

September 8, 2026

PUBLIC COMMENT ON BEHALF OF MONARCH RE: OEHHA PROPOSITION 65 OMNIBUS 2026 PRE-RULEMAKING WORKSHOP, PROPOSED REGULATORY CHANGES

Submitted via electronic docket at <https://oehha.ca.gov/comments>

MONARCH submits this comment to commend the Office of Environmental Health Hazard Assessment (OEHHA) for undertaking the Omnibus 2026 pre-rulemaking process to update California's Proposition 65 warning regulations. These proposals reflect an important effort to modernize warning delivery while preserving Proposition 65's central purpose: ensuring that Californians receive meaningful warnings before exposures to listed chemicals.

MONARCH supports OEHHA's recommendations and respectfully urges several targeted revisions. Those revisions are necessary to ensure that warnings remain clear, prominent, durable, and accessible to all consumers, including consumers who lack smartphones, technical literacy, English fluency, or the practical ability to search for hidden compliance documents before purchase.

**MONARCH Supports OEHHA's Proposed Updates,
with additional comments on the following:**

A. Technical Alignment of Short-Form Warning Language, Sections 25603(b) and 25607.2

MONARCH supports OEHHA's proposed technical alignment of the short-form warning language. OEHHA identifies this "technical fix" to align the short-form warning chemical descriptor with the full-length warning by using "chemicals including."

Harmonizing the warning phrasing reduces ambiguity and supports consistent compliance. The safe harbor should not depend on avoidable drafting differences between full-form, short-form, and food warnings.

This revision increases equity because consistent language benefits small and mid-sized companies that lack dedicated Proposition 65 compliance departments. Clearer safe-harbor language reduces the advantage held by larger manufacturers with greater regulatory resources.

This also supports the stated goal of clear and reasonable warnings. From a consumer perspective, "chemicals including" helps individuals understand that the named chemical is part of the exposure disclosure, not necessarily an exhaustive chemical inventory. That phrasing preserves brevity while improving accuracy.

MONARCH supports this recommendation, subject to the additional revision below requiring identification of the most hazardous listed chemical when multiple chemicals trigger the warning.

B. Internet Purchase Warnings, Sections 25600.2(b) and 25602(b)

MONARCH strongly supports OEHHA's proposal to clarify internet purchase warnings. The proposed Section 25602(b) applies to a manufacturer, producer, packager, importer, supplier, distributor, or retailer selling or distributing a product through an internet website or digital application. The update requires compliance with Section 25603 warning content, and mandates both product-label (or short-form) label methods as well as an internet warning.

This clarification is essential. A warning that appears only **after** the product arrives at a consumer's home does not provide the meaningful **pre-purchase** notice that is necessary in e-commerce. Requiring both product-label and online warnings better aligns digital commerce with the requirement that warnings be clear and reasonable before exposure. In other words, online shoppers deserve the same warning access as in-store shoppers. Consumers using mobile devices, discount platforms, or third-party marketplaces should not receive less meaningful notice because they purchase online. Indeed, they should receive more warning because of the availability of additional information without the naturally occurring content restrictions that exist as a result of the size of packaging or catalog space allotment.

The revision highlights the importance of the need for both on-product and online notice: consumers often make online decisions quickly, based on product images, price, reviews, and delivery speed. Therefore, **a warning must appear in the purchase path**, so that a consumer will be confronted by the warning through the very act of shopping. This warning cannot be buried in document or general website content. OEHHA's proposed clarification correctly addresses the reality of online shopping behavior.

MONARCH supports this recommendation and urges OEHHA to pair it with the SDS clarification below.

C. Retailer Responsibility, Section 25600.2(e)

MONARCH supports OEHHA's effort to simplify retailer responsibility. The proposal preserves the upstream-warning structure while clarifying when the retailer becomes responsible; this reduces ambiguity and will hopefully support compliance. Moreover, clearer retailer obligations help small retailers avoid inadvertent noncompliance. Independent retailers should not be exposed to unnecessary enforcement risk because the regulation is difficult to parse. Finally, clear allocation of responsibility improves the reliability of the warning system. If manufacturers, distributors, and retailers understand who must act, consumers are more likely to receive the warning at the right time.

MONARCH supports this recommendation without revision.

D. QR Code Warning Method, Sections 25601(c) and 25602(a)(2)

MONARCH supports OEHHA's interest in using QR codes as a modern warning tool, but only with additional safeguards.

Legally, QR codes may be a permissible warning method if they actually deliver a clear and reasonable warning. But the current proposal risks treating access to a digital pathway as equivalent to receipt of a warning. MONARCH urges OEHHA to ensure that QR codes supplement, rather than replace, meaningful on-label or point-of-sale notice.

QR-only or QR-primary warnings may exclude low-income or elderly consumers, people with disabilities, consumers without smartphones or those without reliable data access, and consumers who reasonably avoid scanning unknown codes for security reasons. A warning system should not condition meaningful notice on technology access.

