State of California-Department of Finance
ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATION AND ORDERS)
STD. 399 (REV. 12/2013)

ATTACHMENT

ECONOMIC IMPACT STATEMENT – 11/17/2015

DEPARTMENT NAME:
Office of Environmental Health Hazard Assessment, California Environmental Protection Agency

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400:
Title 27, California Code of Regulations Proposed Repeal Of Article 6 And Adoption Of New Article 6 Regulation For Clear And Reasonable Warnings

A. ESTIMATED PRIVATE SECTOR COST IMPACTS

2. The Office of Environmental Health Hazard Assessment estimates that the annual economic impact of this regulation is between $15 and $30 million.

Background

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65", was passed by California voters in 1986. It requires businesses that knowingly cause exposures to chemicals identified by the State of California as causing cancer or reproductive toxicity to provide a "clear and reasonable" warning. The statute does not define a "clear and reasonable" warning.

The current warning regulation, promulgated in 1988, allows businesses considerable flexibility in crafting warnings, but identifies the following as a compliant "safe harbor" warning if businesses wish to use it: "Warning: This product (or this location) contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm." Over the years, this familiar warning has been widely criticized for being vague and uninformative. In 2013, Governor Brown called for reforms to make Proposition 65 warnings more useful and meaningful to the public.

Proposed Regulation

In November 2015, the Office of Environmental Health Hazard Assessment (OEHHA), which is the lead agency for implementation of Proposition 65, officially proposed to replace the 1988 regulation with a new regulation covering the format and content of Proposition 65 warnings.[1] While continuing to give businesses the flexibility to craft their own warnings, the proposed regulation identifies a compliant "safe harbor" warning that businesses could choose to use as containing the following elements:

- The words, "**WARNING**: This product (or entering this location) can expose you to _______, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm." The warning would have to identify at least one listed chemical for which the warning is being provided.
- For most warnings other than for food product exposures, the inclusion of the familiar exclamation point symbol at the beginning of the warning.
- In some circumstances the warning would also need to be provided in non-English languages appearing on the product label or related signage.

[1] Source: Initial Statement of Reason, 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, 2015.

- The URL for an OEHHA Proposition 65 web site that would contain supplemental information on listed chemicals, warnings, and products and facilities commonly associated with warnings.

In summary, the following is a typical "safe harbor" warning that business could use for a product under the proposed regulation to comply with Proposition 65:

> ⚠ **WARNING**: This product can expose you to lead, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. For more information, go to: www.P65warnings.ca.gov.

Other significant provisions of this regulation would provide:

- A two-year phase-in period. Products manufactured prior to the end of the phase-in period could continue to use the existing warnings.
- Court-approved warnings from settlement of past Proposition 65 litigation (probably a significant percentage of Proposition 65 warnings) would remain valid.
- Tailored warnings for specific kinds of exposures from products and facilities, such as alcoholic beverages, dental care, furniture, automobiles and parking facilities. These warnings would have more specific information relating to chemical exposures associated with those products or facilities.
- Businesses could petition OEHHA for additional tailored warnings, including warnings based on a court-approved settlement.
- Specific provisions for providing Proposition 65 warnings for products sold over the Internet or in catalogs.
- A specific provision delineating the responsibilities of product manufacturers versus product retailers. The provision requires that the product manufacturer either provide the warning on the product or provide notification to retailers in writing twice in the first year and once a year thereafter of the need to provide a warning, and either provide or offer to provide warnings signs or materials to retailers. This is intended to address longstanding conflicts between manufacturers and retailers over their relative responsibility to provide warnings and to clarify the requirements of the statute to minimize cost impacts on retailers where feasible.

Challenges

Estimating the proposed regulation's cost impacts on businesses posed some unusual challenges due to the unique nature of Proposition 65:

1. The existing regulation has been in place since 1988 and is being relied on by an unknown number of businesses.

2. The number and types of Proposition 65 warnings being provided in California are unknown because Proposition 65 is a self-implementing law. Businesses must determine on their own when they need to provide a warning. No government agency, including OEHHA, maintains a database of Proposition 65 warnings or the businesses that provide them. Businesses are not required to inform any government entity of their decision to provide or not provide a Proposition 65 warning. There are no comprehensive records of the number of Proposition 65 warnings provided on product labels, store signs or other alternative warning formats.

3. Similarly, the number and types of businesses that are subject to Proposition 65 are unknown. Unlike most laws, Proposition 65 is not targeted at specific products, activities or sectors of the economy. Proposition 65 applies to all businesses with 10 or more employees that sell products or operate facilities in California that they know cause significant exposures to any chemical on the Proposition 65 list maintained by OEHHA (currently consisting of over 875 chemicals[2]).

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[2] http://oehha.ca.gov/prop65/prop65_list/Newlist.html (November 20, 2015)

These include businesses located in other states and countries that sell products in California. Chemicals on the Proposition 65 list range from industrial chemicals used only in the manufacture of other industrial chemicals to ubiquitous substances such as lead, motor-vehicle exhaust and tobacco smoke. There are no databases covering the comprehensive range of businesses and their associated chemical exposures subject to Proposition 65 that may require a warning.

4. The number of businesses currently providing warnings pursuant to court-approved settlements or judgments is not known. These warnings will not change under the proposed regulations, so these businesses will not incur any costs related to the proposed regulations.

This economic impact assessment covers only the impacts of the proposed warning regulation, which is limited in scope. The regulation would not require Proposition 65 warnings for products or locations that do not currently require them. The regulation would only change the safe harbor content and methods of providing warnings, and, in some cases, the format of Proposition 65 warnings for businesses that choose to follow the safe harbor guidance provided in the regulations. Many business costs frequently attributed to Proposition 65 such as defending lawsuits, paying attorney's fees and penalties, determining the chemical exposures from products, and reformulating products to avoid the need to provide warnings fall outside the scope of this regulation and therefore are not covered in this assessment.

