1 is to use the tailored warning content  
3 and methods for consumer products except short form. So  
4 the warning can be provided on a product label, shelf  
5 sign, or electronically.

6           Option 2 is to use the consumer products methods  
7 and content together. This content does include the  
8 short-form warning.

9           And Option 3 is use the tailored warning content  
10 and a sign. And that sign can be displayed at each retail  
11 point of sale or at the point of display. And it must be  
12 at least five by five inches and the warning must be in at  
13 least 20-point font.

14           And that brings us to the end of the proposal  
15 summary. So now, I'll turn it back to Dave Edwards who  
16 will lead us through the public comment phase of this  
17 proceeding.

18           HEARING OFFICER EDWARDS: Great. Thank you,  
19 Carolyn, for that summary of the proposal that we'll be  
20 discussing today.

21           All right. So now we will transition to the  
22 public comment part -- public comments on the proposal.  
23 So we have an idea of how many commenters we will have  
24 today, for those people in the room, if you did not fill  
25 out a blue speaker card, can you please head to the back

1 of the room and fill one out now.

2 Good. All right. Do we have any more blue  
3 cards, Esther?

4 Great. Thank you.

5 All right. And could we also have those on the  
6 webinar raise your virtual hand if you would like to  
7 provide a public comment as well. Please keep your hands  
8 raised. So I see -- it looks like I've got three cards  
9 here in the room and it looks like about seven on the  
10 Zoom. So I guess we'll just go ahead and start. I'll go  
11 ahead and start with those in the room.

12 The comments, as I mentioned earlier, will be  
13 about -- will have up to five minutes. I'll have a timer.  
14 I think you'll also have a timer. I will go ahead and  
15 start with the three cards we have in the room. So I  
16 think I will go ahead and start with Joseph Daniels from  
17 the American Chemical Society.

18 JOSEPH DANIELS: Perfect. Good morning. My name  
19 is Joe Daniels and I am Director of Chemical Management at  
20 American Chemistry Council. ACC and several of our member  
21 companies would like to thank the Office of Environmental  
22 Health Hazard Assessment for the opportunity to comment on  
23 the proposed changes to the short-form warning  
24 regulations.

25 Proposition 65 can be a burden to business across



1 the United States, in no small part due to the ambiguity  
2 around how to achieve compliance built into the statute  
3 itself. Many chemistries on the Prop 65 list are  
4 essential or inherent to products and cannot simply be  
5 formulated out of them, meaning that the only de facto  
6 compliance option is to issue such a warning.

7 OEHHA appears to be making several assumptions  
8 that underlie its regulatory proposal to help reach a  
9 conclusion that the addition of a specific chemical  
10 exposure for which a warning is given will deliver  
11 meaningful improvements to the information that is already  
12 conveyed on the current short-form warning.

13 That said, it appears that the agency is making  
14 these assumptions without significant underlying  
15 fact-based review or analysis of how these warnings are  
16 actually perceived by consumers. In our view, including  
17 the name of a specific chemical and a hazard-based warning  
18 does not by itself provide meaningful or actionable  
19 information to consumers. Providing the name of a  
20 specific chemical may be outright misleading or  
21 counterproductive as it could imply that there is  
22 significant risk presented from the chemical where no such  
23 risk is, in fact, presented.

24 A given product could actually present  
25 significant risks from its composition, assembly, or

1 certain uses that are then disregarded or not recognized  
2 by a consumer. The proposal to add a requirement to  
3 identify a specific chemical exposure on the short-form  
4 label will also be prohibitive to companies that market  
5 their products in small packaging. The current font size  
6 regulations limit companies in the amount of information  
7 they can display on their outer packaging. Adding a  
8 statement to these labels while also complying with font  
9 size regulations may not be possible.

10 Another factor we ask you to consider is that  
11 many manufacturers purchase an advanced supply of  
12 pre-printed labeling. It is very costly and oftentimes  
13 environmentally wasteful to toss them out every time a  
14 regulation changes. If OEHHA ultimately proceeds with  
15 these changes to the short-form warning, manufacturers  
16 should be allowed a grandfather period to be able to use  
17 rather than discard existing labeling, especially if that  
18 labeling has been pre-applied to certain packaging. We  
19 ask that any sell-through period applies to not only  
20 products manufactured and labeled before the operational  
21 date, but also to the pre-printed labeling before that  
22 operational date.

23 The proposed revisions allow for use of the  
24 existing short-form warnings with a two-year phase-out  
25 period. We ask that OEHHA consider the many factors that

1 go into modifying a product label to comply with the  
2 proposed regulations. If OEHHA ultimately proceeds with  
3 the changes to the short-form label -- labels, we ask that  
4 the compliance time frame be extended to three years to  
5 allow companies enough time to redesign the man -- and  
6 manufacture these labels to the new standard.

7           This change will be particularly hard on small  
8 businesses and may also take exceedingly long due to many  
9 factors including label shortages that some companies are  
10 experiencing. Oftentimes changes -- changing a label is  
11 not a simple action and can be exceedingly complex for  
12 companies with diverse portfolios of products and can vary  
13 widely depending on a company's position in a complex  
14 supply chain.

15           Other factors to consider include the need to  
16 change artwork and design updates for products -- or  
17 product portfolios spanning different packaging sizes. An  
18 update to labeling software would likely also be needed to  
19 comply with regulatory changes. So allowing a longer  
20 period between the regulation going into effect and it  
21 being enforceable would be beneficial.

22           Therefore, the American Chemistry Council  
23 requests that the proposed rulemaking amending the  
24 short-form warning requirements under Article 6 be  
25 withdrawn or modified. Thank you for your time and

1 consideration.

2 HEARING OFFICER EDWARDS: Thank you, Joseph.

3 All right. Christopher Finarelli.

4 CHRISTOPHER FINARELLI: Finarelli.

5 HEARING OFFICER EDWARDS: Finarelli.

6 CHRISTOPHER FINARELLI: How is that?

7 Director Edwards, good morning. Christopher  
8 Finarelli. I'm here today representing the Household and  
9 Commercial Products Association, or HCPA. HCPA has a  
10 long-standing commitment to promoting product transparency  
11 as seen in our contribution to the development of the 2017  
12 Cleaning Right to Know Act. This law requires  
13 manufacturers to disclose information about chemicals in  
14 cleaning products, ensuring consumers can make informed  
15 choices.

16 The proposed inclusion of chemical listings in a  
17 short-form label is redundant in our estimation, given  
18 existing ingredient communication requirements such as the  
19 Cleaning Product Right to Know Act. Manufacturers already  
20 provide warnings either on label or online informing  
21 consumers about the presence of chemicals, including those  
22 listed under Prop 65.

23 In our on experience, businesses are responsibly  
24 applying short-form warnings. Whereas, the proposal could  
25 compromise limited labeling space for conveying crucial

1 health and safety information. Moreover, we are concerned  
2 the economic analysis underestimates the impacts to  
3 California businesses.

4 OEHHA's economic analysis, which leans on NAICS  
5 codes of California businesses are -- of California  
6 businesses appear to omit certain categories that we have  
7 identified with our internal surveys. Those include  
8 categories such as all other miscellaneous chemical  
9 product and preparation manufacturing and pesticide and  
10 other agricultural chemical manufacturing. So we strongly  
11 urge OEHHA to conduct an impact analysis reassessing the  
12 NAICS codes to ensure a more accurate representation along  
13 this economic analysis.

14 HCPA is also concerned about the potential  
15 challenges these proposed changes pose for manufacturers  
16 in terms of compliance and litigation risk. The new  
17 short-form warning appears to lack safe harbor protection  
18 present in the current system, leaving manufacturers  
19 vulnerable to legal action for non-specified chemicals.

20 Lastly, we express concerns about the proposed  
21 phase-in timeline for label changes. The current timeline  
22 may not allow manufacturers sufficient time to implement  
23 required modifications to consumer product labels,  
24 potentially disrupting product availability.

25 Related to this, and I think this was addressed

1 in prior testimony, any manufacturer who has ordered an  
2 advanced supply of label stock would not be able to use  
3 those supplies under the sell-through provisions as you  
4 read the proposal.

5 In conclusion, HCPA has long advocated for a  
6 balanced approach to consumer label communication and  
7 ensures transparency while minimizing undue burdens on  
8 manufacturers. We appreciate the opportunity to provide  
9 input and urge OEHHA to reconsider the proposed changes in  
10 light of these concerns. And we will also be providing  
11 some written comments as well for you to consider.

12 Thank you for your time.

13 HEARING OFFICER EDWARDS: Thank you, Christopher.

14 All right. Our third speaker -- commenter in the  
15 room is Adam Regele from Cal Chamber.

16 ADAM REGELE: Good morning, Director, Chief  
17 Deputy, and Chief Counsel. Adam Regele on behalf of the  
18 California Chamber of Commerce. I don't want to reiterate  
19 what my colleagues have from the HCPA and ACC. We align  
20 our comments with generally what they had said.

21 What I did want to focus on really is the impetus  
22 for why we oppose the rulemaking really on a fundamental  
23 basis from where the ISOR, the Initial Statement of  
24 Reasons, really gets at, which is the Department is  
25 justifying this change to the -- to the short-form

1 warnings on the basis that the business community is  
2 overwarning. And we think that's really a symptom, not  
3 the problem, that the rule really needs to address.

4           The symptom is there is a climate under Prop 65  
5 in which the business community faces a very difficult  
6 choice of do we allow private enforcers to effectively sue  
7 us for not identifying the right chemical or any chemical  
8 at all, even if the company believes itself that if they  
9 took this to court and they litigated, that the exposure  
10 levels would be less than the trigger to require a warning  
11 label. But that endeavor in and of itself is so cost  
12 prohibitive that you force the business community to  
13 decide do we run the risk of not warning and getting sued  
14 or do we warn in order to avoid the liability.

15           There is no company that I'm aware of that wants  
16 to warn under Prop 65 to basically tell consumers, hey,  
17 our product may have a chemical that's on the Prop 65  
18 listed -- list. And there's over 900 of them. And so to  
19 my colleague's point about the complexity of determining  
20 whether it's de minimis, whether the exposure levels are  
21 what the private enforcers. All of that is really at the  
22 heart of what I think -- to get at overwarning, you really  
23 need to address why folks warn in the first place. It is  
24 not, oh, we want to just warn without a chemical. I think  
25 that's really again a symptom of the actual problem which

1 is the statute itself, and my colleague mentioned it,  
2 balanced.

3           There needs to balance in this rulemaking to  
4 address why there is warnings from businesses that  
5 otherwise if there were -- similar to the rule that this  
6 department of recently passed on cooked and heat processed  
7 foods. If we know what concentrations in a product are  
8 safe, then companies can know when they test we don't hit  
9 those thresholds. We feel very comfortable we can defend  
10 in a court of law if someone sues us. But we don't have  
11 the data from an enforcer to know whether they think  
12 someone is going to drink 10,000 cups of coffee or two  
13 cups of coffee. And under acrylamide, which is one of the  
14 cases that we're involved with, those are the types of  
15 numbers that are extreme and yet we still get sued under  
16 it.

17           And so I think this approach to basically forcing  
18 a chemical is not going to get at what the ISOR is stating  
19 the problem is, which is if there's an overwarning  
20 problem, it's a symptom. What is causing that? It is the  
21 structure of a -- of a statute that basically forces  
22 businesses in a you're guilty until you prove your  
23 innocence. And the court of proving your innocence is so  
24 cost prohibitive, we are crushing small businesses in  
25 California on this statute. I really encourage the



1 Department to rethink this rulemaking. At the very least,  
2 to my colleague's point about balance, it lacks that  
3 balance. This is going to cause a lot of liability for  
4 businesses. We would ask that it be rescinded, like we  
5 did in 2021. But at the very least, we're looking at more  
6 of a compliance timeline and certainly other fixes to the  
7 statute that would allow for really what believe the heart  
8 of the statute is.

9           If there's a product that truly has a human  
10 health risk, it should have a warning. And we would agree  
11 that if it doesn't, it should not. But the statute really  
12 doesn't set up an environment for the business community  
13 to operate with that purest view of Prop 65. And for  
14 those reasons, we oppose. We'll be providing written  
15 comments to memorialize this.

16           Thanks.

17           HEARING OFFICER EDWARDS: Thank you, Adam.

18           All right. So now, we're going to turn to the  
19 webinar folks. I guess I would ask if you guys could -- I  
20 have the -- it says view. I can see all the raised hands.  
21 If you guys could just hit that, so I can see all six, it  
22 looks like, at this point

23           Great. Thank you. It looks like there's seven.

24           So I will first turn it over to Philip Escobedo.

25           PHILIP ESCOBEDO: Hello. Good morning. Thank

1 you for letting me comment. My name is Philip Escobedo  
2 from Fluidra. We're a major pool equipment manufacturer  
3 based in California with hundreds of employees in  
4 California and hundreds more throughout the United States.

5 One, we completely agree with the comments made  
6 thus far from the commenters. You know, we want to  
7 reiterate some points. One, the addition of a chemical  
8 name such as diethylhexyl phthalates to a product label to  
9 us does not add value to the existing warning or to the  
10 consumer. It does not make the product any more or less  
11 safe or understandable even to a consumer.

12 Two, the economic analysis that we saw saying  
13 approximately \$4,200 of costs per business to us appears  
14 egregiously inaccurate. We went through this exercise  
15 recently with the update in, I believe, 2018 of the  
16 ruling. So we're familiar with what's it going to take to  
17 organize, implement, and get these things to the shop  
18 floor, catalogs, websites, et cetera. We're estimating  
19 conservatively approximately \$200,000 of man hours to make  
20 this happen. And that does not include costs of any scrap  
21 materials, redesigning packaging, or even the opportunity  
22 cost of the resources that could have been spent  
23 innovating more energy efficient products, less carbon  
24 footprint, et cetera. We're going to be spinning our  
25 wheels with this -- with this rule.

1           Three, we definitely believe this opens the door  
2 to frivolous lawsuits. And it's only going to help those  
3 who are in business of suing companies over these  
4 warnings. So we really would want the OEHHA to reconsider  
5 these updates and, you know, maintain what's currently on  
6 the books.

7           Thank you so much.

8           HEARING OFFICER EDWARDS: Great. Thank you,  
9 Philip.

10           The next speaker is David Marlow.

11           DAVID MARLOW: Thank you very much, Mr. Edwards.  
12 Hopefully you call can hear me.

13           HEARING OFFICER EDWARDS: Yes. And David, just I  
14 know you shared some documents last night. So if we can  
15 guess those up, that would be great.

16           DAVIE MARLOW: Yep. I think Kristi let me know  
17 that she would bring them up when prompted.

18           HEARING OFFICER EDWARDS: Great. Thank you. Go  
19 ahead and start.

20           DAVIE MARLOW: Okay. All right. I appreciate  
21 that. Again, good morning, everyone, certainly Director,  
22 Chief Counsel, Deputy Director. I really appreciate --  
23 thank you for the opportunity to address everyone here at  
24 this public hearing. As Mr. Edwards has already prompted,  
25 my name is David Marlow. I am the senior director of

1 product integrity for the Brunswick corporation and I am  
2 here today representing both Brunswick and the National  
3 Marine Manufacturers Association. Brunswick Corporation  
4 is the leading manufacturer of recreational marine  
5 products with national brands such as Boston Whaler, Sea  
6 Ray Boats, Mercury Marine Engines, and assorted and other  
7 parts and accessory companies in that sector.

