



September 8, 2026

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Via electronic submission to: [Comment Submissions - Draft Regulatory Language Omnibus 2026 - OEHHA](#)

RE: Public comments to the proposed revision to provisions for naturally-occurring chemicals (Omnibus 2026)

The following comments are submitted by the American Herbal Products Association (AHPA), the national trade association and voice of the herbal products industry. AHPA is comprised of U.S. domestic and international companies doing business as growers, collectors, processors, manufacturers, marketers, importers, exporters and distributors of herbs and herbal products. Many of these products are categorized as “food” or dietary supplements, which are considered “food” under Proposition 65.

AHPA has prepared these comments in response to the July 22, 2026 OEHHA “Notice of Proposition 65: Omnibus 2026 Pre-Rulemaking” (July 22nd Notice).¹ In this Notice, OEHHA proposes several regulatory amendments to Proposition 65, including but not limited to “clarifying when a chemical is naturally occurring in a product such that a warning is not required.” The revision is to Section 25501. Exposure to a naturally occurring chemical in a food, section (a)(3) (new text underlined)²:

(3) A chemical is naturally occurring only to the extent that the chemical did not result from any known human activity. Where a food contains a chemical, in part naturally occurring and in part added as a result of known human activity, “exposure” can only occur as to that portion of the chemical which resulted from such human activity. For purposes of this section, “human activity” does not include sowing, planting, irrigation, or plowing or other mechanical preparation of soil for agricultural purposes; but does include the addition of chemicals to irrigation water applied to soil or crops. A listed chemical which has been extracted or concentrated from any source, such as a plant, may

¹ Available at <https://oehha.ca.gov/proposition-65/crn/proposition-65-omnibus-2026-pre-rulemaking>

² Regulatory text available at https://oehha.ca.gov/sites/default/files/media/2026-07/Omnibus%202026%20Reg%20Text_2.pdf

be present in a product as the result of human activity even if the extraction or concentration did not change the Chemical Abstract Services Registry Number.

AHPA's members marketing products in California will be directly impacted by the proposed change as drafted by OEHHA, and these comments are offered on their behalf. AHPA has not offered comments to all elements in the July 22nd Notice; the absence of comments on any other element or section of the July 22nd Notice and the accompanying regulatory text should not be interpreted as AHPA's endorsement of such element or section, unless such agreement is specifically stated.

OEHHA clarification regarding the “naturally occurring” exemption for chemicals in food

AHPA appreciates that OEHHA is considering whether clarification to the existing provisions for the “naturally occurring” exemption are needed. It has been AHPA's observation that private plaintiffs do not always honor or respect this provision of the Proposition 65 regulations or OEHHA's findings regarding certain listed chemicals. This is evidenced by the March 16, 2021 filing of a 60-day notice³ for failure to warn for exposure to β -myrcene in thyme leaves (*Thymus vulgaris*), even though β -myrcene is clearly a naturally occurring organic compound in this food product.⁴ This action was followed on March 17, 2021 by the filing of two 60-day notices⁵ for failure to warn for exposure to pulegone in two peppermint oil products, which again ignores the fact that pulegone is a known naturally occurring constituent in various plants and their essential oils, including peppermint (*Mentha $\times$ piperita*).⁶

In 2022, numerous 60-day notices were submitted for alleged exposure to methyleugenol, another listed chemical that is a well-known constituent in many herbs and spices. This includes one Notice of Violation targeting an “organic whole nutmeg,”⁷ a minimally processed product from a plant (*Myristica fragrans*) known to naturally produce methyleugenol.

These Notices of Violation represent aggressive private enforcement actions requiring companies to defend their products even where a Proposition 65 warning is unwarranted under the regulations, where the identified chemicals are all “naturally occurring” constituents in the respective food products.

³ Accessible at <https://oag.ca.gov/system/files/prop65/notices/2021-00643.pdf>

⁴ Notice of Intent to List: Beta-Myrcene, February 7, 2014. Accessible at <https://oehha.ca.gov/proposition-65/events/comment-period-notice-intent-list-beta-myrcene>.

⁵ Accessible at <https://oag.ca.gov/system/files/prop65/notices/2021-00650.pdf> and <https://oag.ca.gov/system/files/prop65/notices/2021-00648.pdf>

⁶ Notice of Intent to List: Pulegone, February 7, 2014. Accessible at [Notice of Intent to List Pulegone by the Labor Code Mechanism | OEHHA \(ca.gov\)](#).