Anticipated costs directly associated with the proposed regulation that this assessment estimates include: the cost of revising and printing product labels or purchasing signs with new warning content, including the exclamation-point graphic; the cost of providing warnings for Internet sales; the cost of providing warnings in the larger-format newspaper advertisements that conform with the proposed regulation; and, when necessary, the cost of providing warnings in foreign languages. The proposed regulation would not change the methods, format or content of Proposition 65 occupational warnings that employers provide to employees, and therefore this regulation would not impose any costs on employers for occupational warnings.

In light of the considerable uncertainties surrounding the number and types of Proposition 65 safe-harbor warnings currently being given, OEHHA developed two estimates of the economic impact of the regulation:

1. A higher-cost scenario based on conservative assumptions on the number and types of safe-harbor warnings being given. The use of these assumptions is unlikely to underestimate the costs associated with the regulation, but is more likely to overestimate those costs.

2. A lower-cost scenario based on less-conservative assumptions on the number and types of safe harbor warnings being given. The use of these assumptions may produce a more accurate estimate of the costs associated with the regulation.

The procedures used to develop these two estimates are discussed below.

Procedure for Estimating Number and Type of Proposition 65 Safe-Harbor Warnings

In conducting this assessment, OEHHA estimated the number of California establishments that are subject to Proposition 65, and then the number of establishments that are likely currently providing specific kinds of Proposition 65 warnings, such as warnings on product labels, warnings posted on signs at specific kinds of locations, and warnings in newspapers under the existing safe-harbor regulations. OEHHA then estimated the cost of modifying these warnings to comply with the safe harbor provisions in the proposed regulation, and multiplied those costs by the estimated number of each of those kinds of warnings.

The number and types of businesses that are subject to Proposition 65 were estimated using a two-step process. First, OEHHA obtained the number of establishments in California as reported in the 2013

County Business Patterns by employment-size class and the North American Industrial Classification System (NAICS) (Table 1).[3]

Table 1. Number of California Establishments by NAICS and Employment-Size Class, 2013.

NAICS code	NAICS Code Description	1-4	5-9	10-19	20-49	50-99	100-249	250-499	500-999	1000 or more	Total	10 or more
11----	Agriculture, Forestry, Fishing and Hunting	1,200	314	163	135	64	25	7	0	2	1,910	**396**
21----	Mining, Quarrying, and Oil and Gas Extraction	351	151	119	109	38	31	10	7	3	819	**317**
22----	Utilities	468	191	149	172	80	71	32	10	12	1,185	**526**
23----	Construction	42,610	10,609	6,661	4,205	1,346	565	123	35	14	66,168	**12,949**
31----	Manufacturing	15,301	6,922	5,906	5,456	2,329	1,586	422	150	82	**38,154**	**15,931**
42----	Wholesale Trade	32,289	11,306	7,689	5,189	1,632	814	236	78	36	**59,269**	**15,674**
44----	Retail Trade	48,238	24,988	16,227	10,156	4,384	2,389	404	31	3	**106,820**	**33,594**
48----	Transportation and Warehousing	11,395	3,620	2,665	2,116	836	531	144	59	31	21,397	**6,382**
51----	Information	12,653	2,724	2,193	2,088	900	618	206	102	52	21,536	**6,159**
52----	Finance and Insurance	31,328	8,548	5,357	3,041	859	490	169	94	44	49,930	**10,054**
53----	Real Estate and Rental and Leasing	37,349	7,214	3,198	1,519	435	191	39	9	6	49,960	**5,397**
54----	Professional, Scientific, and Technical Services	83,390	15,681	9,292	5,660	1,859	970	289	71	70	117,282	**18,211**
55----	Management of Companies and Enterprises	1,837	762	727	839	416	331	130	48	42	5,132	**2,533**
56----	Administrative and Support and Waste Management and Remediation Services	24,366	6,466	4,425	3,624	1,713	1,198	356	188	118	42,454	**11,622**
61----	Educational Services	6,121	2,131	1,832	1,833	654	395	99	40	34	13,139	**4,887**
62----	Health Care and Social Assistance	55,649	23,539	13,146	7,308	2,570	1,700	346	162	220	**104,640**	**25,452**
71----	Arts, Entertainment, and Recreation	15,754	1,862	1,382	1,445	715	326	71	40	23	21,618	**4,002**
72----	Accommodation and Food Services	24,488	14,498	18,923	16,348	4,566	995	162	49	25	**80,054**	**41,068**
81----	Other Services (except Public Administration)	44,488	13,983	7,201	3,948	934	384	55	24	11	71,028	**12,557**
99----	Industries not classified	1,673	55	17	3	0	0	0	0	0	1,748	**20**
------	**Totals**	**490,948**	**155,564**	**107,272**	**75,194**	**26,330**	**13,610**	**3,300**	**1,197**	**828**	**874,243**	**227,731**

Source: Source: United States Census Bureau, County Business Patterns, Released April, 2015. http://censtats.census.gov/cbpnaic/cbpnaic.shtml

A total of 874,243 establishments did business in California in 2013. However, as stated above, Proposition 65 applies only to businesses with ten or more employees that sell products or operate facilities in California. A total of 227,731 establishments, comprising 26 percent of the total number of establishments, had 10 or more employees. OEHHA also had to account for the fact that a parent business can operate establishments with fewer than 10 employees that are still subject to Proposition 65. According to the US Census Bureau, County Business Patterns covering 2012 and 2013, California establishments with fewer than 10 employees comprised about 26 percent of the total California