8           The National Marine Manufacturers Association is  
9 our nation's recreational marine trade association  
10 representing over 1,000 manufacturers of recreational  
11 products including boats, marine engines, and marine  
12 accessories. I'd like to thank OEHHA staff for working  
13 with NMMA on this rulemaking. Working together, we've  
14 been able to not only offer a rule with clarity and  
15 consistency in labeling to marine manufacturers, but also  
16 improve the labeling language providing consumers with the  
17 critical health and safety information to make educated  
18 choices.

19           NMMA supports the safe harbor language proposed  
20 for recreational vessel parts and accessories. We also  
21 support the specific language in the rule for Proposition  
22 65 warnings for products sold on the internet. NMMA  
23 continues to struggle however with how to comply with  
24 Proposition 65 warnings in paper catalogs, where space is  
25 very limited. OEHHA has provided clear directions for

1 internet purchases. For paper and catalogue purchases,  
2 where space is limited, OEHHA has identified a warning as  
3 compliant using the following language: "The warning must  
4 be provided in the catalog in a manner that clearly  
5 associates it with the item being purchased."

6 The internet includes technology such as  
7 hyperlinks and pop-ups that are not available for paper  
8 catalogues. The challenge is that space in a paper  
9 catalogue is very limited. And adding the safe harbor  
10 language to all the items affected by Proposition 65  
11 literally triple -- quadruple the size of the current  
12 volume. The printing costs are based on page count.  
13 Adding that much content would dramatically affect a  
14 business's ability to offer paper catalogs to consumers.

15 As we look to finding ways to comply, we need  
16 additional clarity as the term "clearly associates" is  
17 vague and open for critical interpretation. As the  
18 rules -- or excuse me, as the changes in this rule will  
19 become law, and that law will be primarily, if not  
20 exclusively, enforced by citizen lawsuits, it is important  
21 that direction as to what "clearly associates" means be  
22 fully understood by the manufacturer, distributor,  
23 retailers, and most importantly the consumer.

24 NMMA proposes for the record the following  
25 examples that we've already talked about, Mr. Edwards,

1 where a streamlined or short-form paper catalogue warning  
2 could continue to be used and approved to alert the  
3 consumer to Proposition 65 warnings for items sold in the  
4 catalogue, in addition to a centralized point of  
5 information to provide detailed content regarding those  
6 warnings and specifically the marine vessel part's safe  
7 harbor language. If OEHHA agrees with this example and  
8 adequately informs the consumer of a Prop 65 -- that  
9 this -- excuse me -- example adequately informs the  
10 consumer of a Prop 65 warning. NMMA strongly urges OEHHA  
11 to either describe these examples more clearly in the rule  
12 or reference them in a guidance document.

13           So as these are brought up for viewing, I want to  
14 thank everyone again for your time and attention today.  
15 And it would certainly be my pleasure to answer questions  
16 or have dialogue around the exhibits that I've provided.

17           HEARING OFFICER EDWARDS: Thank you. Thank you,  
18 David, and also for providing the two examples.

19           I think we're ready for the next.

20           Oh, okay. David, did you have anything else you  
21 wanted to say?

22           DAVE MARLOW: Yes. I apologize if I -- in just  
23 the remaining moments, the examples include short-form  
24 warnings. You'll notice that they're associated with the  
25 items identified as having Prop 65 content. And what

1 we've added is a reference to a page one overview for  
2 further information for information about Proposition 65.  
3 So the one page called marine intro -- or, excuse me, Prop  
4 65 footer shows a series of four pages with a variety of  
5 components that have Prop 65 chemicals and indeed need  
6 warnings, either associated with cancer, reproductive  
7 harm, or both, and then has a reference to a -- an intro  
8 page on page one.

9           And we've provided that where we've been able to  
10 give the consumer important information about Prop 65, a  
11 marine vessel part's short-form -- or excuse me, safe  
12 harbor language and the associated website. So getting  
13 some comment back from you all, Mr. Edwards, would be very  
14 appreciative. I'd be happy to work with the staff on this  
15 iteration or others, if you have further questions.

16           Thank you.

17           HEARING OFFICER EDWARDS: Great. Yeah, thank  
18 you.

19           All right. If you could get the list of  
20 commenters back up.

21           Okay. Riaz Zaman.

22           RIAZ ZAMAN: Good morning. Good morning. Thank  
23 you for the opportunity to speak with you today. My name  
24 is Riaz Zaman. I am Government Affairs Counsel with the  
25 American Coatings Association, or ACA. ACA members

1 manufacture paints, coatings, sealants, adhesives, and the  
2 raw materials that go into formulation. Our members  
3 manufacture products for industrial, commercial, and  
4 consumer markets, and often products will be labeled for  
5 safe use in both workplace and consumer settings complying  
6 with the federal warning requirements.

7 I would like to request today an exemption from  
8 the proposal to list a chemical name for each toxicity  
9 endpoint for products that comply with federal chemicals  
10 management labeling requirements under the Federal  
11 Hazardous Substances Act for consumer products or for OSHA  
12 HazCom's -- for workplace products. These standards  
13 provide consumers with more detailed information related  
14 to risk than disclosure of a Prop 65 listed chemical.

15 For such products, I request OEHHA allow use of  
16 the current short-form warning without disclosure of a  
17 Prop 65 listed chemical. Because of the amount of safety  
18 related information, including ingredient disclosures that  
19 our members already place on labels and the accompanying  
20 literature, we see the revision as being unnecessary and  
21 not conveying any additional information of value to  
22 consumer for our products.

23 Because we are providing so much information on  
24 the label, OEHHA does not receive inquiries about  
25 formulated products and chemical ingredients. When OEHHA



1 issued its prior proposal to amend Prop 65, it disclosed a  
2 list of product inquiries received from consumers. Of the  
3 approximately 4,900 inquiries summarized in the  
4 disclosure, ACA could not identify a single inquiry  
5 related to paint, coatings, sealants, adhesives, or any  
6 other formulated products. Inquiries identify articles  
7 almost exclusively. And in its current Statement of  
8 Reasons, OEHHA also identifies consumer inquiries, noting  
9 consumers inquired about a bidet and an electrical kettle  
10 as two examples used by OEHHA.

11 It's understandable that consumers would want  
12 more information about chemicals in such articles. These  
13 products are not subject to FHSA or OSHA HazCom. Our  
14 products however are different. We provide so much  
15 information already on the labels that OEHHA does not  
16 receive inquiries about chemically formulated products.  
17 And these additional disclosures would not assist  
18 consumers in any way.

19 So this requirement is demonstrably of no utility  
20 for formulated products, but it comes to our industry at a  
21 very great cost. In its Statement of Reasons, OEHHA  
22 underestimates the compliance costs at about \$4,273 per  
23 business. One medium-sized ACA member documents costs to  
24 revise labels of about 500 products would be about  
25 \$800,000. In addition to this relabel expense, the

1 company devoted about 3,000 hours of work, and that would  
2 be an additional expense above the 800,000. Many ACA  
3 members would need to revise thousands of product labels  
4 using sophisticated algorithms or by revising the labels  
5 manually. So the costs here are very significant.

6 Two additional issues that I'd like to briefly  
7 mention. The -- first, the proposal is vague about how  
8 this will impact workplace labels that are compliant with  
9 OSHA HazCom for the Prop 65 listed chemical. And here  
10 I'll note that OSHA HazCom warnings are accepted as  
11 adequate warnings under Prop 65. So some additional  
12 information on how to reconcile those two would be  
13 appreciated.

14 Second, manufacturers of complex formulated  
15 products often substitute out a Prop 65 chemical due to  
16 frequent changes in availability of raw materials. The  
17 supply of raw materials is fluid requiring quick  
18 adaptation and modification of formulated products, so  
19 certain ingredients change batch to batch. Companies  
20 cannot modify the label to ensure accurate identification  
21 of a listed chemical due to these frequent changes in the  
22 raw material supply.

23 So these are just a few issues I'd like to leave  
24 you with. I appreciate the opportunity to comment today.  
25 I'll provide additional details in my written comments and

1 I would welcome the opportunity to follow up with you in  
2 person and talk about these issues if possible.

3 Thank you, again.

4 HEARING OFFICER EDWARDS: Great. Thank you so  
5 much

6 Great. Next is Alex Boesenberg.

7 ALEX BOESENBERG: Good morning. I am Alex  
8 Boesenberg. I'm the Vice President of Regulatory Affairs  
9 at MEMA.

10 HEARING OFFICER EDWARDS: Could you please speak  
11 more into your device, Alex. It's hard to hear.

12 ALEX BOESENBERG: Is that better?

13 HEARING OFFICER EDWARDS: Yes.

14 ALEX BOESENBERG: Good. It was defaulting to my  
15 laptop for some reason.

16 So I'll start over. Thank you for this  
17 opportunity to testify. I am Alex Boesenberg. I'm the  
18 Vice President of Regulatory Affairs For MEMA. We  
19 represent the auto parts manufacturers, vehicle suppliers  
20 we like to call ourselves. And I share many of the  
21 concerns and my members share the concerns that you've  
22 already heard today, so I'll try to be brief and not  
23 restate too much.

24 We also question the tangibility or whether there  
25 are any tangible consumer benefits to an increased amount

1 of labeling. And we also note, as others have, it is  
2 going to take a lot more -- if OEHHA insists on making  
3 these changes, it will take a lot more than two years to  
4 accomplish it. We submitted comments in 2021 and 2022.  
5 And I will be submitting written comments again by the  
6 20th and that included some considerations for the timing  
7 that it takes to make all those changes and perform all  
8 these tests et cetera that you already heard, so I won't  
9 belabor that.

10           Something we also commented on, which still  
11 appears to have -- not have been addressed is the  
12 estimates of cost of compliance. The economic and  
13 financial impact statement, the standard 399 I believe  
14 it's called, estimates some roughly \$4,000 per  
15 manufacturer in 12 -- \$14 million overall.

16           In our comments, we have already mentioned, and  
17 I'm working on getting additional detail if possible from  
18 some of my members, but our estimates were somewhere on  
19 the order of \$12 million per manufacturer for larger  
20 suppliers. This is a difference of three orders of  
21 magnitude and something that definitely should be pursued  
22 and cleared up.

23           And we -- again as I said, we'll be submitting  
24 written comments and we hope that we can begin a dialogue  
25 with the agency to, you know, improve the outcome and

1 certainly better inform it. So thank you again for this  
2 opportunity.

3 HEARING OFFICER EDWARDS: Thank you, Alex.

4 Next, I see Nate Herman.

5 NATE HERMAN: On behalf of the American Apparel  
6 and Footwear Association, or AAFA, thank you for the  
7 opportunity to testify at today's hearing at OEHHA's  
8 proposal on Prop 65 warnings, specifically its proposed  
9 modification of the short-form warning. My name is Nate  
10 Herman. I'm the Senior Vice President for Policy here at  
11 AAFA and I am testifying today in strong opposition to the  
12 proposed change to the short-form warning. Further, we  
13 strongly support the related comments of all the previous  
14 witnesses.

15 The American Apparel and Footwear Association is  
16 a national trade association representing apparel,  
17 footwear, and other sewn products companies. Representing  
18 more than 1,000 world famous name brands, AAFA is a  
19 trusted public policy and political voice of the apparel  
20 and footwear industry. It's management and shareholders  
21 has more than 3.2 million U.S. workers, including hundreds  
22 of thousands of workers in California and its contribution  
23 of more than \$490 billion in annual U.S. retail sales.

24 With our members engaged in the production and  
25 sale of clothing and footwear, we are on the frontlines of

1 product safety. It is our members who design and execute  
2 the quality and compliance programs that stitch product  
3 safety into every garment and every shoe we make.

4           We strongly oppose OEHHA's proposal for many  
5 reasons. In the short time that I have, I will focus  
6 today's testimony on only one of those reasons, that the  
7 proposal will not protect consumers. In your proposal,  
8 you claim that the proposed warning would better inform  
9 consumers than the current short-form warning. In fact,  
10 the opposite is true. The proposed warning does not give  
11 the consumer any meaningful information with which to make  
12 an educated choice in purchasing products.

13           With more than 900 chemicals on the Prop 65 list,  
14 listing only one or two specific chemical names on a  
15 warning label represents an arbitrary selection of  
16 chemicals to which a consumer could be exposed in using  
17 that product. If a consumer wants to avoid, for example,  
18 Prop 65 listed chemical A and they purchase a product that  
19 warrants a potential exposure to Prop 65 listed chemical  
20 B, then they would have no way to know if the product  
21 could also expose them to chemical A or any of the 900  
22 plus other Prop 65 chemicals.

23           On the other hand, if a consumer wants to avoid  
24 all Prop 65 listed chemicals, then the current short-form  
25 warning most efficiently supports that goal. The

1 expressed purpose of the law is, in fact, to educate  
2 consumers, so they can avoid exposure to all chemicals  
3 OEHHA has deemed harmful, if they so choose. Instead,  
4 adding more information to the warning label, in this case  
5 one or two chemical names, would mislead the consumer by  
6 implying that the chemicals on the warning label are the  
7 only chemicals which a consumer could be exposed, which is  
8 not true. The proposed warning would make the consumer  
9 feel like they have complete information about the risk of  
10 the product when in reality, it gives no context about the  
11 actual risk. The proposed warning would only serve to  
12 mislead and confuse the consumer.

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

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

25           That is why this very same proposal was tabled

1 two years ago in the face of overwhelming opposition,  
2 including the opposition of the American Apparel and  
3 Footwear Association. We again urge OEHHA to reject this  
4 proposal. Thank you for your time and consideration in  
5 this matter. I would be happy to take any questions

6 HEARING OFFICER EDWARDS: Thank you, Nate, for  
7 your comments.

8 All right. Next is Kaitlin Walker.

9 KAITLIN WALKER: Good morning. My name is  
10 Kaitlin Walker, Associate General Counsel with  
11 Air-Conditioning, Heating, and Refrigeration Institute.  
12 AHRI is a national trade association representing more  
13 than 300 manufacturers of air conditioning, heating,  
14 commercial refrigeration and water heating equipment. Our  
15 members produce more than 90 percent of the HVACR equipment  
16 manufactured in North America. AHRI appreciates the  
17 opportunity to provide testimony today on the proposed  
18 amendments to the Proposition 65 short-form warning.

19 While we support the goals of Proposition 65 in  
20 safeguarding public health and safety, AHRI is concerned  
21 with the potential impact that the proposed amendments  
22 would have on the HVACR industry.

23 First, AHRI believes the current short-form  
24 warnings sufficiently alert consumers to potential harms  
25 by a chemical known to cause Cancer or reproductive harm.