⁷ Accessible at <https://oag.ca.gov/system/files/prop65/notices/2022-01609.pdf>

Invitation to private plaintiffs

AHPA understands that OEHHHA has proposed the revision to Section 25501(a)(3) in an effort to clarify when a chemical may be present in a food as a result of human activity. Currently Section 25501(a)(3) contains language that specifies the processes that do not constitute human activity (“sowing, planting, irrigation, or plowing or other mechanical preparation of soil for agricultural purposes”) and one that does constitute human activity (addition of chemicals to irrigation water applied to soil or crops). Section 25501(a)(3) is currently silent on any other processes that may constitute “human activity,” such as extraction, concentration, or other processing techniques used in the production of a finished food product. While such processes may alter the food product, they do not “add” substances that were already a naturally occurring constituent produced by the source botanical.

No additional clarification or context is provided by the proposed change, leaving many questions about what additional processes may be considered “human activity.” In its July 30, 2026 pre-rulemaking workshop, OEHHHA indicated that such determination of “human activity” will continue to rely on the “specific facts”⁸ of the product, without providing any specific context or guidance for marketers or private plaintiffs to consider.

AHPA is concerned that the permissive verb used in this new text (“...may be present in a product as the result of human activity...”) is ambiguous and likely to be interpreted very broadly by private plaintiffs. As evidenced by prior Notices of Violation cited in these comments, private enforcers have already targeted products where a Proposition 65 listed chemical is clearly present in a product only because it is produced by the source botanical, and not introduced by human activity. The potential permissiveness of the proposed language is anticipated to widen the flood gates for Notices of Violation against similar safe products, in the absence of more definitive language regarding what other processes do or do not constitute “human activity.” AHPA is concerned that the proposed change might encourage greater restriction on the application of the provisions of Section 25501 versus providing clarification.

Relation of the proposed change to Section 25501(b)

AHPA also has concerns about how the proposed change to Section 25501(a)(3) relates to the subsequent text of Section 25501(b). This subsection works along with Section 25501(a) to define the same principle of naturally occurring constituents for non-food consumer products. Where a naturally occurring chemical in food is used to produce another consumer product where that food is used in the “manufacture, production, or processing” of the product, the naturally occurring portion of the chemical is not defined as causing an exposure. As OEHHHA proposed no changes to this section, it is reasonable to infer that the “manufacture, production, or processing” of the product is not considered human activity contributing to an exposure to a listed chemical. It is AHPA’s position that this could also be affirmatively stated in Section 25502(a)(3) within the context of producing a food product.

These two provisions are part of an integrated framework for determining to what extent human activity contributes to the existence of a naturally-occurring chemical in both food and non-food

⁸ OEHHHA Proposition 65 Pre-Regulatory Workshop Omnibus 2026, July 31, 2026 presentation slides, slide 16, available at <https://oehha.ca.gov/sites/default/files/media/2026-08/OmnibusPresentation080526.pdf>

products and potential exposure. AHPA's position is that the language added to Section 25501(a)(3) introduces confusion as to how these two Sections interrelate.

Manufacturers are likely to provide warnings when none may be required

If the proposed amendment to Section 25501(a)(3) is finalized as drafted, AHPA anticipates that some marketers of products that contain listed chemicals that are clearly naturally produced by a source botanical, not contaminants, will begin displaying Proposition 65 warnings simply to avoid the potential expense of defending against a Notice of Violation or litigating to establish the "naturally occurring" nature of the constituent. When marketers are uncertain if their product will become a new target for private plaintiffs, it stands to reason they may provide a precautionary warning to manage litigation risk, leading to unnecessary, over-warning. By creating confusion as to what "human activity" may contribute to the presence of a listed chemical in food, OEHHA may unintentionally embolden private plaintiffs to increasingly target such products, as they have done in the past as cited in these comments.

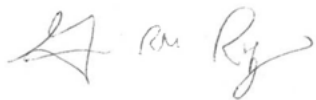
OEHHA has previously expressed its concern regarding the use of the short-form warning as a form of protection from potential litigation, with the result that consumers may be receive warnings when none are required. It is AHPA's position that the overall framework of Proposition 65 already results in systemic over-warning, and OEHHA's proposed change to Section 25501(a)(3) is likely to result in an increase of provision of more warnings than are necessary.

Concluding remarks

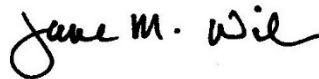
In summary, AHPA strongly recommends that OEHHA withdraw the proposed change to Section 25501(a)(3). If clarifications to this section are indeed needed, OEHHA may wish to consider language changes that will provide clear guidance on what constitutes "human activity" and that will not contribute to OEHHA's concerns regarding over-warning of consumers.

AHPA greatly appreciates the opportunity to present comments during this public comment process. We welcome any questions that may arise from AHPA's comments.

Respectfully submitted,



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