[3] The Business Register is the Census Bureau's source of information on employer establishments included in the County Business Patterns. The Business Register is a database that contains a record for each known establishment that is located in the United States with paid employees. An establishment is a single physical location at which business is conducted or services or industrial operations are performed. An establishment is not necessarily equivalent to a company or enterprise, which may consist of one or more establishments. A single-unit company owns or operates only one establishment. A multi-unit company owns or operates two or more establishments. The treatment of establishments on the Business Register differs according to whether the establishment is part of a single-unit or multi-unit company. http://www.census.gov/econ/cbp/

establishments operated by firms with 10 or more employees. These additional establishments are subject to Proposition 65. To account for these establishments, OEHHA generally assumed that 26 percent of establishments with fewer than 10 employees in each sector are owned by larger businesses subject to Proposition 65, and included these establishments in this assessment.[4]

The Accommodation and Food Service sector has the most establishments with 10 or more employees in California (41,068). Retail Trade (33,594) and Manufacturing (15,931) also have a significant number of establishments with 10 or more employees. The extent to which businesses in these sectors are covered by the regulation depends on whether they are knowingly causing chemical exposures that require Proposition 65 warnings. Furthermore, as discussed above, Proposition 65 treats manufacturers and retailers differently. The law and the regulation provide that manufacturers bear primary responsibility and cost burden for providing warnings for their products. Even if a manufacturer chooses to use the process in the proposed regulation to delegate responsibility for providing a warning to retailers, the manufacturer would still have to provide warning signs or other materials to retailers, upon request. The regulation does specify limited circumstances when retailers would be primarily responsible for providing warnings. However, most of the costs relating to warnings for products sold in retail establishments would likely be borne by product manufacturers, rather than retailers. This is reflected in this economic assessment.

Second, a panel of representatives from OEHHA, the California Environmental Protection Agency, the Department of Toxic Substances Control, and the Office of the Attorney General identified the kinds of businesses that may be currently providing Proposition 65 warnings. The panel used the North American Industrial Classification System, which is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data. NAICS provides industry data at the most aggregated category, the 2 digit level (Table 1), to the most detailed category, the 6-digit level (Appendix 1).

Categories of Proposition 65 warnings were defined as: 1) Environmental warning signs and warnings published in newspapers; and 2) Product warning labels, coupled with notices on Internet sites where the products are sold. Panelists individually went through the list of 6-digit sectors and opined, based on their knowledge and experience, as to whether it is possible, probable or certain that California businesses in that sector are currently providing Proposition 65 warnings. Panelists then met to discuss their opinions regarding warnings. The discussion resulted in a consensus regarding the likelihood that Proposition 65 warnings are currently being provided by businesses in each sector. The recorded results are presented in Appendix 2. Only those sectors identified as having businesses that likely currently provide Proposition 65 warnings are displayed in Appendix 2. As noted in the instructions to the panel, a “1” means that establishments in that sector are possibly providing Proposition 65 warnings, a “2” means establishments are probably providing warnings, and “3” means that establishments are almost certainly providing Proposition 65 warnings.

Estimating the Number of Products That Potentially Have Proposition 65 Warnings

OEHHA used its experience and professional judgment in estimating the percentage of products produced in each sector receiving a “1”, “2” or “3” score that potentially have a Proposition 65 warning on their label. In some manufacturing sectors, OEHHA assumed that all products produced in that sector potentially have Proposition 65 warnings. For other manufacturing sectors where, in OEHHA’s judgment, it is likely that only a fraction of products produced in that sector have Proposition 65 warnings, OEHHA assumed that 10 percent of products provided in that sector potentially have warnings on their product labels. For example, in the Navigational, Measuring and Electromedical Equipment sector, OEHHA assumed only 10 percent of products in that sector potentially have warnings on their product labels, because most products produced in this sector are not marketed to the general consumer and therefore are unlikely to have Proposition 65 warnings on their labels. In certain other sectors, OEHHA assumed that 50 percent of products produced in that sector potentially have warnings on their labels. OEHHA

[4] OEHHA used different methodologies for estimating the number of apartment and office buildings with Proposition 65 warnings, as discussed later in the section on environmental warning signs. OEHHA also assumed that no establishments with fewer than 10 employees are providing newspaper warnings, as discussed in the section on published environmental warnings.

assumed that 50 percent of products produced in the Cement and Concrete Products Manufacturing sector potentially have warnings on their labels, since this sector produces products both for the general consumer as well as bulk products for the construction industry.[5]

In estimating the total number of products produced by California manufacturers that potentially have Proposition 65 warnings, OEHHA needed to make assumptions on how many products potentially having Proposition 65 warnings are produced by each establishment in each sector receiving a score of 1, 2 or 3. OEHHA first looked at the number of employees at each establishment, which the NAICS data provides. OEHHA then developed a “sliding scale” of products manufactured at these establishments based on their number of employees.

- Establishments with 1-9 employees: 0.5 products (1 product for every 2 establishments)
- Establishments with 10-19 employees: 1 product
- Establishments with 20-49 employees: 2 products
- Establishments with 50-99 employees: 3 products
- Establishments with 100-249 employees: 10 products
- Establishments with 250-499 employees: 25 products
- Establishments with 500 to 999 employees: 50 products
- Establishments with more than 1000 employees: 100 products

OEHHA developed this sliding scale based on discussions with two manufacturers (see below). As stated above, OEHHA assumed for some sectors that all products produced at these establishments potentially require a Proposition 65 warning on its label. In other sectors, OEHHA assumed that 10 percent or 50 percent of products in those sectors have warnings on their label.

Based on these assumptions, OEHHA estimated that California manufacturing establishments are producing 16,215 products that potentially have Proposition 65 warnings on their labels.

Direct Cost of Revising Proposition 65 Warnings

The cost of changing existing safe harbor Proposition 65 warnings to conform to the new safe harbor content in the proposed regulation was estimated by multiplying the estimated number of current warnings by the estimated cost of changing a warning to conform with the safe-harbor elements in the proposed regulation. In several key areas, OEHHA employed different assumptions in the higher-cost and lower-cost scenarios, as described in the specific sections below.