1           Second, manufacturers really know in which  
2 locations their products will end up, which will require  
3 them to place a label on all products in production. It  
4 will cause significant resources to be expended by  
5 manufacturers to comply with the proposed amendments.

6           Honestly, a substantial amount of time and  
7 resources will be required by manufacturers to comply with  
8 the proposed amendments by modifying the short-form  
9 warnings.

10           AHRI thanks OEHHA for the opportunity to provide  
11 testimony today and we'll be filing written public  
12 comments expanding our concerns provided today.

13           HEARING OFFICER EDWARDS: Great. Thank you,  
14 Kaitlin.

15           All right. Thomas Fox.

16           THOMAS FOX: Yes. Thank you for the opportunity  
17 to testify today. I'm Tom Fox. I'm Senior Policy Advisor  
18 for Center for Environmental Health. We're a non-profit  
19 organization headquartered in Oakland, California. And  
20 for more than 25 years, CEH has helped lead a growing  
21 nationwide effort to protect people from toxic chemicals  
22 that cause cancer, adverse reproductive effects, learning  
23 disabilities, and many other health problem.

24           CEH works with -- works to protect children and  
25 pregnant women in EJ communities, environmental justice

1 communities, and other vulnerable populations from toxic  
2 chemicals. We use a range of strategies to achieve this  
3 goal from public education, to advocacy, and also legal  
4 action. We devote substantial resources to addressing  
5 health threats from exposures to cancer-causing chemicals  
6 and reproductive toxicants, as well as other hormone --  
7 disrupting chemicals in food, food packaging, and other  
8 consumer products.

9           We conduct testing to identify sources of toxic  
10 chemicals in food packaging and other products. And we  
11 advise companies on the development of business practices  
12 that do not harm people through safer alternative.

13           We are supporters of Prop 65. We believe that  
14 Prop 65 protects consumers. It is the ultimate Right To  
15 Know Act, and that it provides incentives for safer  
16 alternatives in reformulations of products. And we are  
17 concerned with the overwarning of using short-form  
18 warnings as opposed to long-form warnings.

19           We applaud OEHHA for most of the proposed rule  
20 changes. We're particularly supportive of the listing of  
21 at least one chemical name on the short-form warnings, and  
22 where the warning is provided for both endpoints, cancer  
23 and reproductive toxicity, requiring that it include the  
24 name of one or more chemicals for each endpoint is  
25 particularly informative, unless the -- unless the named

1 chemical is listed -- is known to cause both endpoints.

2           We believe these changes will go a long way  
3 towards reducing the overuse of short-form warnings and  
4 further the purposes of Prop 65 by facilitating informed  
5 decision-making and protecting public health. For  
6 example, if you are a pregnant women or a women hoping to  
7 get pregnant, identifying at least one reproductive  
8 toxicant will help them prevent exposures to these  
9 chemicals. I don't think that there's -- more information  
10 is not going to confuse the public. I think that they're  
11 confused in that the industry is overusing short-form  
12 warnings and just putting it on there in order to avoid  
13 liability without really thinking about ways that they can  
14 reformulate and use safer alternatives.

15           There are some provisions in the proposed  
16 regulations that we believe conflict with some of those  
17 sound policies underlying the short-form warning option  
18 and should be revised. For example, there should be a  
19 maximum label size for short-form warnings where there's  
20 room for the full warnings. They should be required. It  
21 shouldn't just be used on all warnings.

22           The minimum six-point font size is generally too  
23 small. If you've looked at six-point font, it's very  
24 difficult to read. And that critical health information  
25 should be made equitably accessible to all consumers

1 regardless of their ability to read fine print.

2           And in addition, we don't think that the use of  
3 short-form warnings for internet warnings should be  
4 allowed, because that would be inconsistent with the  
5 intent of providing an option of a short-form warning, if  
6 there's -- if it's internet sales, you have the option of  
7 putting a hyperlink to the full warning. And that's real  
8 not burdensome.

9           There are other issues with respect to the  
10 catalog warnings. The full warnings should be provided in  
11 the catalog. I do understand the concern that one of the  
12 previous commenters made about putting a full warning on  
13 each and every item in a written catalog. That's a  
14 different issue. But the internet catalogs should have  
15 hyperlinks with the full warnings.

16           And thank you for the opportunity to provide  
17 comments.

18           HEARING OFFICER EDWARDS: Thank you, Tom.

19           All right. So that was the last of the raised  
20 hands in the Zoom participants.

21           I just want do one last call. Is there anyone in  
22 the room that hasn't -- wants to comment?

23           All right. And is there anyone else virtually  
24 participating that would like to comment?

25           All right. So seeing none, I hereby close the

1 hearing.

2           So go to the next slide.

3                               --o0o--

4           HEARING OFFICER EDWARDS: So this rulemaking is  
5 following the regular rulemaking process. The Notice of  
6 Proposed Rulemaking was published in the California  
7 Regulatory Notice Register on October 27th, 2023. The  
8 hearing is today on December 13th and the office will  
9 accept written public comments until December 20th, 2023.

10                              --o0o--

11           HEARING OFFICER EDWARDS: OEHHA strongly  
12 recommends that the public submit written information  
13 electronically rather than in paper form. Comments maybe  
14 submitted electronically through our website at  
15 <https://oehha.ca.gov/comments> or via email at the address  
16 on the slide.

17           Thank you for attending this hearing today and  
18 thanks for all of our participants.

19           Meeting adjourned.

20           (Thereupon the Office of Environmental Health  
21 Hazard Assessment public hearing concluded at  
22 11:04 a.m.)

23

24

25



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.<sup>1</sup> 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,

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<sup>1</sup> 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](mailto: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.

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23<sup>rd</sup> 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](mailto: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](mailto: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 65<sup>2</sup> 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.<sup>3</sup> The Act also prohibits the discharge of listed chemicals to sources of drinking water.<sup>4</sup> 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

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<sup>2</sup> 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").

<sup>3</sup> Health and Saf. Code section 25249.6.

<sup>4</sup> 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,<sup>5</sup> 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

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<sup>5</sup> 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).<sup>6</sup>

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<sup>6</sup> 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.<sup>7</sup> 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](http://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](http://www.oehha.ca.gov/Proposition-65).

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<sup>7</sup> 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](http://www.oehha.ca.gov/Proposition-65).

**Proposition 65**

**Initial Statement of Reasons**

**Clear and Reasonable Warnings**

**Safe Harbor Methods and Content**

**Title 27, California Code of Regulations**

**Division 4, Chapter 1, Article 6, Subarticle 2**

**Proposed Amendments to Existing Sections 25601 - 25603, 25607.2**

**Proposed Adoption of New Sections 25607.50 - 25607.53**

**October 27, 2023**



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



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## I. Summary

Proposition 65<sup>1</sup> requires businesses to provide a “clear and reasonable” warning before they knowingly and intentionally cause an exposure to a chemical listed as known to the state to cause cancer or reproductive toxicity.<sup>2</sup> The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency that implements Proposition 65 and has the authority to promulgate and amend regulations to implement and further the purposes of the Act. To that end, OEHHA has adopted “safe harbor” warning regulations that set forth language and methods businesses can use to comply with the Act.<sup>3</sup> OEHHA’s safe harbor regulations are non-mandatory guidance.

This is the Initial Statement of Reasons (ISOR) for a proposal to amend existing sections of the safe harbor warning regulations for consumer products exposures. The proposed amendments are designed to make the short-form warnings more informative and to clarify other aspects of these regulations, including the warning methods and content for internet and catalog purchases. The proposed amendments also provide additional signal word options for safe harbor consumer product warnings and adjust the type-size requirements for short-form warnings. In addition, this rulemaking proposes to adopt four new sections that would provide tailored safe harbor warnings for passenger or off-highway motor vehicle parts exposures and recreational marine vessel parts exposures.

## II. Background

In August 2016, OEHHA adopted major changes to the “clear and reasonable” safe harbor warning regulations (Title 27 of the California Code of Regulations, Article 6), originally adopted over 35 years ago. The primary purpose of the 2016 rulemaking, as it related to consumer product exposures, was to provide consumers with “consistent, understandable warnings for exposures to listed chemicals”.<sup>4</sup> As part of that rulemaking,

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<sup>1</sup> Health and Saf. Code section 25249.5 et seq., The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as “Proposition 65” and hereafter referred to as “Proposition 65” or “the Act”.

<sup>2</sup> Health and Saf. Code section 25249.6.

<sup>3</sup> Cal. Code Regs., title 27, section 25601, et seq. (Division 4, Chapter 1, Article 6, Subarticle 2 “Safe Harbor Methods and Content”). All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated.

<sup>4</sup> OEHHA, Initial Statement of Reasons, Title 27, California Code of Regulations Proposed Repeal of Article 6 and Adoption of new Article 6 Regulations for Clear and Reasonable Warnings. (November 27,

at the request of various businesses and associations, OEHHA adopted a “short-form” warning option for consumer product exposures. The rulemaking also provided consumers with more specific information about the chemicals they are exposed to from use of consumer products.<sup>5</sup> The rulemaking was finalized in 2016,<sup>6</sup> and the regulations replaced nearly all the previous Proposition 65 safe harbor warning regulations.

In January 2021, OEHHA proposed amendments to the regulations, similar to the current proposal, to make the short-form safe harbor warning more informative to consumers. OEHHA was unable to complete the rulemaking process within the regulatory time limit and allowed the proposal to lapse in May 2022, as provided for under the Administrative Procedure Act. In its announcement of non-completion of the regulation in May 2022, OEHHA stated its intention to restart the regulatory process. Public comments received during that rulemaking process helped inform the current proposal to make the short-form warnings more informative. While these proposed amendments focus on changes to the content of the short-form safe harbor warning, additional changes to other parts of the consumer product warning regulations, including safe harbor warning methods for internet and catalog purchases and content for food exposures, are also proposed.

In response to feedback received from OEHHA’s 2021-2022 effort to amend the short-form provisions, OEHHA evaluated whether to adopt tailored warning content and methods for exposures to listed chemicals in passenger or off-highway motor vehicle parts and recreational marine vessel parts to address unique challenges faced by manufacturing and retail entities. OEHHA has determined that passenger or off-highway motor vehicle and recreational marine vessel parts manufacturers, importers,

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2015) <<https://oehha.ca.gov/media/downloads/cnr/112715warningreg20isor.pdf>> (hereinafter “OEHHA, Article 6 ISOR 2015”); OEHHA, Final Statement of Reasons Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6 Regulations for Clear and Reasonable Warnings. (2016) <<https://oehha.ca.gov/media/downloads/cnr/art6fsor090116.pdf>>; OEHHA, Supplement to the Final Statement of Reasons, Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6 Regulations for Clear and Reasonable Warnings. (August 30, 2016) <<https://oehha.ca.gov/media/downloads/cnr/art6suppsor090116.pdf>>.

<sup>5</sup> The 2016 regulations also included provisions covering warnings for occupational and environmental exposures to listed chemicals. The current proposal does not modify those regulations.


<sup>6</sup> The revised Article 6 Clear and Reasonable Warnings regulations were adopted on August 30, 2016, and became operative on August 30, 2018.

distributors, retailers, and California consumers would benefit from providing these businesses with the option of using tailored Proposition 65 warnings.

### III. Problems to be Addressed by the Proposed Amendments

#### Unintended uses of and lack of information in short-form warnings

As originally proposed, the 2016 Article 6 safe harbor warning regulations for consumer products generally required that a warning include the name of at least one chemical for each endpoint (cancer or reproductive toxicity) for which it is being given. The general full-length consumer product warning<sup>7</sup> is shown below using exposures to the reproductive toxicant toluene and the carcinogen formaldehyde as examples:

 **WARNING:** This product can expose you to chemicals including formaldehyde, which is known to the State of California to cause cancer, and toluene, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

During the development of the 2016 regulations, several stakeholders raised concerns that the above warning language would not fit on small products, labels, or containers without crowding out other necessary information. In response to those concerns, OEHHA included an optional “short-form” warning that could be placed directly on a product, its label, or its immediate container or wrapper.<sup>8</sup> Businesses are not required to identify a chemical or chemicals in the existing short-form warning,<sup>9</sup> which significantly limits the usefulness of the warnings to consumers. The current short-form warning for consumer products for each of the endpoints is as follows:<sup>10</sup>

 **WARNING:** Cancer -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

 **WARNING:** Reproductive Harm -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

 **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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<sup>7</sup> Section 25603(a), referred to here as the “full-length” warning.

<sup>8</sup> Section 25603(b).

<sup>9</sup> Section 25603(c), “A person providing a short-form warning on the product label pursuant to subsection (b) is not required to include within the text of the warning the name or names of a listed chemical.”

<sup>10</sup> Section 25603(b).

After adopting the safe harbor warning regulations in August 2016, OEHHA found that many businesses were using the short-form warning for a wide variety of consumer products, regardless of product or package size. For example, OEHHA has received multiple inquiries from members of the public concerning short-form warnings provided on large products with ample space for full-length warnings, including home appliances such as washing machines, refrigerators, and stoves.<sup>11</sup>

Not requiring a specific chemical or chemicals to be included in the short-form warning has caused its over-use, diluting the impact of legitimate warnings. Many businesses are using the short-form warning prophylactically because it protects from potential litigation and does not require identification of a specific chemical exposure for which the warning is being given. As a result, some businesses are using short-form warnings as a litigation avoidance strategy for exposures to listed chemicals that do not or cannot occur from use of their products, which does not serve Proposition 65's purpose of providing relevant hazard information to consumers about Proposition 65-listed chemicals in products they may use. OEHHA anticipates that if a business must identify a chemical exposure, businesses will be less likely to use the warning prophylactically and more likely to warn only when the Act requires it. In addition, some businesses are providing short-form consumer product warnings for chemicals that are inaccessible to consumers. The chemical may be present in an internal component like an appliance motor, to which the consumer will never be exposed. Such warnings are not required by the Act and only serve to dilute the impact of warnings for exposures to listed chemicals that are required. OEHHA anticipates that, when pressed to identify a chemical exposure, some businesses will determine that no warning is required for their products, resulting in fewer instances of over-warning and making those warnings that are given more meaningful.

Additionally, in OEHHA's experience, consumers often become confused when they see a short-form Proposition 65 warning that does not include a chemical. OEHHA receives many email and phone inquiries virtually every day, and several hundred email inquiries every month, concerning Proposition 65 warnings. Frequently these inquiries are from the public regarding exposures from a wide range of consumer products labeled with a short-form warning, including inquiries as to the specific chemicals to which the public is exposed. In an informal tally of the 440 public inquiries to OEHHA related to Proposition 65 warnings during April 2023, 79% of consumer inquiries requested more information about a specific product, and of these, 66% of the inquiries

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<sup>11</sup> See Appendix A for examples of actual current short-form warnings.

did not have a chemical name in the warning. Almost 30% of the consumer inquiries included a request for information regarding a short-form consumer product exposure warning or a warning that the consumer found to be unclear. These consumers wanted to know, among other things, the name of the chemical to which they might be exposed.

The following are illustrative examples of inquiries sent to OEHHA regarding the lack of information on which chemical the warning is being given for:

- “I have purchased a ... bidet seat. Please advise of chemical carcinogens. For example, where are they coming from, on the device water systems, or deodorizer?”<sup>12</sup>
- "I am interested to know, however, why it is not required for companies/labels to disclose WHAT the compound or chemical in the product is that requires the proposition 65 label. I work a retail job and I get folks in two groups when it comes to products with the label: those who are numb to the warning labels and don't care at all, and those who want to know more and are frustrated when we don't necessarily have the answer as to what exactly it is that may be harmful in the product. We as a retailer or even as a manufacturer aren't even required to know/disclose what prompts the label. Have you ever discussed requiring producers to put the exact chemical that could be harmful on the label? It would allow consumers greater autonomy in decisions on what they feel safe using in various applications.”<sup>13</sup>
- “Have just noticed my electric kettle warns against cancer-causing element but do not know which chemical it warns against.”<sup>14</sup>

These are just a few examples of inquiries from the public about the short-form warning. Without a chemical name, it is difficult for consumers to make informed choices about these potential exposures, frustrating the purposes of the Act.

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<sup>12</sup> Consumer correspondence sent to OEHHA on January 30, 2023, at 2:33 p.m.

<sup>13</sup> Consumer correspondence sent to OEHHA on June 2, 2023, at 2:10 p.m.

<sup>14</sup> Consumer correspondence sent to OEHHA on August 26, 2023, at 6:42 a.m.

The Proposition 65 Warnings Website receives hundreds of thousands of visits every month,<sup>15</sup> but without the name of the chemical in a product the website is a very limited resource for addressing the concerns expressed in these inquiries. It is often difficult for consumers to obtain information from the product manufacturers and others in the chain of commerce regarding the chemical for which the warning is being provided.

To obtain additional information regarding consumer exposures to listed chemicals, OEHHA sent 40 inquiry letters to businesses under section 25205 between January 2019 and March 2023. Thirty-three of these were sent to businesses providing short-form warnings. OEHHA requested chemical exposure information for use on the Proposition 65 Warnings Website ([www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)). Some businesses provided limited chemical exposure information; other businesses failed to respond to OEHHA's request for information; and some businesses provided information concerning the chemical exposures for which the warning was provided. The majority, however, did not identify an exposure to a listed chemical that likely needed a warning.

Consumers have informed OEHHA of instances where a business representative told them that they are required to provide a Proposition 65 warning for all products sold in California regardless of whether they contained a listed chemical. For example, one consumer explained that they called a pet bed business:

I called the company and spoke to an office manager who said there is nothing on the product that can cause cancer they are required to put the warning "Cancer and Reproductive Harm" on everything.<sup>16</sup>

These practices are contrary to the statutory requirement to give a "clear and reasonable" warning for exposures to listed chemicals, and OEHHA's stated intention in the 2016 rulemaking - to provide more meaningful and informative warnings for consumer product exposures. Use of the short-form warning prophylactically when no warning is required dilutes the effectiveness of the warnings. As discussed below, requiring businesses to identify the name of the chemical to which consumers were exposed could ameliorate this problem.

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<sup>15</sup> OEHHA's Proposition 65 warnings website ([www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)) recorded an average of 474,833 visitors per month in 2021, 437,669 visitors per month in 2022, and 420,647 visitors per month, as of April 1, 2023, in 2023.

<sup>16</sup> Consumer correspondence sent to OEHHA on April 17, 2023, at 8:31 a.m.



In 2016, OEHHA commissioned a study to determine if consumers preferred a warning with or without a chemical name. Of the people surveyed, 66% selected a warning with specific chemical names as being more helpful than a warning that generally referred to chemicals, and the most frequent reaction to the inclusion of specific chemicals was that people felt better able to make an informed choice.<sup>17</sup>

OEHHA anticipates that some businesses may stop the prophylactic practice of over-warning as a litigation-avoidance strategy if they must warn customers of a specific chemical exposure that can occur through use of their product. A reduction in over-warning furthers the purposes of the Act by reducing the unnecessary proliferation of Proposition 65 warnings and ensuring that consumers are provided with truthful, accurate information about anticipated exposures to listed chemicals from consumer products where they can occur.

### **Need for clarification on warnings for products purchased on the internet or through a catalog**

OEHHA regularly receives inquiries from businesses and trade organizations about how to provide safe harbor warning for product purchases.<sup>18</sup> Businesses have sought clarification about:

- the warning required when selling a product on the internet, including where to place the warning on the business's webpage,
- how to direct a warning that is only to California consumers,
- the business's responsibility for passing a warning from manufacturer to consumer, and
- whether "electronic warnings" under section 25602(a)(2) include internet warnings.

OEHHA has also learned that one of the main areas of confusion is whether a warning is needed for products sold on the internet if the product itself has a warning label, or

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<sup>17</sup> UC Davis Extension Collaboration Center, Proposition 65 Clear and Reasonable Warning Regulations Study: Survey results assessing the effectiveness of existing and proposed Proposition 65 warnings. (October 15, 2015) pp. 1-2. <<https://oehha.ca.gov/media/downloads/crn/112715isorappendixa.pdf>>.

<sup>18</sup> Following the 2016 Article 6 regulations OEHHA published a Q&A for businesses about internet and catalog warnings in response to business inquiries. OEHHA, Proposition 65 Clear and Reasonable Warnings Questions and Answers for Businesses: Internet and Catalog Warnings. (March 2018) <[https://www.p65warnings.ca.gov/sites/default/files/art\\_6\\_business\\_qa\\_internet\\_warnings.pdf](https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa_internet_warnings.pdf)>.

vice versa, i.e., if the webpage has the warning, whether the product itself needs a warning. The following are illustrative examples of business inquiries to OEHHA:

I am emailing on behalf of my client who [is] looking to export their clothing products to California. The company [is] unsure if they need to display the Prop 65 warning around chemicals causing cancer on their clothes or if warning online would be sufficient.<sup>19</sup>

We only sell our product online . . . . Based on the information we provided to [a third-party retailer], [they] will automatically provide any customer with a California zip code with the Prop 65 warning for our product prior to completing the purchase. As such, every prospective customer from California will see this warning before they decide to complete their purchase. Are we still required to put the Prop 65 warning label directly on our product?<sup>20</sup>

This proposed rulemaking would provide clarifications on these internet warning issues. Similarly, it provides clarification about some of these same issues for catalog warnings.

### **Other adjustments needed for consumer product safe harbor warnings**

#### *Font size requirement for short-form warnings*

OEHHA has become aware that the current provision stating that “[t]he entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product”<sup>21</sup> may be impractical. For example, some recently enacted federal labeling requirements would result in over-sized short-form warnings on food labels. The proposed rulemaking would allow for more flexibility while confirming that the short-form warning is subject to the same standard of conspicuousness as other consumer product warnings.<sup>22</sup>

#### *Provision for short-form warning option for food products*

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<sup>19</sup> Business correspondence sent to OEHHA on June 6, 2023, at 6:00 a.m.

<sup>20</sup> Business correspondence sent to OEHHA on March 5, 2023, at 7:03 p.m.

<sup>21</sup> Section 25602(a)(4).

<sup>22</sup> Section 25601(c) (“Consumer product exposure warnings must be prominently displayed on a label, labeling, or sign, and must be displayed with such conspicuousness as compared with other words, statements, designs or devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use.”).

Since the 2016 rulemaking, OEHHA has also received numerous inquiries from businesses seeking clarification as to whether the short-form warning could be used as a safe harbor warning for food products. The existing tailored warning for food products<sup>23</sup> does not expressly provide for short-form warnings on food products. This proposed rulemaking would clarify that short-form warnings may be used to provide safe harbor warnings for food products, with specified modifications to conform to the full-length warning requirements for food exposure warnings.

#### *Additional signal words options*

Current warnings start with the signal word “WARNING”. Adding the choice of signal words “CA WARNING” and “CALIFORNIA WARNING” would allow businesses to target the warning to California consumers and to clarify that the warning is being given pursuant to California law.

#### *Conspicuousness*

OEHHA has become aware of many cases where a warning containing safe harbor content is being given in such a manner that the warning is not easily seen. This proposed rulemaking would add language to provide further clarification regarding the requirement that the warning should be likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use.

#### **Additional options for warnings for passenger or off-highway motor vehicle and recreational marine vessel parts exposures**

Warnings for exposures to listed chemicals from passenger or off-highway motor vehicle and recreational marine vessel parts carry unique challenges for parts manufacturing and retail entities. First, passenger or off-highway motor vehicle and recreational marine vessel replacement parts number in the tens of thousands and are manufactured all over the world. A retail seller may carry hundreds of individual parts, a large number of which may require a Proposition 65 warning. Currently, many passenger or off-highway motor vehicle and recreational marine parts manufacturers provide a short-form warning for their products because full-length warnings can be difficult to fit on very small parts, although some provide a full-length warning that may name a specific chemical. In addition, it is difficult to estimate an individual’s exposure from contact with each part as the exposures are both user- and part-specific. For

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<sup>23</sup> Section 25607.2.

example, one consumer may only touch a part once while installing it during the life of the vehicle, while another individual may own several vehicles and maintain all of them using the same or similar parts and, therefore, will have more frequent contact with the same part. Finally, in addition to exposure to chemicals in the part itself, the do-it-yourself mechanic can be exposed to other listed chemicals while servicing the passenger or off-highway motor vehicle or recreational marine vessel to replace the part. Therefore, OEHHA is proposing a general warning for potential exposure to listed chemicals, combined with a recommendation that the consumer practice good industrial hygiene (e.g., service the vehicle in a well-ventilated area, wear gloves, and wash hands), would provide a greater benefit than receipt of the standard safe harbor warning.

#### IV. Proposed Amendments

##### **§ 25601. Safe Harbor Clear and Reasonable Warnings – Methods and Content.**

###### *§ 25601(b): Naming of chemicals in short-form and tailored warnings*

Existing subsection (b) provides that, except as provided in the short-form warning provision of section 25603(c), all warnings must include the name of one or more of the listed chemicals for which a warning is being provided:

Except as provided in Section 25603(c), a warning meets the requirements of this subarticle if the name of one or more of the listed chemicals in the consumer product or affected area for which the warning is being provided is included in the text of the warning.

OEHHA proposes to amend subsection (b) by removing “provided in Section 25603(c)” and replacing it with “otherwise specified in Section 25607 et seq.” Existing subsection 25603(c) currently provides that a short-form consumer product exposure warning does not require the name of a listed chemical. However, OEHHA is proposing to amend subsection 25603(c) to require a business to provide the name of one or more listed chemicals for which the safe harbor warning is being given. Therefore, the proposed amendment deletes the phrase “provided in Section 25603(c)” to conform with the proposed amendments to subsection 25603(c).

Adding the phrase “otherwise specified in Section 25607 et seq.” conforms this subsection to the existing requirements for tailored warnings in section 25607 et seq. This is a clean-up amendment for clarity and consistency with existing regulations. It imposes no new requirements on the use of tailored safe harbor warnings.

###### *§ 25601(c): Conspicuousness of safe harbor warnings*

OEHHA proposes to add “Notwithstanding any other provisions in this subarticle,” to the beginning of existing subsection 25601(c), and correct the capitalization of “Consumer”, as follows<sup>24</sup>:

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<sup>24</sup> Unless otherwise stated, language that is proposed to be removed from an existing regulation is shown in strike out text, and language that is proposed to be added to an existing regulation is shown in underlined text. For an entire section that contains all new language, for example, section 25603(b), the whole section is not underlined because it is easier to read without the underlining.

Notwithstanding any other provisions in this subarticle, ~~C~~consumer product exposure warnings must be prominently displayed on a label, labeling, or sign, and must be displayed with such conspicuousness as compared with other words, statements, designs or devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use.

This makes it clear that, regardless of any of the provisions in the subarticle, there is a baseline requirement for conspicuousness for a consumer product warning on a “label, labeling, or sign” - it must be “prominently displayed” and displayed in a conspicuous manner. This also makes it clear that the test for judging conspicuousness against the other elements on the sign, labeling method, or label must be met to achieve safe harbor status. For example, a warning on a small label placed on a product where a consumer would be unlikely to see it would not meet this test.

## **§ 25602: Consumer Product Warnings – Methods of Transmission**

### *§ 25602(a): General provisions for consumer product warnings*

For clarity, OEHHA is proposing to add the below underlined language to the exceptions to the general provisions in subdivision (a): “Unless otherwise specified in subsections (b) for internet purchases or (c) for catalog purchases or in Section 25607 et seq.”

OEHHA is also proposing a non-substantive amendment to subsection (a) to correct a clerical error to add a period after et seq.

OEHHA is proposing to add the following sentence to section 25602(a)(2): “This subsection does not apply to internet purchases, which are subject to the provisions of subsection (b).”

Section 25602(a)(2) describes as one of the methods of providing consumer product warnings using “any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product....” OEHHA has received inquiries about whether this method applies to internet purchases. OEHHA is clarifying that this method does not apply to warnings provided for internet purchases and that such purchases are covered in subsection (b). As explained in the original ISOR for subsection (a), subsection (a)(2) was meant as a catch-all provision for methods of electronic and automatic communication such as barcode scanners and

self-checkout registers.<sup>25</sup> Given that there is still confusion about this section and its use for internet purchases, OEHHA is proposing language that clarifies that the method of warning that complies with subsection (a)(2) does not apply to internet purchases.

Subsection (a)(4) covers the methods for providing a short-form warning on a product. In the proposed amendment, the words, “The entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product.”, would be replaced with the phrase “and is provided on a product in a type size that complies with Section 25601(c).” OEHHA is making this change because recent federal requirements would result, in some cases, in oversized short-form warnings disproportionate to the package size, which could provide a disincentive to adding Proposition 65 warnings to labels, an important method for giving a warning. For example, the Nutrition Facts Label final rule, which recently became effective, requires in some instances large font sizes on nutrition labels (e.g., 16- and 22- point font).<sup>26</sup> In some circumstances, this would result in the short-form warning taking up a high percentage of the product label, dominating other important consumer information and rendering the short-form warning’s use infeasible. To emphasize the requirement for visibility of the warning label OEHHA is proposing to reference section 25601(c), as detailed above in the discussion of changes to that section.

Incorporating this provision ensures consistency and addresses the question of the appropriate size of the warning relative to the product and other information provided on the label.

The existing minimum type size requirement for short-form warnings is retained.

“In no case shall the warning appear in a type size smaller than 6-point type.”

The reference to section 25601(c) is intended to promote conspicuous warnings and to affirm that the 6-point type is not intended to be a de facto acceptable floor for the type size of a warning. The warning type size should render the warning conspicuous in relation to the other items on the product label. A 6-point type size warning is not prominently displayed or conspicuous on the back side or bottom of an 8-foot by 4-foot refrigerator box, but it may be on the back and bottom of a 2-inch by 6-inch package of

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<sup>25</sup> OEHHA, Article 6 ISOR 2015. See footnote 4.