Revising Warnings on Product Labels

OEHHA consulted with two product manufacturers – a large manufacturer with more than 1000 employees and a small manufacturer of approximately 100 employees -- on the cost of changing a Proposition 65 warning on a product label. Based on these discussions, OEHHA assumed a one-time cost of $1000 for revising the label for each product with a unique SKU number. Larger manufacturers benefitting from economies of scale would likely incur a lower cost for relabeling an individual product, while smaller manufacturers could incur a higher cost. The $1000 assumed cost reflects the blend of products with warnings in the marketplace produced by large and small manufacturers. The $1000 assumed cost is also based on the cost of revising labels on relatively small containers that are not necessarily typical of all consumer-product packaging. Revising the warning on larger packages or alternate means often used to provide warnings (such as package inserts or warnings in instruction

[5] Many products may require a warning even if they are not intended for the general consumer, but these would likely be occupational warnings intended for workers. Because the proposed regulation would not change requirements for occupational warnings, the regulation would not impose a cost on employers who provide occupational warnings. For example, for bulk concrete products intended for construction projects, it is unlikely that employers would rely on a product label to provide a Proposition 65 warning for employees handling those products. Instead, employers would rely on other methods provided in both the current and proposed regulation, such as dissemination of safety data sheets, to comply with the warning requirement.

pamphlets) would likely cost less. The assumption of a $1000 relabeling cost for all packaging should be viewed as conservative.

OEHHA then employed two different set of assumptions in estimating the high-cost and low-cost scenarios for the cost of revising warnings on products:

High-cost scenario: OEHHA assumed that all of the estimated 16,215 products produced by California establishments have Proposition 65 warnings, and that manufacturers will spend $1000 per product to revise labels to comply with the proposed safe harbor regulation. The total estimated relabeling costs under this scenario are $16,214,507. This is a conservative assumption that likely overestimates the actual cost imposed by the proposed regulation for two reasons:

- It is unlikely that all these products have Proposition 65 warnings. It is not uncommon for a manufacturer to provide a Proposition 65 warning for a product, while a comparable product produced by a competing manufacturer does not have a Proposition 65 warning. The competing manufacturer may be using a product formulation that does not contain Proposition 65-listed chemicals, or perhaps has determined that the product does not cause an exposure to any listed chemicals that is high enough to require a warning.

- A significant number of products utilize court-approved warnings stemming from past litigation. Manufacturers can continue to use court-approved warnings and therefore will not incur costs due to the proposed regulation for those warnings. The high-cost scenario does not take this into account, with one exception.[6]

Low-cost scenario: OEHHA assumed that 50 percent of the 16,215 products that could potentially have Proposition 65 warnings actually have warnings. This accounts for the likelihood that some products made by some manufacturers have warnings, while comparable products by other manufacturers do not have warnings. It also accounts for products with court-approved warnings that will not need to change. The total estimated relabeling costs under this scenario are $8,107,253.

Internet warnings for consumer products
An additional cost for consumer products would involve providing warnings for products purchased on the Internet. The proposed regulation would expand the safe harbor warning methods to include Proposition 65 warnings on websites that prospective California purchasers would be provided when purchasing products that require warnings. While many companies that sell products over the Internet already provide such warnings, the proposed regulation would establish safe-harbor warning requirements for Internet purchases for the first time. To estimate the cost to businesses selling products on the Internet, OEHHA assumed a cost of $150 to add warning language to web pages describing an establishment's products that require a Proposition 65 warning. While some businesses might choose potentially costlier options for providing the warning (such as pop-up features that display the warning only when the prospective purchaser enters a California address when ordering), OEHHA chose $150 because it is an upper-end estimate of the most basic method that a business could use to provide the warning on the Internet. OEHHA also made the conservative assumption that all products requiring a Proposition 65 warning are sold on the Internet.

Using these assumptions, the estimated cost of Internet warnings is $1,861,199. This cost is used for both the high-cost and low-cost scenarios.

[6] The one exception is for alcoholic beverages; warnings for approximately 90 percent of alcoholic beverage products sold in California are covered under a 2014 consent judgment and would not need to be modified as a result of the regulation. OEHHA assumed that 10 percent of alcoholic beverage-manufacturing establishments subject to Proposition 65 would need to change their warnings as a result of the regulation.

Environmental Warning Signs
Signs with Proposition 65 warnings are commonly seen at the entrances to many buildings and facilities. The cost of environmental warning signs is assumed to cover the cost of purchasing and replacing the old sign with a new one that conforms with the safe-harbor elements in the proposed regulation. We assume a cost of $20 per sign, based on costs quoted on websites of vendors selling Proposition 65 warning signs. This is an average cost that covers a wide variety of signs that businesses use to provide Proposition 65 warnings, ranging from simple printed warnings downloaded from the Internet to professionally engraved signs. For most sectors, OEHHA assumed that all establishments in a sector receiving a “1”, “2” or “3” score have a Proposition 65 warning sign on their premises. For example, in manufacturing sectors, the cost of acquiring and posting new signs is estimated to be $284,341.

The establishments of the Real Estate and Rental and Leasing sector (NAICS Code 5311) often post warning signs in apartment and commercial office buildings that they manage. Because the number of apartment and office buildings cannot be estimated from NAICS information, OEHHA used different methods for estimating the number of warnings in these facilities.

Apartment Buildings
As reported by the Department of Finance, the current number of California housing units in buildings with 5 or more units is 3,191,257.[7] OEHHA assumed an average of 10 apartment units per building, resulting in an estimate of 319,126 apartment buildings in California. Many but not all apartment buildings in California provide Proposition 65 warnings. While many apartments post a warning sign, others provide warnings in their leases or through other means. OEHHA used two different calculations to estimate the cost of revising Proposition 65 warnings for apartment buildings.