<sup>26</sup> Food and Drugs, 21 C.F.R. subpart 101.9(d) (1).

<<https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/cfrsearch.cfm?fr=101.9>> [as of 6/22/2023]

Example visual, <<https://www.fda.gov/media/97999/download>> [as of 6/22/2023].

glue. These are questions of enforcement, but the inclusion of the requirement in the regulation is intended to promote clarity for businesses and enforcers.

*§ 25602(b): Internet purchases*

OEHHA is proposing to make several clarifying amendments to subsection 25602(b). The amendments divide subsection (b) into two further subsections: subsection 25602(b)(1), which clarifies options to provide warnings on the internet to the purchaser prior to purchase; and subsection 25602(b)(2), which clarifies options to provide warnings to consumers upon delivery. The amendment clarifies that the business must meet both warning provisions to claim safe harbor status for internet purchases.

OEHHA proposes to amend section 25602(b) and create subsection (b)(1) and (b)(2) as follows:

(b) For internet purchases, a warning ~~that~~ meets the requirements of this subarticle if it complies with the content requirements of Section 25603(a) or Section 25607 et seq., and complies with subsections (1) and (2) below:

(1) The warning must also be provided by including either the using one or more of the following methods:

(A) a warning on the product display page, or

(B) a clearly marked hyperlink using the word “**WARNING**” or the words “**CA WARNING**” or “**CALIFORNIA WARNING**” on the product display page that links to the warning, or

(C) by an otherwise prominently displayed warning made to the purchaser prior to completing the purchase. If the warning is provided using the short-form warning label content pursuant to Section 25602(a)(4), the warning provided on the website may use the same content. For purposes of this subarticle subsection, a the warning is not prominently displayed if the purchaser must search for it in the general content of the website.

(2) In addition, the warning must also be included: on or with the product when delivered to the consumer using one or more of the methods in Section 25602(a)(3) or Section 25602(a)(4); on labeling accompanying the product as defined in Section 25600.1(j); or as otherwise specified in Section 25607 et seq.



OEHHA is removing the specific reference to subsection 25603(a) and leaving the broader reference to “Section 25603” to provide the option of using either full-length or short-form warnings. OEHHA is also clarifying that a specific tailored warning for a product exposure in “Section 25607 et seq.” may, and in some cases must, also be used on the internet. For most but not all exposures covered by tailored warnings, the tailored safe harbor content is necessary to fall within the safe harbor. Where it is not, a business may use the content for the tailored warning (section 25607 et seq.), the short-form (subsection 25603(b)), or the full-length warning (subsection 25603(a)) for internet warnings. The changes in this subsection also include edits to correct grammatical errors.

#### Subsection 25602(b)(1): Warning prior to purchase

The proposed amendments to subsection (b)(1) clarify and add flexibility to the existing options for the methods of displaying the Proposition 65 warning on the internet prior to purchase. Amendments are proposed to clarify and expand the existing options for warning methods as follows:

- Subsection (b)(1)(A) – A warning can be placed “on the product display page.” The proposed amendment makes clear businesses have the option to place the entire warning on the webpage where the product is displayed (e.g., without requiring the consumer to click to another webpage).
- Subsection (b)(1)(B) – A warning can be provided via hyperlink using signal words. The proposed amendment provides the additional signal words “CA WARNING” or “CALIFORNIA WARNING” as alternatives to the existing signal word “WARNING”. Adding the choice of signal words “CA WARNING” and “CALIFORNIA WARNING” also allows a business that is selling products on the internet to target the warning to California consumers and to clarify that the warning is being given pursuant to California law.
- Subsection (b)(1)(C) – A warning can be made by using “an otherwise prominently displayed warning made to the purchaser prior to completing the purchase.” This existing option already includes, for instance, a pop-up warning during the purchase of the item, rather than an image on the product display page as in subsection (b)(1)(A). The reference to the short-form warning is deleted because it is clarified elsewhere.

Subsection 25602(b)(2): Warning when the product is delivered to the consumer

OEHHA proposes to add subsection (b)(2), which would state:

In addition, the warning must also be included: on or with the product when delivered to the consumer using one or more of the methods in Section 25602(a)(3) or Section 25602(a)(4); on labeling accompanying the product as defined in Section 25600.1(j); or as otherwise specified in Section 25607 et seq.

The goal of this proposal is to provide a warning to the end consumer of the product, namely, the one who will be exposed and should receive the information to make an informed decision about that exposure. This proposed provision provides businesses with several options for providing a compliant warning when the product is delivered to the consumer:

- A full-length warning on a product label when it is delivered to the consumer, consistent with section 25602(a)(3), which provides “[a] warning on the label that complies with the content requirements in Section 25603(a).” “‘Label’ means a display of written, printed or graphic material that is printed on or affixed to a product....” (Section 25600.1(i).) This would include a warning affixed to the immediate packaging or wrapper for the product.
- A short-form warning on a product label when it is delivered. This would also include a warning affixed to the immediate packaging or wrapper for the product. This is consistent with the proposed amended section 25602(a)(4), which states, “A short-form warning on the label that complies with the content requirements in Section 25603(b) and is provided on a product in a type size that complies with Section 25601(c). In no case shall the warning appear in a type size smaller than 6-point type.”
- On labeling accompanying the product as defined in section 25600.1(j), which states, “‘[l]abeling’ means any written, printed, graphic, or electronically provided communication that accompanies a product, such as a package insert.”
- Product-specific requirements in section 25607 et seq. for warnings for products sold on the internet. For example, for alcoholic beverages, the methods in section 25607.3(a)(4) and the language in section

25607.4 must be used, absent an exception.

§ 25602(c): *Catalog purchases*

OEHHA proposes to amend subsection 25602(c) as follows:

(c) For catalog purchases, a warning that complies with the content requirements of Section 25603(a) or Section 25607 et seq., and complies with subsections (1) and (2) below:

(1) The warning must also be provided in the catalog in a manner that clearly associates it with the item being purchased. ~~If a short form warning is being provided on the label pursuant to Section 25602(a)(4), the warning provided in the catalog may use the same content.~~

(2) In addition, the warning must also be included: on or with the product when delivered to the consumer using one or more of the methods in Section 25602(a)(3) or Section 25602(a)(4); on labeling accompanying the product as defined in Section 25600.1(j); or as otherwise specified in Section 25607 et seq.

Subsection 25602(c)(1): Warning prior to purchase

As with the proposed amendments to the internet warning, OEHHA is removing the specific reference to subsection 25603(a) and leaving the broader reference to “Section 25603” to provide the option of using either full-length or short-form warnings. OEHHA is also clarifying that a specific tailored warning for a product exposure in section 25607 et seq. may, and in some cases must, also be used on the internet.

Subsection 25602(c)(2): Warning when the product is delivered to the consumer

As with internet warnings in subsection 25602(b)(2), the goal of this proposed amendment is to provide a warning to the end-consumer of the product purchased through a catalog. The proposed amendment provides businesses with several options for providing compliant warnings to end consumers when the product is delivered. The end consumer is the person who will be exposed and needs the information to make an informed decision about that exposure. Businesses have the same options for warning methods in subsection 25602(c)(2) as detailed in the discussion above regarding subsection 25602(b)(2).

*§ 25602(d): Translation of labeling into non-English language*

To maintain consistency with proposed subsections (b) and (c), OEHHA would add “labeling,” to subsection 25602(d) and a cross-reference to section 25600.1 where the definitions of “sign” “label,” and “labeling” are provided. As with the other methods of providing a warning, translation to a language other than English is needed for the warning if there is other consumer information provided about the product in a language other than English.

**§ 25603. Consumer Product Exposure Warnings – Content**

*§ 25603(a): Full-length warning*

OEHHA proposes to amend subsection (a) by replacing the existing reference to “Section 25607.1 et seq.” with a reference to “Section 25607 et seq.” This change is non-substantive. It is proposed to correct a typographical error in the existing regulation.

Subsection (a)(2) would be amended to include the signal words “CA WARNING” or “CALIFORNIA WARNING” as alternatives to the existing requirement to include the signal word “WARNING”, consistent with the proposed amendments of section 25602(b).

*§ 25603(b): Short-form warning – new provisions*

The proposed amendments to section 25603 would, among other things,<sup>27</sup> amend the provisions for short-form warning content by:

- Requiring the name of a listed chemical for which the warning is being provided to be included in the warning—or the name of two chemicals, if the warning is being provided for both cancer and reproductive toxicity, unless the same chemical is listed for both endpoints.
- Modifying the wording of the warning to better communicate its meaning to consumers.
- Providing multiple wording options for the warnings. These new provisions would include multiple options for short-form safe harbor warnings for a consumer

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<sup>27</sup> Certain other amendments to the warning regulations are proposed to conform the other provisions with the relevant changes to the short-form warning and for grammatical accuracy.

product exposure to a chemical that is listed as a carcinogen, a reproductive toxicant, or both, as well as other listed chemicals in the product.

- Providing two more signal word options, “CA WARNING” and “CALIFORNIA WARNING,” in addition to the existing signal word “WARNING”.
- Providing an unlimited sell-through period for products manufactured and labeled prior to the effective date of the amendments to limit costs to businesses and a 2-year phase-in period for the new short-form safe harbor warning. This would both allow the new language to be used immediately after the regulation is adopted and also provide an additional two years after the regulation’s adoption for businesses to transition from the existing short-form warning language to the new content.

The existing short-form warning provisions in current subsection (b) would be moved in their entirety to proposed subsection (c).

Proposed subsection 25603(b) would read as follows:

(b) A short-form warning may be provided on the label pursuant to Section 25602(a)(4) if it includes:

(1) The symbol required in subsection (a)(1);

(2) The word “**WARNING:**” or the words “**CA WARNING:**” or “**CALIFORNIA WARNING:**” in all capital letters, in bold print; and

(3) One of the following:

(A) For exposures to listed carcinogens, the words:

1. “Cancer risk from exposure to [name of chemical]. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”; or
2. “Can expose you to [name of chemical], a carcinogen. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

(B) For exposures to listed reproductive toxicants, the words:

1. “Risk of reproductive harm from exposure to [name of chemical]. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”; or
2. “Can expose you to [name of chemical], a reproductive toxicant. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

(C) For exposures to both listed carcinogens and reproductive toxicants, the words:

1. "Risk of cancer from exposure to [name of chemical] and reproductive harm from exposure to [name of chemical]. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."; or
2. "Can expose you to [name of chemical], a carcinogen, and [name of chemical], a reproductive toxicant. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."

(D) For exposures to a chemical that is listed as both a carcinogen and a reproductive toxicant, the words:

1. "Risk of cancer and reproductive harm from exposure to [name of chemical]. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."; or
2. "Can expose you to [name of chemical], a carcinogen and reproductive toxicant. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."

Per subsection (b)(1) the warning symbol is the same as that described in subsection 25603(a)(1). In subsection (b)(2), the new warning options include the signal words "CA WARNING" or "CALIFORNIA WARNING" as alternatives to the signal word "WARNING," consistent with the proposed amendments of section 25602(b) to provide businesses with signal word options, as discussed above. Each of the proposed short-form warning options also requires the name of a listed chemical for each endpoint, along with amended language for the warnings. These options provide more flexibility so businesses can choose the wording that best fits their needs while still communicating the essential information required by the Act. At the same time, the proposal provides consumers with more information so they can make informed decisions about their exposure to listed chemicals.

The modified warnings are more consistent with the existing full-length warning in section 25603(a). The full-length warning uses the language "can expose" rather than "contains" because it conveys more clearly to a consumer that they can actually be

exposed to a chemical.<sup>28</sup> The full-length warning also requires the naming of at least one chemical per major endpoint (cancer, reproductive toxicity).

The short-form warning content would be modified by adding terms such as “risk”, “can expose”, and “exposure” to warn a consumer that there is an increased risk of cancer and/or reproductive harm from exposure to the chemical named in the warning from the consumer product. Both forms of the proposed short-form warning are more informative than the current short-form warning, which only identifies the end point, i.e., “WARNING: Cancer” or “WARNING: Reproductive Harm”, does not provide context for the warning, and does not name the chemical to which the consumer is being exposed.

When the warning language in section 25603 was adopted in 2016, one consideration was that some products might result in exposures requiring a warning to some people but not to others, depending on how the product is used. Adding the terms “can”, “risk”, and “expose” to the new short-form warning options in section 25603(b), with reference to the applicable endpoint(s), will better convey that there is a risk, but not a certainty, of harm from that chemical exposure.

Proposition 65 is a right-to-know law. The preamble<sup>29</sup> to the law states:

The people of California find that hazardous chemicals pose a serious threat to their health and well-being . . . . The people therefore declare their *rights*:

. . . .

(b) To be informed about *exposures* to chemicals that cause cancer, birth defects, or other reproductive harm . . . .

(Italics added.) The intent was to ensure the people of California would be informed about actual exposures to carcinogens and reproductive toxicants with reasonable specificity. Warnings that are too general can generate confusion and encourage businesses to provide a warning even when none is required, precisely because businesses can do so in such a broad and unrevealing fashion. Requiring more specific, relevant information will further the right-to-know purposes of the Act and may reduce the likelihood that businesses will provide unnecessary warnings for non-existent or insignificant exposures.


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<sup>28</sup> The 2016 rulemaking changed the language from “contains” to “can expose you to.” See footnote 4, OEHHA, Article 6 ISOR 2015.


<sup>29</sup> Ballot Pamp., Gen. Elec. (Nov. 4, 1986) text of Prop 65.

<<https://oehha.ca.gov/media/downloads/proposition-65/general-info/prop65ballot1986.pdf>>.

The new requirement in the proposed short-form warning to name at least one chemical per major endpoint will require minimal additional space while providing a more “clear and reasonable” warning than the current short-form warning. This requirement will, in many cases, discourage unnecessary, prophylactic over-warnings that dilute the effectiveness of warnings for actual exposures to listed chemicals. Given that Proposition 65 only applies to knowing and intentional exposures to listed chemicals, OEHHA has determined that the concept of exposure is an important component of the full-length Proposition 65 safe harbor warning and should likewise be incorporated in the short-form warnings. As an example, a short-form warning for a consumer product exposure to the carcinogen formaldehyde would state:

 **WARNING:** Can expose you to formaldehyde, a carcinogen. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Another option under the proposal is:

 **CA WARNING:** Cancer risk from exposure to formaldehyde. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

As with the existing short-form content, the new content requires the inclusion of the link to the Proposition 65 Warnings Website. Including the chemical names provides consumers a means to: research the specific chemical to which they are being exposed; obtain more information about exposure, including ways to reduce their exposure, and risks associated with certain consumer products; and to get links to other online sources of information. OEHHA has published numerous fact sheets about specific chemicals and products on the Proposition 65 Warnings Website.<sup>30</sup>

*§ 25603(c): Existing short-form warning and sell-through*

Current subsection (c) provides that use of the short-form safe harbor warning does not require inclusion within the text of the warning the name or names of a listed chemical. This would be deleted because the changes to subsections (b) would require the name of one or more listed chemicals in short-form consumer product exposure warnings, thereby making (c) inconsistent with the new short-form warning requirements.