<u>High-cost scenario</u>: OEHHA assumed that 75 percent of apartment buildings in California have warning signs. At a cost of $20 per sign, the total estimated cost for apartment warning signs is $4,786,890.

Low-cost scenario: OEHHA assumed that 50 percent of apartment buildings in California have warning signs. At a cost of $20 per sign, the total estimated cost for apartment warnings is $3,191,260.

Office/Commercial Buildings
The number of establishments (regardless of the number of employees) that would typically occupy commercial office buildings was estimated to be 223,079.[8] Assuming an average of 5 office suites per building, OEHHA estimated there are 44,616 office buildings in California. Many but not all office/commercial buildings have Proposition 65 warnings.

<u>High-cost scenario</u>: OEHHA assumed that 75 percent of office buildings in California have a warning sign. At a cost of $20 per sign, the total estimated cost for office building warnings is $669,240.

<u>Low-cost scenario</u>: OEHHA assumed that 50 percent of office buildings in California have a warning sign. At a cost of $20 per sign, the total estimated cost for office building warning is $446,160.

Published Environmental Warnings
A relatively small number of establishments, typically large industrial facilities, choose to provide Proposition 65 environmental warnings by purchasing advertising space in newspapers on a quarterly basis. While the current OEHHA warning regulation simply says the warnings need to run quarterly, most facilities that provide newspaper warnings follow the more-prescriptive guidelines in the Attorney General’s 2001 private enforcement regulation. These guidelines say the warning should be a quarter-page in size, be published quarterly in the main news section of the newspaper with the largest circulation in the area for which the warning is given, and contain a graphic depiction of the location of the facility and the area for which the warning is being given. The proposed regulation incorporates the Attorney General guidelines and adds two additional requirements for a safe-harbor warning: the warning must

[7] http://www.dof.ca.gov/research/demographic/reports/estimates/e-5/2011-20/view.php
[8] United States Census Bureau, County Business Patterns, Released April, 2015. http://censtats.census.gov/cbpnaic/cbpnaic.shtml

also appear on the newspaper's website, if it has one; and the warning must also appear in non-English languages in any non-English newspapers that circulate in the affected area.

For this assessment, OEHHA estimated the difference in costs between advertisements that comply with the Attorney General's guidelines and the safe-harbor requirements of the proposed regulation. The estimated cost difference is $14,800 per establishment running eight quarterly sets of warnings over the two-year period covered by this assessment

The estimated $14,800 per establishment cost was derived in the following manner.

1. The cost of a one-day Internet advertisement on the Los Angeles Times or San Francisco Chronicle web sites is approximately $1,000.
2. Costs vary considerably among foreign-language newspapers. El Latino, a 60,000-circulation weekly Spanish-language newspaper in San Diego County, charges $850 for a quarter-page advertisement. OEHHA assumed one foreign-language advertisement in a newspaper of this size.
3. Summing the $1,000 and $850 costs yields a total cost of $1,850. Running these advertisements eight times over the two-year period covered by the assessment would mean a differential of $14,800 over the cost of warnings conforming with the Attorney General's guidelines.

In estimating the number of facilities that provide newspaper warnings, OEHHA looked at sectors containing the kinds of businesses that historically have provided such warnings. Recognizing that these warnings are typically provided either by very large facilities or in other cases cover multiple small- and mid-size facilities, OEHHA applied two different assumptions:

<u>High-cost scenario</u>: <u>OEHHA assumed that</u> 10 percent of establishments in those sectors provide newspaper warnings. (An exception was oil refineries, where OEHHA assumed all such facilities are providing newspaper warnings.) OEHHA also assumed that no establishments with fewer than 10 employees are providing their own newspaper warnings. This resulted in an estimate of just over 300 establishments in California that provide quarterly newspaper warnings. The total added cost of the newspaper warnings under this scenario is estimated to be $4,037,440.

<u>Low-cost scenario</u>: OEHHA assumed that 5 percent of establishments in those sectors provide newspaper warnings. (An exception was oil refineries, where OEHHA assumed all such facilities are providing newspaper warnings.) This resulted in an estimate of just over 150 establishments in California that provide quarterly newspaper warnings. OEHHA also assumed that no establishments with fewer than 10 employees are providing their own newspaper warnings. The total added cost of the newspaper warnings under this scenario is estimated to be $2,288,820.

Retail Sectors

The proposed regulation assigns most of the responsibility for providing product warnings to manufacturers rather than retailers. The proposed regulation would not impose significant new duties on retailers. Under the proposed regulation, retailers might need to revise the warnings that they currently provide, although the regulation shifts much of this responsibility to manufacturers. Retailers would likely need to provide written acknowledgement to, and work with, manufacturers who wish to provide them with warning signs or similar materials. Lastly, retailers would also need to post a warning or potentially stop selling a product within two business days of receiving a 60-day Notice of Violation regarding a specific product. While retailers would need to take those duties seriously, they are similar to those that retailers have historically performed under Proposition 65.

OEHHA assumed that 50 percent of retail establishments would incur a cost of $50 to perform general duties related to the regulation. While this cost may seem low, it reflects the intent of the regulation to reduce the responsibilities of retailers, rather than increase them. OEHHA assumed for both the high-cost and low-cost scenarios that 50 percent of retail establishments would spend $50 for activities related to the warning regulation, such as responding to manufacturer requests to post warnings, and posting signs. This is an average cost covering all retailers. Large retail establishments may be able to document costs directly attributable to the proposed regulation in excess of $50, but a majority of small retailers likely will not incur any costs.[9]

OEHHA estimates the costs to retailers of activities relating to the proposed regulation to be $1,296,316.