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<sup>30</sup> See a complete list of fact sheets, including fact sheets translated into Spanish, at <https://www.p65warnings.ca.gov/fact-sheets> [as of May 1, 2023].



As discussed above, proposed new subsection (c) would include the existing short-form warnings with a phase-out provision. This section would include the date by which businesses must have transitioned to the amended short-form warnings in order to claim the safe harbor: two years after the effective date of the amendments. This is an unlimited sell-through period for products manufactured before the date that is two years after the effective date of the amendments. The proposed section 25603(c) would be as follows:

(c) A short-form warning may be provided on the product label using all of the following elements on a product manufactured and labeled prior to [Office of Administrative Law to insert date that is two years after the effective date of the 2023 amendments], may use the following content regardless of when the product is sold to a consumer:

(1) The symbol required in subsection (a)(1).

(2) The word “**WARNING:**” in all capital letters, in bold print.

(A) For exposures to listed carcinogens, the words, “Cancer -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

(B) For exposures to listed reproductive toxicants, the words, “Reproductive Harm -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

(C) For exposures to both listed carcinogens and reproductive toxicants, the words, “Cancer and Reproductive Harm -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

This language would provide a two-year period during which the current short-form warnings may be used. Comments received during the prior rulemaking stated that businesses would need more than the one-year proposed phase-in period to transition to the new warning language. Thus, new subsection (c) would provide a two-year phase-in period to allow businesses time to make the necessary changes to their short-form safe harbor warnings if they choose this method of warning. During this two-year phase-in period, businesses would have the option of using either the current short-form warning or the new amended language in proposed subsection 25603(b). The provision includes an unlimited sell-through for products manufactured and labeled up to two years after the regulation is adopted. This provision is to address concerns expressed by businesses in the 2016 rulemaking regarding anticipated logistical and economic costs associated with changing the warnings on products already or about to be produced and distributed to the marketplace. Although the proposed amendments are much more narrowly focused than the 2016 regulatory action and will impact only those

businesses currently providing short-form safe harbor warnings, OEHHA believes the unlimited sell-through period will help mitigate or avoid potential costs and logistical issues and will allow manufacturers and retailers sufficient time to transition to the new warnings without the need to locate and re-label products already in the chain of commerce. It also provides an opportunity for businesses to use up any existing labels they have on hand.

*§ 25603(d): Additional signal word options for pesticides*

OEHHA proposes to amend subsection (d) to provide the additional signal word options: “CA WARNING” and “CALIFORNIA WARNING,” for pesticides regulated by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)<sup>31</sup>, Title 40 Code of Federal Regulations, Part 156; and by the California Department of Pesticide Regulation<sup>32</sup>. This amendment is consistent with other proposed amendments to add signal words options to consumer product warning content (e.g., subsections 25602(b)(1)(B), 25603(a)(2) and (b)(2), 25607.2(a)(1) and (b)(1)).

**§ 25607.2. Food Exposure Warnings – Content**

The proposed amendments would add additional signal word options and a short-form warning option to the tailored warning content provisions for food exposures.

*§ 25607.2(a): Additional signal word options*

Subsection (a)(1) would be amended to provide alternative signal word options “CA WARNING:” or “CALIFORNIA WARNING:” that indicate that the warning is being provided pursuant to California law. This amendment is consistent with other proposed amendments (e.g., subsections 25602(b)(1)(B), 25603(a)(2) and (b)(2)). OEHHA is also proposing to make a minor modification to section 25607.2(a) by replacing the word “via” with “using” because it is clearer language.

*§ 25607.2(b): Short-form warning for food products*

When OEHHA adopted the short-form warning content for safe harbor consumer product exposure warnings in the 2016 rulemaking, the regulations did not include a

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<sup>31</sup> 7 U.S.C. §§ 136 *et seq.*

<sup>32</sup> Food and Agricultural Code section 14005; Cal. Code Regs., tit. 3, section 6242.

short-form warning option for food products. As businesses began providing Proposition 65 warnings using the new safe harbor warning methods and content, OEHHA received inquiries from businesses and trade groups seeking clarification as to whether the short-form warning could be used as a safe harbor warning for food products. This proposed rulemaking would explicitly provide that short-form warnings may be used to provide safe harbor warnings for food products, with appropriate modifications to conform to the existing full-length warning requirements for food exposure warnings, as discussed below.

The proposed new subsection 25607.2(b) for providing short-form warning content for food products is as follows:

(b) A short-form warning may be provided on a food product label pursuant to Section 25602(a)(4) if it includes:

(1) The word “**WARNING:**” or the words “**CA WARNING:**” or “**CALIFORNIA WARNING:**” in all capital letters, in bold print; and

(2) One of the following:

(A) For exposures to listed carcinogens, the words:

1. “Cancer risk from exposure to [name of chemical]. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”; or
2. “Can expose you to [name of chemical], a carcinogen. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”

(B) For exposures to listed reproductive toxicants, the words:

1. “Risk of reproductive harm from exposure to [name of chemical]. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”; or
2. “Can expose you to [name of chemical], a reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”

(C) For exposures to both listed carcinogens and reproductive toxicants, the words:

1. “Risk of cancer from exposure to [name of chemical] and reproductive harm from exposure to [name of chemical]. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”; or

2. “Can expose you to [name of chemical], a carcinogen, and [name of chemical], a reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”

(D) For exposures to a chemical that is listed as both a carcinogen and a reproductive toxicant, the words:

1. “Risk of cancer and reproductive harm from exposure to [name of chemical]. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”; or
2. “Can expose you to [name of chemical], a carcinogen and reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).”

New subsections (b)(1) and (b)(2)(A)-(D) would incorporate short-form warning content that is consistent with the other proposed amendments to the short-form warning content for consumer product exposure warnings in subsection 25603(b).

Certain elements of the existing tailored food exposure warnings also apply to the short-form warning for food. For example, subsection 25607.1(b) requires for warnings provided on a food label, “...it must be set off from surrounding information, enclosed in a box and comply with the content requirements specified in 25607.2.” Use of the short-form warning for food would also require the addition of the box around the warning. As with the full-length warning for food, the proposed short-form warning for food omits the warning symbol.

Also, as is the case with the full-length warning, the proposed short-form food exposure warning message would include the signal word options “WARNING”, or “CA WARNING” or “CALIFORNIA WARNING”, the endpoint (cancer and/or reproductive toxicity), the name of one listed chemical (or two where it covers both endpoints, unless the same chemical is listed for both endpoints) for which the warning is being provided, and the food-specific URL [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food), which provides the consumer with a resource for additional information specific to food.

The basic features of the proposed short-form food exposure warning requirements are consistent with the current full-length warning for food exposures in section 25607.2(a). These features include the boxed warning, omission of warning symbol, use of signal words, naming of the chemical, and reference to the URL for the food page on the

Proposition 65 Warnings Website. The following is an example of a short-form warning for a food product exposure to the carcinogen and reproductive toxicant, lead:<sup>33</sup>

**CA WARNING:** Can expose you to lead, a carcinogen and reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

Like other safe harbor warnings on consumer products, the level of exposure may require a warning for one endpoint but not the other where a chemical is both a carcinogen and reproductive toxicant. In this scenario, a warning should be given only for the endpoint requiring a warning. For example, the chemical benzene is listed as both a carcinogen and reproductive toxicant.<sup>34</sup> If the exposure exceeds the No Significant Risk Level (NSRL) of 6.4 micrograms/day for cancer (oral)<sup>35</sup> but is below the Maximum Allowable Dose Level (MADL) of 24 micrograms/day (oral, for reproductive toxicity<sup>36</sup>), a safe harbor warning would be given only for cancer. In this scenario, the short-form warning for benzene in a food could read as follows:

**CA WARNING:** Can expose you to benzene, a carcinogen. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

However, if the product described above also caused a significant exposure to another reproductive toxicant (e.g., lead), the short-form warning would include both relevant chemicals under the requirements of subsection (b)(2)(c). For example, if a food product would cause an exposure to lead above its MADL and an exposure to benzene above its NSRL, the short-form warning for that food could read as follows:

**CA WARNING:** Risk of cancer from exposure to benzene and reproductive harm from exposure to lead. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

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<sup>33</sup> Current listing and basis for listing. <<https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>>.

<sup>34</sup> Current listing and basis for listing. <<https://oehha.ca.gov/proposition-65/chemicals/benzene>>.

<sup>35</sup> Section 25705.

<sup>36</sup> Section 25805.

Businesses that wish to use the new short-form warnings for food may do so once the regulations become effective or at any time afterwards.

*§ 25607.2(c): Acrylamide warning for food – renumbered subsection*

The current subsection (b), acrylamide warning for food, effective January 1, 2023, would be relabeled to subsection (c) but otherwise would remain unchanged.

**§ 25607.50 Safe Harbor Consumer Product Exposure Warning for Passenger or Off-Highway Motor Vehicle Parts – Methods of Transmission**

OEHHA proposes to adopt new sections 25607.50 and 25607.51 into the existing tailored warning provisions (section 25607 et seq.) to provide additional safe harbor warning options for exposures to listed chemicals to individual replacement parts for passenger or off-highway motor vehicles. The new sections would cover exposures from parts sold at retail establishments, on the internet, and through electronic or printed catalogs. There are existing tailored warning provisions for the vehicles themselves.<sup>37</sup> This proposal is specific to the replacement parts purchased and installed by consumers.

*§ 25607.50(a): Methods and definition of passenger and off-highway motor vehicle*

The proposed text for new section 25607.50 would be as follows:

- (a) Notwithstanding Section 25607(a), a warning for exposures that occur during the purchase, handling, or installation of a part for a “passenger vehicle,” as defined in Vehicle Code Section 465, or an “off-highway motor vehicle,” as defined in Vehicle Code Section 38012(b), meets the requirements of this subarticle if it:
- (1) Complies with the content in Section 25607.51 and the methods in Section 25602, not including subsection (a)(4); or
  - (2) Complies with content in Section 25603 and the methods in Section 25602; or
  - (3) Complies with the content in Section 25607.51 and is provided on a sign no smaller than 5 inches by 5 inches in no smaller than 20-point

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<sup>37</sup> Sections 25607.18 and 25607.19.

type, placed at each retail point of sale or display of passenger or off-highway motor vehicle parts.

- (A) If other signage in the facility contains consumer information for passenger or off-highway motor vehicle parts in a language other than English, the warning must be provided in English and that other language.
- (B) If the product is also sold on the internet or in a catalog then a warning that complies with Section 25602(b) or (c), respectively, must also be provided.

The phrase “Notwithstanding Section 25607(a)” in subsection 25607.50(a) provides an exception to the general proposition that a business must use a tailored safe harbor warning, when it exists, to fall within the safe harbor.

Proposed subsection (a) explains that the warning language is intended to cover exposures that occur during the “purchase, handling, or installation of a part.” Consumers may maintain or otherwise work on their own or other’s vehicles using replacement parts and can be exposed to listed chemicals during the purchase, handling and/or installation of these parts. Exposures that may result from the use of the part during vehicle operations or from the vehicle as a whole are addressed in the tailored warning for motor vehicles (sections 25607.16 -.17).

This proposed regulation defines “passenger vehicle” by incorporating by reference the definitions in Vehicle Code section 465 and “off-highway motor vehicle,” in Vehicle Code section 38012(b). The existing definitions in the Vehicle Code are also used in the other tailored warnings for vehicles.<sup>38</sup> Thus, the regulation covers aftermarket parts for passenger vehicles such as automobiles, sport utility vehicles (SUVs), and light trucks, and off-road vehicles such as motorcycles, snowmobiles, and all-terrain vehicles. It does not cover parts for large vehicles such as heavy-duty buses or trucks.

This proposed subsection provides multiple methods to comply with the warning requirement for vehicle parts:

- Subsection (a)(1) would allow the content from the tailored warning to be used in combination with any of the warning methods in section 25602 such as a label or

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<sup>38</sup> Section 25607.16 Vehicle Exposure Warnings – Methods of Transmission.

shelf tag, except that the tailored warning content could not be used with the short-form warning method in section 25602(a)(4).

- Subsection (a)(2) would allow businesses to continue using the general consumer product warning content and methods of sections 25603 and 25602, respectively.
- Subsection (a)(3) would allow the content of the tailored warning to be provided “on a sign no smaller than 5 inches by 5 inches in no smaller than 20-point type...”<sup>39</sup>. The sign size and the type size make the warning readable and conspicuous, as required by the existing regulations<sup>40</sup>.

The sign described in subsection (a)(3) would be required to be displayed at each retail point of sale or display (cash register or checkout stand) to provide a warning to the consumer prior to purchase. The use of the word “or” allows the retailer to choose whether to post the sign at each retail point of sale or as part of each display of parts to be covered by the warning. For example, in an auto parts store, if the retailer decides to post signs at the point of sale, they will not need to post a sign at each point of display (e.g., at the windshield wiper display, the towing parts display, and the towing lights display). At a big-box store where a retailer sells a variety of products in addition to vehicle parts, the retailer may choose to post the sign at each auto parts display instead of at each point of sale. Thus, the retailer is free to choose where to post the signs, based on its business needs.

The translation requirement for the posted warning in subsection (a)(3)(A) is consistent with the other safe harbor warnings in Subarticle 2. It applies when the retailer provides

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<sup>39</sup> The same size sign and type size requirements are used in three other tailored warnings for consumers: section 25607.3 Alcoholic Beverage Exposure; section 25607.5 Food and Beverage Exposure Warnings for Restaurants; and section 25607.8 Dental Care Exposure Warnings.

<sup>40</sup> Section 25601(c) requires prominent display of the warning and “conspicuousness as compared with other words, statements, designs or devices on the label, labeling or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use.” And section 25600.1 provides a definition of sign:

“Sign” means a physical presentation of written, printed, graphic, or electronically provided communication, including shelf signs, other than a label or labeling, posted in a conspicuous manner that is associated with the exposure for which the warning is being provided under the Act and is clearly visible under all lighting conditions normally encountered during business hours and under such conditions as to make it likely to be seen, read, and understood by an ordinary person.



“consumer information for passenger or off-highway motor vehicle parts” in a language other than English. Existing section 25600.1(c) defines consumer information 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.

Internet and catalog warnings must follow methods of transmission in sections 25602(b) and 25602(c), respectively, to ensure that consumers are warned about exposure at the time of purchase, in addition to the warning they receive on or with the product. The new tailored warning content may be used for internet or catalog warnings as well.

No sell-through period or phase-in date is included in this proposed regulation because products that have warnings that are compliant with sections 25602 and 25603 need not be changed. This regulation simply allows additional tailored warning options for businesses. Businesses that wish to use the new tailored warning may do so once the regulations become effective or at any time afterwards.