Total Direct Cost
The total estimated direct cost of the proposed regulation was calculated by first summing for all establishments included in the 4-digit sectors (Appendix 3) and then summing for all 2-digit sectors (Tables 2a and 2b). The total estimated direct cost is $30,985,298 under the high-cost scenario, and $19,310,715 under the low-cost scenario. That is assumed to be expended by the establishments equally over the two year implementation period. Therefore the annual expenditures during the two-year implementation period for California businesses is estimated at $15,492,649 for the high-cost scenario, and $9,655,358 for the low-cost scenario.

Table 2a. High-Cost Scenario for Proposed Warning Regulation

North American Industry Classification System		Environmental Warning		Product Warning*				Establishments	
Code	Industry Description	Signs	Published	Products	Labels	Internet	Total Cost	Providing Warnings	Total
21----	Mining, Quarrying, and Oil and Gas Extraction	$8,924	$0	-	$0	$0	$8,926	446	819
22----	Utilities	$3,914	$59,200	-	$0	$0	$63,114	196	1,185
23----	Construction	$102,090	$0	-	$0	$0	$102,090	5,105	66,168
31----	Manufacturing	$284,341	$3,785,840	16,215	$16,214,507	$1,861,899	$22,146,586	15,078	38,154
44----	Retail Trade	$1,296,316	$0	-	$0	$35,472	$1,331,788	51,853	106,820
48----	Transportation and Warehousing	$5,427	$192,400	-	$0	$2,652	$200,479	271	21,397
53----	Real Estate and Rental and Leasing	$5,456,130	$0	-	$0	$0	$5,456,130	5,511	49,960
56----	Administrative and Support and Waste Management and Remediation Services	$2,173	$0	-	$0	$0	$2,173	109	42,454
61----	Educational Services	$21,062	$0	-	$0	$0	$21,062	1,053	13,139
62----	Health Care and Social Assistance	$214,904	$0	-	$0	$0	$214,904	10,745	104,640
71----	Arts, Entertainment, and Recreation	$250,292	$0	-	$0	$0	$250,292	836	21,618
72----	Accommodation and Food Services	$973,701	$0	-	$0	$0	$973,701	48,685	80,054
81----	Other Services (except Public Administration)	$214,052	$0	-	$0	$0	$214,052	12,118	71,028
Totals		**$8,833,326**	**$4,037,440**	**16,215**	**$16,214,507**	**$1,900,023**	**$30,985,298**	**152,006**	**617,436**

[9] In recognition that amusement parks that provide warnings would likely need to post multiple signs, OEHHA assigned signage costs of $1000 for each amusement park.

Table 2b. Low-Cost Scenario for Proposed Warning Regulation

North American Industry Classification System		Environmental Warning		Product Warning*				Establishments	
Code	Industry Description	Signs	Published	Products	Labels	Internet	Total Cost	Providing Warnings	Total
21----	Mining, Quarrying, and Oil and Gas Extraction	$8,924	$0	-	$0	$0	$8,926	446	819
22----	Utilities	$3,914	$59,200	-	$0	$0	$63,114	196	1,185
23----	Construction	$102,090	$0	-	$0	$0	$102,090	5,105	66,168
31----	Manufacturing	$284,341	$2,037,220	16,215	$8,107,253	$1,861,899	$12,290,713	15,078	38,154
44----	Retail Trade	$1,296,316	$0	-	$0	$35,472	$1,331,788	51,853	106,820
48----	Transportation and Warehousing	$5,427	$192,400	-	$0	$2,652	$200,479	271	21,397
53----	Real Estate and Rental and Leasing	$3,637,420	$0	-	$0	$0	$3,637,420	5,511	49,960
56----	Administrative and Support and Waste Management and Remediation Services	$2,173	$0	-	$0	$0	$2,173	109	42,454
61----	Educational Services	$21,062	$0	-	$0	$0	$21,062	1,053	13,139
62----	Health Care and Social Assistance	$214,904	$0	-	$0	$0	$214,904	10,745	104,640
71----	Arts, Entertainment, and Recreation	$250,292	$0	-	$0	$0	$250,292	836	21,618
72----	Accommodation and Food Services	$973,701	$0	-	$0	$0	$973,701	48,685	80,054
81----	Other Services (except Public Administration)	$214,052	$0	-	$0	$0	$214,052	12,118	71,028
	Totals	**$7,014,616**	**$2,288,820**	**16,215**	**$8,107,253**	**$1,900,023**	**$19,310,715**	**152,006**	**617,436**

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Total (Direct, Indirect and Induced) Cost of the Proposed Revisions to Proposition 65

Section A.2 of the STD 399 requests an estimate of total private sector cost impacts of the proposed regulation. The State Administrative Manual Section 6602 defines an economic impact as:”[10]

> “All costs or benefits, (direct, indirect and induced) of the **proposed major regulation** on business enterprises and individual located in or doing business in California.
>
> A direct economic impact is the first-round impact of the policy change from the proposed regulation, e.g., a cost to a business of investing in new required equipment of a benefit to consumer of having additional health coverage. There are two additional types of economic impacts – indirect and induced – which are the reactions to the direct economic impact. An indirect economic impact is the secondary economic impact resulting from the direct economic impact, e.g., the extra sales of equipment to the regulated business, or the additional supply or demand for health care from expanded coverage. An inducted economic impact is any other economic impact of the policy change from the proposed regulation not accounted for by the direct or indirect economic impacts, e.g., the additional household spending by employees of firms selling extra equipment or in the health care industry, or the additional tax burden on businesses and individuals from fiscal costs associated with enforcing the regulation.

[10] Department of Finance Budget Letter Number: 13-30, Attachment B, State Administrative Manual Changes, Standardized Regulator Impact Assessment of Major Regulations, Section 6602 Definitions, December 26, 2013.

> Calculating an economic impact for a **major regulation** includes all costs or all benefits, computed without regard to any offsetting benefits or costs that might result directly or indirectly, to business enterprises and individuals directly affected by the regulation.

A major regulation is defined as:

> "Any proposed rulemaking action adopting, amending or repealing a regulation subject to review by the Office of Administrative Law that will have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars ($50,000,000) in any 12-month period between the date of the major regulations is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented (as estimated by the agency), computed with regard to any offsetting benefits or costs that might result directly or indirectly from that adoption, amendment or repeal."

These definitions apply to the calculation of the "economic impact" in determining if the proposed regulation is a major regulation.

The direct cost of implementing the proposed regulation is estimated at $30,985,298 (high-cost scenario) or $19,310,715 (low-cost scenario) (Tables 2a and 2b). This amount will likely be split evenly between the two one-year periods following the adoption of the regulation, which is the regulation's phase-in period. The total cost of the proposed regulation was estimated using the REMI model designed to calculate total economic impact of changes to the regional economy.[11] The REMI model generates year-by-year estimates of the total regional effects of a policy or set of policies. We used the REMI PI+ model for this analysis—a one-region (State of California), 160-sector model.

The REMI model requires that sector cost estimates be aggregated to the 4-digit level for most industries but aggregated to the 3-digit level for the Oil and Gas Extraction, Support Activities for Mining, Petroleum and Coal Products Manufacturing, and Real Estate sectors. Construction industries must be aggregated to the 2-digit level.

REMI estimates total economic impacts using a number of parameters. Three parameters that are considered principal economic indicators of economic impacts are:

1. Gross State Product - The market value of finished goods and services produced by labor and property in California;
2. Personal Income - Income received by persons from all sources including government payments, business transfer payments, rental payments, and income receipts on assets; and
3. Total Employment – Number of persons involved in the production of goods and services measured in full time equivalence.

Gross State Product is an estimate of the goods and services sold for consumption and is calculated by subtracting the value of intermediate inputs from the value of all goods and services produced (total output). This is the best indicator of the total (direct, indirect and induced) economic impacts of the proposed regulation. In addition to the change in gross state product (GSP) REMI calculates the expected decline in personal income, which is a component of the GSP, as well as the decrease in employment that potentially results from the regulation. The change in employment is also taken into account by REMI in calculating the change in GSP. These estimates are shown in Tables 3a and 3b.

[11] The Department of Finance has contracted with Regional Economic Models, Inc. (REMI) for software to assist in modeling economic impacts for the State of California. While the direct regulatory costs are estimated by the user, the indirect and induced costs, and economic impacts are estimated using sequential computations of major economy components. For a detailed description of the model see: REMI Policy Insight 9.5 User Guide, Regional Economic Models, Inc., 2007. http://www.remi.com/

Table 3a. Total (direct, indirect and induced) Private Sector Cost of Implementing the Proposed Proposition 65 Regulation: High-Cost Scenario

Economic Indicator	FY 2016-17	FY 2017-18
Direct Cost	$15,492,649	$15,492,649
Gross State Product*	-$24,170,801	-$30,236,561
Personal Income*	-$17,077,477	-$23,530,649
Total Employment	-263	-312

*In Current dollars.

Table 3b. Total (direct, indirect and induced) Private Sector Cost of Implementing the Proposed Proposition 65 Regulation: Low-Cost Scenario

Economic Indicator	FY 2016-17	FY 2017-18
Direct Cost	$9,655,357	$9,655,357
Gross State Product*	-$15,063,771	-$18,844,086
Personal Income*	-$10,643,057	-$14,664,815
Total Employment	-164	-195

Source: Regional Economic Models, Inc. (REMI), Air Resources Board

REMI predicts that Gross State Product will decline by $24.2 million (high-cost scenario) or $15.1 million (low-cost scenario) in the first 12 months after the regulation is adopted and $30.2 million (high-cost scenario) or $18.8 million (low-cost scenario) in the second 12 month period after it is adoption as a result of implementing the proposed regulation. Personal income is projected to decline by $17.1 million (high-cost scenario) or $10.6 million (low-cost scenario) in the first 12 month period and $23.5 million (high-cost scenario) or $14.7 million (low-cost scenario) in the second 12 month period. The US Bureau of Economic Analysis reports that California personal income in 2014 was over $1.9 trillion.[12] Total employment is projected to decline by 263 jobs (high-cost scenario) or 164 jobs (low-cost scenario) in the first 12 months and 312 jobs (high-cost scenario) or 195 jobs (low-cost scenario) in the second 12 month period after its adoption. According to the US Bureau of Labor Statistics, California employment in September 2015 was 19,004,200.[13]

3. Enter the total number of businesses impacted: 152,006. (See Tables 2a and 2b)

Describe the types of businesses (Include nonprofits): Appendix 3 identifies the establishments that are possibly providing Proposition 65 warnings and the projected cost of that participation, aggregated by the establishments' 4-Digit NAICS code.

Enter the number or percentage of total businesses impacted that are small businesses: 0. Proposition 65 only applies to businesses with 10 or more employees which was considered at the time of Proposition 65's approval by California voters in 1986, to be an appropriate definition of a "small business".

4. Enter the number of businesses that will be created: 0. The economic impact of the proposed regulation is very small relative to any one establishment's typical cost of operation and the need for business to be created or eliminated as a result of the proposed regulation does not exist.

[12] U.S. Department of Commerce, Bureau of Economic Analysis, http://www.bea.gov/
[13] http://www.bls.gov/eag/eag.ca.htm

B. Estimated Costs

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? The total direct cost to businesses resulting from their use of the revised Proposition 65 safe harbor warning is estimated at $30,985,298 (high-cost scenario) or $19,310,715 (low-cost scenario) (Tables 2a and 2b). This is estimated to be incurred by the establishments over the two-year phase-in period, in equal proportions. The California statewide REMI model predicts that Gross State Product will be decline by $24.2 million (high-cost scenario) or $15.1 million (low-cost scenario) in the first 12 months and $30.2 million (high-cost scenario) or $18.8 million (low-cost scenario) in the second 12 month period after the regulation is adopted.