*§ 25607.50(b): Definition of passenger or off-highway motor vehicle part*

Proposed section 25607.50(b) reads:

(b) For purposes of Sections 25607.50 and 25607.51, “passenger or off-highway motor vehicle part” means any part offered for sale or transferred to a consumer for installation in or service on a passenger or off-highway motor vehicle as defined in subsection (a) but shall not include packaged service chemicals, tires, parts containing asbestos, carpeting, upholstery including fillings and coverings, textiles, or fabrics.

For example, vehicle parts include, but are not limited to, replacement parts such as plastic and metal fittings and housings, bulbs, nuts and bolts, belts, filters, and the like. These parts may be purchased at dealerships and auto parts stores, among other locations and on the internet and through catalogs. However, the proposed definition of “passenger or off-highway motor vehicle part” expressly does not include “packaged service chemicals, tires, parts containing asbestos, carpeting, upholstery including fillings and coverings, textiles, or fabrics.” Also, the proposed definition is specific to sections 25607.50 and 25607.51.

Carpeting or other upholstery textiles or fabrics are excluded from the scope of the regulation. Language in the proposed tailored warning sign recommends working in a

well-ventilated area and provides other advice that is not applicable to the excluded materials.

Packaged service chemicals, such as engine oil, brake fluid, coolant (antifreeze), and transmission fluid, are excluded from the definition as well. These chemical mixtures or fluids are unlikely to cause exposure to lead or phthalates, the example chemicals in the warning. Many such products already carry the names of other Proposition 65-listed chemicals such as ethylene glycol or methanol on the product label. Directly associating the named listed chemicals with the Proposition 65 warning, pursuant to proposed amended sections 25602 and 25603 above, would better inform the consumer. Thus, product-specific warnings rather than the general tailored warning are preferred for packaged service chemicals.

### **§ 25607.51. Passenger or Off-Highway Motor Vehicle Parts Exposure Warnings – Warning Content**

#### *§ 25607.51(a): Tailored warning content*

The text for new proposed section 25607.51(a) is as follows:

- (a) Notwithstanding Section 25607(a), a warning for exposure to a listed chemical from passenger or off-highway motor vehicle parts meets the requirements of this subarticle if it complies with Section 25607.50(a) and includes all the following elements:
  - (1) The symbol in Section 25603(a)(1);
  - (2) The words “**WARNING:**”, “**CALIFORNIA WARNING:**” or “**CA WARNING:**” in all capital letters and bold print; and
  - (3) The words: “Handling passenger or off-highway motor vehicle parts can expose you to chemicals such as phthalates and lead, which can cause cancer and reproductive harm. To minimize exposure, service the vehicle in a well-ventilated area, wear gloves, and wash your hands. For more information see [www.P65Warnings.ca.gov/motor-vehicle-parts](http://www.P65Warnings.ca.gov/motor-vehicle-parts).”

This proposed section would provide tailored safe harbor warning content for passenger or off-highway motor vehicle parts. As discussed above, the phrase “Notwithstanding Section 25607(a)” in subsection 25607.51(a) provides an exemption to the general proposition that a business must use tailored safe harbor content, when it exists, to fall within the safe harbor. This provides businesses with more options for safe harbor

warnings. The proposed tailored safe harbor warning content would require the use of the warning symbol and provide options for signal words “WARNING:”, “CALIFORNIA WARNING:”, or “CA WARNING:” that mirror the general safe harbor warning content in section 25603.

An example of the tailored warning, including the language from proposed section 25607.51(a)(3), is as follows:

**⚠ WARNING:** Handling passenger or off-highway motor vehicle parts can expose you to chemicals such as phthalates and lead, which can cause cancer and reproductive harm. To minimize exposure, service the vehicle in a well-ventilated area, wear gloves, and wash your hands. For more information see [www.P65Warnings.ca.gov/motor-vehicle-parts](http://www.P65Warnings.ca.gov/motor-vehicle-parts).

The warning is tailored to identify the consumer product(s) for which the warning is being given, e.g., passenger or off-highway motor vehicle parts, and explains the common pathway for how a person could be exposed, e.g., handling the parts. There are many varying vehicle replacement parts that include a variety of Proposition 65 chemicals. The warning makes the broad statement that “vehicle parts can expose you to chemicals” and uses as examples lead and phthalates. These chemicals are used as examples because handling of some parts may cause significant exposures to these chemicals, and they are likely familiar chemicals to the general public. Exposure to lead can come from lead acid batteries and other parts. Phthalates are a group of chemicals that make plastic flexible and may be present in cable and wire coverings. In addition to asbestos, lead and phthalates are used as examples in OEHHA’s Proposition 65 fact sheet on motor vehicle part exposures.<sup>41</sup>

Parts containing asbestos are being excluded from this regulation because it is especially hazardous, and consumers should take different precautions to protect against inhalation exposures.<sup>42</sup>

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<sup>41</sup> OEHHA, Motor Vehicle Parts, <<https://www.p65warnings.ca.gov/fact-sheets/motor-vehicle-parts>> [as of June 25, 2023].

<sup>42</sup> See e.g., United States Environmental Protection Agency, Current Best Practices for Preventing Asbestos Exposure Among Brake and Clutch Repair Workers, < <https://www.epa.gov/asbestos/current-best-practices-preventing-asbestos-exposure-among-brake-and-clutch-repair-0>>; OEHHA, Asbestos, < [https://www.p65warnings.ca.gov/sites/default/files/downloads/factsheets/Asbestos fact sheet.pdf](https://www.p65warnings.ca.gov/sites/default/files/downloads/factsheets/Asbestos_fact_sheet.pdf)>.

To further the public health goals of Proposition 65, the warning provides supplemental language to help consumers minimize exposure risk. OEHHA receives many consumer inquiries requesting guidance regarding how to reduce chemical exposures. Working in a well-ventilated area, wearing gloves, and washing hands after handling parts will reduce or minimize exposure to many listed chemicals, including lead and phthalates, which are named in the warning.

The warning also directs the consumer to the Proposition 65 Warnings Website ([www.P65warnings.ca.gov/motor-vehicle-parts](http://www.P65warnings.ca.gov/motor-vehicle-parts)), which provides more information on lead, phthalates, and other chemicals, and further advice for consumers about how they may be exposed and how to minimize their exposures to those chemicals.

*§ 25607.51(b): Substitution of chemical names in tailored warning*

Proposed new section 25607.51(b) reads as follows:

- (b) Notwithstanding Section 25607(b), for a posted warning sign using the method in Section 25607.50(a)(3), the chemicals identified in subsection (a)(3) may not be added to, removed, or substituted. For all other methods of providing the warning described in subsection 25607.50(a)(1), the product manufacturer or importer may substitute a chemical name in the warning if the product will not expose a consumer to lead or phthalates at a level that requires a warning.

Existing section 25607(b) allows businesses to substitute chemical names in a tailored safe harbor warning if the product does not cause exposures to the chemicals in the tailored safe harbor warning. It states:

If a person does not cause an exposure to a particular listed chemical required to be identified in a warning set out in Section 25607 et seq., the name of that listed chemical need not be included in the warning in order to meet the requirements of this subarticle. The name of at least one listed chemical for which the warning is being provided must be included in all warnings.

This proposal would not allow a business to add, remove, or substitute the chemicals in the tailored safe harbor warning for passenger or off-highway motor vehicle parts when the warning is on a posted sign using the method in section 25607.50(a)(3). This is because a retailer posting multiple signs with different chemicals at different points of sale may cause confusion. Use of the tailored safe harbor warning sign is optional for a manufacturer or importer. If a manufacturer would like to identify a different chemical or chemicals in the warning, they can do so if they use the general safe harbor warning methods (e.g., shelf tag), as provided for in section 25607.50(a)(1), or if they use the general safe harbor content provided in section 25603, with the general safe harbor methods in section 25602.

### **§ 25607.52. Recreational Marine Vessel Parts Exposure Warnings – Methods of Transmission**

OEHHA proposes to add new sections 25607.52 and 25607.53 to the existing tailored warning provisions to provide optional warnings for exposure to individual replacement parts for recreational marine vessels. The new sections cover exposure from parts sold at retail establishments, on the internet, and through electronic or printed catalogs.

New section 25607.52 would incorporate by reference the existing warning methods from the general safe harbor consumer product regulations in sections 25602 (methods) and 25603 (content), while adding an additional option to provide the tailored warning on a sign posted at the point of sale or display of the recreational marine vessel parts. New section 25607.53 would provide a new tailored warning content option.

The proposed text for section 25607.52 would be as follows:

- (a) Notwithstanding Section 25607(a), a warning for exposures that occur during the purchase, handling, or installation of a part for a “recreational marine vessel,” as defined in Harbor and Navigation Code Section 651(t), meets the requirements of this subarticle if it:
  - (1) Complies with the content in Section 25607.53 and the methods in Section 25602, not including subsection (a)(4);
  - (2) Complies with the content in Section 25603 and the methods in Section 25602; or
  - (3) Complies with the content in Section 25607.53 and is provided on a sign no smaller than 5 inches by 5 inches in no smaller than 20-point

type, placed at each retail point of sale or display of recreational marine vessel parts.

- (A) If other signage in the facility contains consumer information for recreational marine vessel parts in a language other than English, the warning must be provided in English and that other language.
- (B) If the product is also sold on the internet or in a catalog then a warning that complies with Section 25602(b) or (c), respectively, must also be provided.

(b) For purposes of Sections 25607.52 and 25607.53, “recreational marine vessel part” means any part offered for sale or transferred to a consumer for installation in or service on a recreational marine vessel as defined in subsection (a) but shall not include packaged service chemicals, tires, parts containing asbestos, carpeting, upholstery including fillings and coverings, textiles, or fabrics.

The proposed text for recreational marine vessel parts mirrors the text for passenger or off-highway motor vehicle parts and has the same general rationale. Where there are differences, the rationale is provided below.

*§ 25607.52(a): Warning methods and definition of recreational marine vessel*

The warning methods and exceptions are identical to those used for exposures to passenger and off-highway motor vehicle parts. See the discussion of section 25607.50(a) above.

“Recreational marine vessel” is defined by reference to Harbor and Navigation Code section 651(t). The same definition is used in the tailored warning for recreational vessels exposures in section 25607.18.

*§ 25607.52(b): Definition of recreational marine vessel part*

Proposed section 25607.52(b) defines “recreational marine vessel part” as “any part offered for sale or transferred to a consumer for installation in or service on a recreational marine vessel as defined in subsection (a) but shall not include packaged service chemicals, parts containing asbestos, carpeting, upholstery including fillings and coverings, textiles, or fabrics.” The definition is specific to the proposed tailored warning options in sections 25607.52 and 25607.53.

The rationale for excluding packaged service chemicals, parts containing asbestos, carpeting, upholstery including fillings and coverings, textiles, or fabrics from the definition of recreational vessel parts is the same as that provided above in the discussion of section 25607.50(b) for passenger and off-highway motor vehicle parts. While recreational marine vessels are more often used in open-air environments that partially mitigate exposure to off-gassed chemicals, dermal absorption can still result in exposure to listed chemicals from upholstery and other products.

### **§ 25607.53. Recreational Marine Vessel Parts Exposure Warnings – Content**

The proposed text for new section 25607.53 is as follows:

- (a) Notwithstanding Section 25607(a), a warning for exposure to a listed chemical from recreational marine vessel parts meets the requirements of this subarticle if it complies with Section 25607.50(a) and includes all the following elements:
  - (1) The symbol required in Section 25603(a)(1);
  - (2) The words “**WARNING:**”, “**CALIFORNIA WARNING:**” or “**CA WARNING:**” in all capital letters and bold print; and
  - (3) The words: “Handling recreational marine vessel parts can expose you to chemicals such as phthalates and lead, which can cause cancer and reproductive harm. To minimize exposure, service the vessel outdoors or in a well-ventilated area, wear gloves, and wash your hands. For more information see [www.P65Warnings.ca.gov/marine-vessel-parts](http://www.P65Warnings.ca.gov/marine-vessel-parts).”
- (b) Notwithstanding Section 25607(b), for a posted warning sign using the method in Section 25607.52(a)(3) the chemicals identified in subsection (a)(3) may not be added to, removed, or substituted. For all other methods of providing the warning described in subsection 25607.52(a)(1), the product manufacturer or importer may substitute a chemical name in the warning if the product will not expose a consumer to lead or phthalates at a level that requires a warning.

This proposed section would provide tailored safe harbor warning content for recreational marine vessel parts.

*§ 25607.53(a): Tailored warning content*

The proposed text for the recreational marine vessel parts regulations mirrors the text for passenger or off-highway motor vehicle parts, except for the following provisions that are specific to recreational marine vessel parts:

- Section 25607.52(a) – The definition of parts “recreational marine vessel parts.”
- Section 25607.53(a)(3) –
  - Recreational marine vessels are often outdoors in a body of water when a part is changed or installed, which should reduce exposure levels. The warning recommends that “recreational marine vessel parts” be replaced outdoors, adding the words “outdoors or” to “in a well-ventilated area”.
  - The specific website URL to the Proposition 65 Warnings Website page for recreational marine vessel parts ([www.P65Warnings.ca.gov/marine-vessel-parts](http://www.P65Warnings.ca.gov/marine-vessel-parts)) is included.

See the discussion of the tailored warning for passenger or off-highway motor vehicle parts in section 25607.51(a) for an explanation of the other aspects of the warning language content.

An example of the tailored warning for exposures to recreational marine vessel parts, including the language from proposed section 25607.53(a)(3) is as follows:

**⚠ WARNING:** Handling recreational marine vessel parts can expose you to chemicals such as phthalates and lead, which can cause cancer and reproductive harm. To minimize exposure, service the vessel outdoors or in a well-ventilated area, wear gloves, and wash your hands. For more information see [www.P65Warnings.ca.gov/marine-vessel-parts](http://www.P65Warnings.ca.gov/marine-vessel-parts).

The warning also directs the consumer to the Proposition 65 Warnings Website ([www.P65warnings.ca.gov-marine-vessel-parts](http://www.P65warnings.ca.gov-marine-vessel-parts)) that provides more information on phthalates and lead and other chemicals, as well as advice for consumers about how they may be exposed and how to minimize their exposures to those chemicals.

*§ 25607.53(b): Substitution of chemical names in tailored warning*

Existing section 25607(b) allows for the substitution of chemical names in a tailored safe harbor warning if the product does not cause exposures to the chemicals in the tailored safe harbor warning. The new section 25607.53(b) does not allow this when the warning is transmitted on a sign. This is the same provision and rationale as for the passenger



or off-highway motor vehicle parts warning content. See discussion of section 25607.51(b) above.

## **V. Necessity**

After carefully assessing businesses' use of the warnings since the regulations were adopted in 2016, OEHHA has determined that amendments to the regulations are necessary to provide clarity and add additional non-mandatory, safe harbor warning options. Compliance with the regulations will reduce the potential for litigation concerning the sufficiency of warnings because the content and methods provided in the safe harbor regulations are deemed "clear and reasonable" by the lead agency for purposes of the Act (see section 25601(a)). The content of the proposed warnings is also intended to provide information to individuals potentially exposed to listed chemicals to help make better informed decisions about those exposures and to reduce over-warning.