1.a. Initial costs for a small business: <u>0</u>. The Proposition 65 statute only applies to businesses with 10 or more employees, which was considered at the time of its approval by California voters in 1986 to be an appropriate definition of a “small business”.

1.b. Initial costs for a typical business: <u>$203.84 (high-cost scenario) or $127.04 (low-cost scenario).</u> This was derived by dividing the total cost of the proposed regulation of $30,985,298 (high-cost scenario) or $19,310,715 (low-cost scenario) by the estimated 152,006 establishments that are likely to be currently providing Proposition 65 warnings. No change in annual ongoing costs will occur to the vast majority of businesses providing Proposition 65 warnings as a result of the proposed regulation because modifying a current warning to meet the new “safe harbor” provisions of the proposed regulation would only need to take place once. The relatively small number of businesses that choose to provide newspaper warnings that conform with the proposed regulations will incur some ongoing cost as previously noted.

2. If multiple industries are impacted, enter the share of total costs for each industry: Costs for the 4-digit NAICS industries are contained in Appendix 3 and the 2-digit NAICS industries in Tables 2a and 2b. Manufacturing is estimated to incur approximately 71% of total costs of the proposed regulation (high-cost scenario) or 64% of total costs (low-cost scenario) to modify product labels and publish environmental warnings. Real estate sectors are estimated to realize approximately 18% of total costs (high-cost scenario) or 19% (low-cost scenario) in the form of posting environmental warning signs to apartment and office buildings. Retail trade is projected to incur 4% (high-cost scenario) or 7% (low-cost scenario)in posting environmental warnings. Accommodation and food service sectors are expected to expend 3% (high-cost scenario) or 5% (low-cost scenario) of total costs on posting environmental warnings.

5. Are there comparable Federal regulations? No. Proposition 65 is a unique law, and there is no counterpart to it in federal law or regulations.

C. ESTIMATED BENEFITS

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safely and the State’s environment: In 1986, California voters approved Proposition 65, officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986. Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, has grown to include almost 900 chemicals since it was first published in 1987.

Proposition 65 requires businesses with 10 or more employees to provide warnings when they knowingly cause exposures to listed chemicals. Proposition 65 is intended to enable Californians to make informed decisions about products they purchase and locations they enter. However, Proposition 65 warnings have long been criticized for being vague and uninformative, and Governor Brown in 2013 called for reforms to make warnings more informative and meaningful.

The proposed regulation will benefit Californians by:

- Making warnings more visible (due to the use of the familiar exclamation point symbol for most warnings)
- Stating that the product or the location can expose them to a listed chemical (as opposed to the current general practice of simply warning of the presence of a chemical)
- Identifying at least one listed chemical to which they would be exposed
- Providing the URL for an OEHHA web site which will provide general information about listed chemicals, products or locations commonly associated with those chemicals, and general advice for how to reduce or avoid exposures to those chemicals.
- Appearing in non-English languages in instances where product labeling contains information in alternative languages or at locations where signs are posted in those languages.

The benefits of the proposed regulations cannot be quantified in monetary terms because they are mostly intangible. However this does not mean they are any less important than tangible benefits. The benefits are in the form of a more informed public that is better able to make decisions on the products they purchase and places they frequent based on information about their exposures to chemicals that cause cancer or reproductive effects.

The implicit net benefit of Proposition 65 and the proposed regulation is based on the stated desire of Californians to be informed of exposures to chemicals that are known to cause cancer or reproductive effects, as evidenced by the passage of Proposition 65 by the voters in 1986 by a vote of 63%-37%. In addition, a public-opinion survey conducted for OEHHA by the University of California, Davis and its contractor found that more than 75 percent of those surveyed found the "safe harbor" warnings in the proposed regulation to be more informative than current Proposition 65 warnings.[14]

D. ALTERNATIVES TO THE REGULATION

1 List alternatives considered and describe them below. If no alternatives were considered, explain why not:

In January 2015, the Office of Environmental Health Hazard Assessment (OEHHA), which is the lead agency for implementation of Proposition 65, officially proposed to replace the existing 1988 Proposition 65 warning regulation with a new regulation covering the format and content of Proposition 65 warnings. While similar to the current proposal, the January 2015 proposal differed in several significant respects. For example, that proposal identified 12 listed chemicals or chemical groups that would have been required to be named in the warning if exposures to those chemicals were the reason for the warning. This might have caused slightly higher costs statewide than the current proposal, because in some cases businesses might have needed to test their products or locations to determine if their warnings would need to name some of those chemicals. The current proposed regulation should not trigger the need for any additional testing, as only one chemical would be named in the warning, and businesses providing warnings already have ascertained that they are causing an exposure to at least one chemical.

2. Briefly discuss any quantification issues that are relevant to comparison of estimated costs and benefits for this regulation or alternatives: This item requires benefit and cost estimates of considered alternatives to the revisions to the Proposition 65 regulation. As discussed in Item C, the benefits cannot be estimated due to the intangibles involved. Estimating the cost of the January 2015 regulatory proposal requires the same kinds of estimates of the number of Proposition 65 warnings and costs involved in changing warnings that are discussed in this assessment. Estimating the cost of the January 2015 proposal would have also involved an additional estimate of testing costs incurred by those businesses choosing to obtain more specific information on the chemical content of their products. This estimate

[14] 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 27, 2015

would have been difficult, since a business' decision to conduct tests, as well as the cost of those tests, is proprietary information.