In addition to the explanations above, the proposed amendments are necessary to ensure that California consumers receive information in safe harbor short-form warnings comparable to the content of the full-length safe harbor warnings for consumer products (section 25603(a)). Naming a carcinogen and/or reproductive toxicant in the warning will help inform consumers about exposures to listed chemicals so they can make better informed choices, thereby furthering the consumer right-to know purposes of Proposition 65.

By requiring safe harbor short-form warnings to list a chemical, the proposed amendments may discourage businesses from providing prophylactic warnings as a litigation-avoidance strategy. Prophylactic warnings confuse consumers and dilute the overall value of Proposition 65 warnings, which should only be provided for knowing and intentional exposures to a significant amount of a listed chemical. The inclusion of additional words such as "Cancer risk from exposure to [chemical]", or the alternative option "Can expose you to [chemical], a carcinogen," and similar language for reproductive toxicants, provides a brief explanation of the warning to consumers, but still limits the size of the overall warning.

When it included the short-form warning option in its 2016 warning regulations, OEHHA intended for the short-form warnings to be used on very small packages that could not accommodate a longer warning. Thus, the warning was kept short to fit in compressed labeling spaces on small products. Since then, businesses have widely used the short-form warning on all sizes of products and packaging, including large appliances with no shortage of packaging space. The proposed amendments to the short-form warning

regulations will preserve businesses' ability to use size-appropriate short-form warnings on consumer product labels, regardless of the size of the package, while still offering businesses with small products or packaging a viable on-product warning option. The regulation continues to allow the short-form warnings to be used for internet and catalog sales where a short-form warning is provided on the product label while ensuring that the information in short-form warnings is comparable to the information provided in the full-length consumer product safe harbor warning.

The clarifications to sections 25602(b) and (c) on methods of providing warnings for purchases on the internet and through catalogs address inquiries from businesses and trade organizations about whether their practices can receive safe harbor protection from litigation.

The proposed amendments add the choice of signal words "CA WARNING" and "CALIFORNIA WARNING" to the general consumer product regulations for short-form and full-length safe harbor warnings, as well as tailored safe harbor warnings for food. This signals that the warning is being provided pursuant to California law and reduces uncertainty if the products are purchased outside California.

The proposed new sections 25607.50-.54 are provided so that California consumers buying passenger or off-highway vehicle and recreational marine vessel parts receive information about reducing the risk of exposure to listed chemicals. This should facilitate reductions in risk of exposures to Proposition 65 listed chemicals for persons purchasing and installing such parts. The new regulations for these products allow an additional option to retailers and manufacturers to provide a meaningful warning to consumers through a posted sign at specialty stores selling passenger or off-highway vehicle and recreational marine vessel parts.

## **VI. Benefits of the Proposed Amendments**

The health and welfare of California residents will benefit from the proposed amendments to the consumer product warning regulations because the changes will improve the quality of information provided to consumers and further clarify provisions of the safe harbor warning regulations for businesses.

The proposed amendments to the short-form consumer product warnings will ensure that these safe harbor warnings name at least one listed chemical for which a warning is being provided. The regulation will also benefit Californians by reducing unnecessary prophylactic warnings that can mislead consumers, leading them to believe a product

causes an exposure to a listed chemical when a business does not know if there will be such an exposure. The proposal furthers the goal of informing consumers about public health risks for products purchased on the internet and in catalogs by providing the warning to the consumer. And the proposal assists businesses in clarifying the warning requirements for consumer products sold on the internet and in catalogs. Clarifying the use of the short-form warning on foods will provide businesses with options for applicable warning language and provide consumers with meaningful information to allow them to make informed purchasing choices.

OEHHA has determined that passenger or off-highway motor vehicle and recreational marine vessel parts manufacturers, importers, retailers, and California consumers would benefit from providing these businesses with the option to provide a Proposition 65 warning on a sign posted at the point of sale and/or display of passenger or off-highway motor vehicle parts, as an alternative to or in addition to the other general methods for providing consumer product exposure warnings (e.g., labels). The health and welfare of California residents will benefit from the proposed amendments. The new warning encourages consumers to use good chemical hygiene practices to reduce exposures to listed chemicals when handling such parts, including wearing gloves, washing hands, and working in well-ventilated areas or outdoors. It would also provide a consistent tailored warning for use at retail facilities that could decrease costs for manufacturers and increase consumer knowledge.

## VII. Other Required ISOR Elements

### **Economic Impact Assessment Required by Government Code section 11346.3(b)**

In compliance with Government Code section 11346.3, OEHHA has assessed all the elements pursuant to sections 11346.3(b)(1)(A) through (D).

#### *Creation or elimination of jobs within the State of California*

This regulatory action will not impact the creation or elimination of jobs within the State of California. 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 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 will not impact the creation or elimination of jobs within California because the proposed regulatory action will 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. It should be noted that Proposition 65 expressly exempts businesses with less than 10 employees<sup>43</sup> from the requirements of the Act.

#### *Creation of new businesses or elimination of existing businesses within the State of California*

This regulatory action will 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, as discussed below.

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

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<sup>43</sup> Health & Saf. Code section 25249.11(b).

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).<sup>44</sup>

*Expansion of businesses currently doing business within the State of California*

This regulatory action will not impact the expansion of businesses within the State of California. The proposed amendments will 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 will 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

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<sup>44</sup> 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).

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 vehicles and marine vessel parts. The action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety.

### **Technical, Theoretical, and/or Empirical Study, Reports, or Documents Relied Upon**

Citations to documents relied on for this proposal are provided in this document and in the Economic Impact Statement (STD 399) for this rulemaking and its attachments<sup>45</sup>. Copies of these documents will be included in the regulatory file for this action and are available from OEHHA upon request. OEHHA did not rely on any other technical, theoretical, and/or empirical studies, reports, or documents.

### **Reasonable Alternatives to the Regulation and the Agency's Reasons for Rejecting Those Alternatives**

OEHHA considered implementing a proposal to limit the label size on which a short-form warning could be used. This proposal was released on January 8, 2021. OEHHA received public comments that the proposal to limit the label size was impractical and burdensome for businesses. OEHHA did not include a label size limit in the current proposal because of the previous comments from stakeholders that indicated that the calculation of label size for the wide variety of consumer products would be too complicated to be feasible. The proposal was withdrawn on May 10, 2022, because it could not be completed in the required timeframe.

OEHHA also considered but rejected other modifications to the regulations suggested by stakeholders such as requiring the inclusion of the names of all listed chemicals to which a consumer could be exposed through use of the product. Such a requirement would be inconsistent with the current structure of the regulations and could result in unwieldy and confusing warnings.

Another option considered was to repeal the short-form warning provisions entirely. However, OEHHA determined that taking away the short-form warning option would be

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<sup>45</sup> *Ibid.*

unduly burdensome to businesses, and unnecessary because the short-form warning can be amended to satisfy the minimum requirements for a “clear and reasonable” warning.

OEHHA has determined the alternatives are not reasonable in comparison to the proposed regulatory action and will not carry out the purposes of the Act.

### **Reasonable Alternatives to the Proposed Regulatory Action that Would Lessen Any Adverse Impact on Small Business and the Agency’s Reasons for Rejecting Those Alternatives**

OEHHA considered the potential impact of the proposed amendments on small businesses and determined that the two-year period for businesses to transition to the new short-form warnings, including an unlimited sell-through period for products manufactured and properly labeled up to two years after the effective date, would adequately address the issues likely to impact small businesses.

OEHHA has initially determined that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the proposed action, or would be as effective and less burdensome to small business, or would be more cost-effective and equally effective in implementing the statutory policy or other provision of law to small business. The current proposal furthers the purposes of Proposition 65 by providing non-mandatory guidance for businesses concerning how safe harbor warnings can be provided for exposures to listed chemicals and for exposures from lead and phthalates from passenger and off-highway vehicle and recreational marine vessels. In addition, OEHHA has determined that the proposed regulatory action will not impose any mandatory requirements on small businesses because the regulations are non-mandatory guidance that businesses may but are not required to use to comply with Proposition 65’s “clear and reasonable” warning requirement. It should be noted that Proposition 65 expressly exempts businesses with less than 10 employees<sup>46</sup> from the requirements of the Act.

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<sup>46</sup> Health and Saf. Code section 25249.11(b).

## **Evidence Supporting Finding of No Significant Adverse Economic Impact on Business**

OEHHA does not anticipate that the regulation will 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 regulatory action will provide non-mandatory guidance for businesses, including content for a warning for exposures to listed chemicals and for exposures from lead and phthalates from passenger and off-highway vehicle and recreational marine vessels. Businesses remain free to provide any warning they deem to be “clear and reasonable,” albeit without safe harbor protection. It should be noted that Proposition 65 expressly exempts businesses with less than 10 employees from the requirements of the Act. 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 well below the threshold that would trigger a Standardized Regulatory Impact Analysis (SRIA).

## **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 regulations do not duplicate and will not conflict with federal regulations.



## Appendix A – Examples of Existing Short-Form Warnings Being Provided

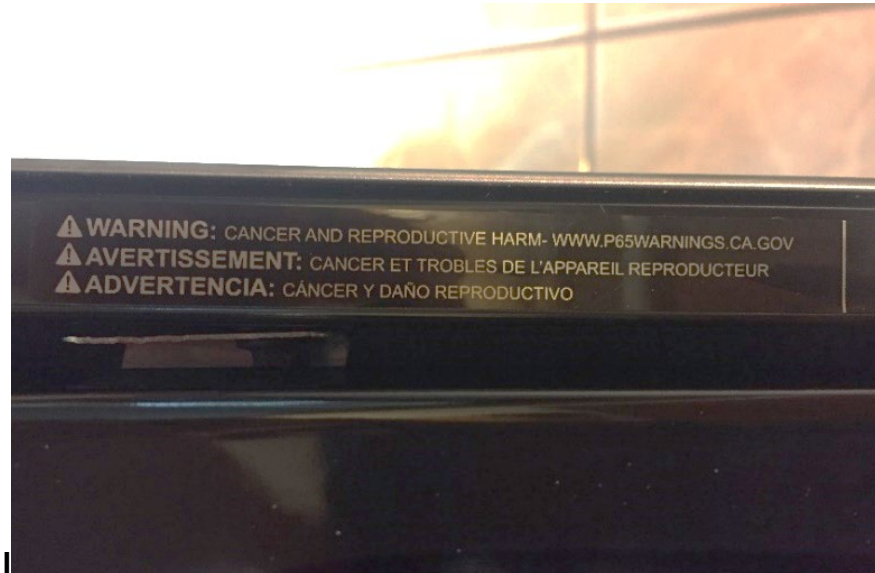


Residential Trash Bin Warning

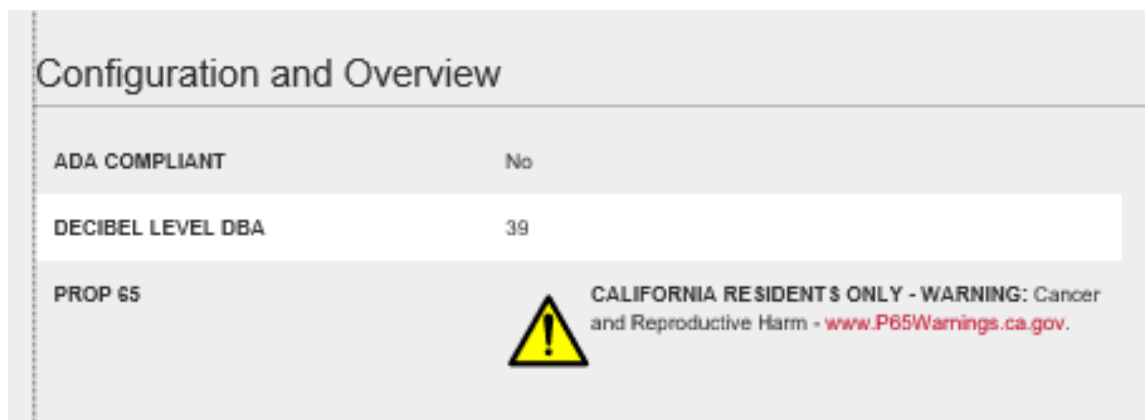


Ceramic Tower Heater – On-Product Label

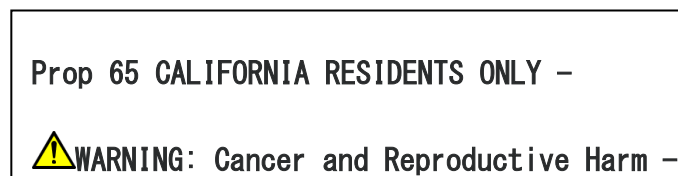
## Appendix A – Examples of Actual Short-Form Warnings, cont.



Electric Range – On-Product Label



Dishwasher - Website Warning



Top Freezer Refrigerator - Website Warning

**Appendix A – Examples of Actual Short-Form Warnings, cont.**



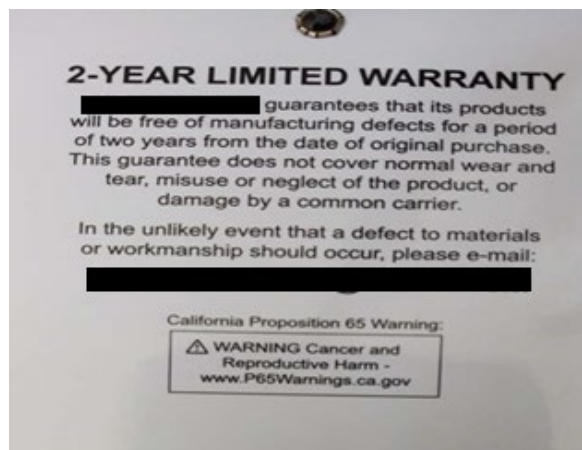
**Refrigerator - On-Product Label**

Prop 65 **CALIFORNIA RESIDENTS ONLY**

**Clothes Dryer - Website Warning**

**WARNING:** Cancer and Reproductive Harm - [www.p65Warnings.ca.gov](http://www.p65Warnings.ca.gov).

**Guitar, Bass and Ukulele - Website Warning**



**Luggage – On-Product Label**

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.<sup>1</sup> 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,

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<sup>1</sup> 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](mailto: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.

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23<sup>rd</sup> 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](mailto: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](mailto: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 65<sup>2</sup> 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.<sup>3</sup> The Act also prohibits the discharge of listed chemicals to sources of drinking water.<sup>4</sup> 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

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<sup>2</sup> 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").

<sup>3</sup> Health and Saf. Code section 25249.6.

<sup>4</sup> 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,<sup>5</sup> 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

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<sup>5</sup> 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).<sup>6</sup>

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<sup>6</sup> 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.<sup>7</sup> 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](http://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](http://www.oehha.ca.gov/Proposition-65).

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<sup>7</sup> 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](http://www.oehha.ca.gov/Proposition-65).