Extra steps inherently create barriers. Additional steps to access a warning reduces the likelihood that the consumer receives and understands that warning. Scanning a code, waiting for a page to load, navigating a website, and interpreting technical content are all friction points. QR codes can add value, but only if the regulation requires a readable fallback and a stable, product-specific warning destination.

MONARCH therefore supports Topic 7 only with the revisions proposed below.

MONARCH's Proposed Revisions

Revision 1: Require the Warning to Identify the Most Hazardous Listed Chemical Triggering the Warning

MONARCH urges OEHHA to revise the warning regulations to require that, when multiple listed chemicals trigger a consumer product warning, the warning identify the listed chemical or chemicals that present the most serious risk based on toxicity, potency, exposure level, endpoint, route of exposure, or another scientifically appropriate metric. At minimum, the regulation should prohibit a business from naming a less serious listed chemical when a more serious listed chemical also triggers the warning. For example, a warning should not be permitted to identify wood dust while omitting lead if both chemicals require a warning for the product.

The proposed short-form language repeatedly permits the warning to identify “one or more chemicals.” The proposed consumer product and food short-form warnings allow language referring to exposure to “[name of one or more chemicals]” for cancer risk, reproductive harm, combined cancer and reproductive harm, and chemicals listed for both endpoints. That flexibility is useful, but it creates a serious consumer-protection problem if a manufacturer can choose the least alarming chemical while omitting the chemical that matters most to the consumer’s decision.

The legal argument is straightforward: a warning cannot be clear and reasonable if it technically names a listed chemical but obscures the material risk. A warning that identifies a lower-concern chemical while omitting the more toxic listed chemical may be seen and read, but it is not meaningfully understood. It communicates the wrong risk signal.

Pregnant consumers, parents, caregivers, workers, and communities already facing cumulative exposures need the most material warning information, not a strategically selected minimum

disclosure. If, for example, a product exposes a child or pregnant person to lead, naming a less concerning chemical deprives the consumer of the information most likely to affect purchasing, handling, storage, and hygiene decisions.

Ultimately, the chemical named in the warning drives risk perception. Consumers respond differently to “lead” than to “wood dust.” The regulation should account for that reality. A label that names the less serious hazard may create false reassurance and reduce protective behavior.

Suggested regulatory concept:

“Where a consumer product exposure warning is provided for a product that exposes consumers to more than one listed chemical at a level requiring a warning, the warning shall identify the listed chemical or chemicals that present the most significant risk of cancer, reproductive toxicity, or other listed endpoint, considering toxicity, potency, exposure level, exposure route, and reasonably foreseeable conditions of purchase and use. A business shall not satisfy the safe harbor by identifying a listed chemical that materially understates the exposure risk when a more hazardous listed chemical also requires a warning.”

Revision 2: Clarify That Safety Data Sheets Do Not Satisfy Consumer-Facing Pre-Purchase Warning Requirements

MONARCH urges OEHHA to clarify that a Safety Data Sheet (SDS), whether enclosed inside a product package or linked on a website, does not constitute a prominently displayed consumer warning for purposes of Proposition 65. An SDS may be valuable for downstream vendors, distributors, retailers, and workplace safety personnel, but they are not a substitute for a consumer-facing warning available before purchase.

The legal basis for this revision comes directly from the proposed warning-method provisions. Consumer product exposure warnings must be prominently displayed and sufficiently conspicuous to be likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use. An SDS inside a sealed package is not available under customary conditions of purchase, see above internet warning comments. A link to an SDS on a website is not necessarily prominent. A buried SDS link is exactly the kind of content a consumer must search for and does not comply with the regulations. Nor does an SDS naturally contain the required warnings – i.e. the yellow triangle and the notice language.

At the same time, MONARCH recognizes that an SDS can serve an important supply-chain function. Proposed Section 25600.2(b) allows a manufacturer, producer, packager, importer, supplier, or distributor to comply by providing a warning on the product label or labeling that satisfies Health and Safety Code section 25249.6 and complies with Section 25602, or by providing written notice directly to the authorized agent for the business or retail seller to which the product is sold or transferred. An SDS may help downstream businesses understand Proposition 65 exposure issues and affix appropriate warnings, but that is different from giving the consumer a clear, reasonable, and prominent warning before purchase.

Strictly relying on the SDS disadvantages consumers who are not trained to read technical hazard documents. Many consumers do not know what an SDS is, where to find it, or how to interpret it.

That burden falls hardest on low-income consumers, elderly consumers, non-English speakers, and consumers with limited technical literacy.

Functionally, an SDS is not and cannot serve as a warning in the consumer decision pathway. Shoppers do not typically read the SDS before buying consumer products. They look at the product label, shelf display, product page, price, and reviews. If the Proposition 65 warning is hidden in a technical document, the warning will not influence the purchase or exposure decision.

Suggested regulatory concept:

“A Safety Data Sheet, technical data sheet, product specification sheet, or comparable document shall not, by itself, constitute a prominently displayed consumer product exposure warning under Sections 25601 or 25602. Inclusion of Proposition 65 information in such documents may support written notice to downstream businesses under Section 25600.2(b) but does not satisfy the requirement to provide a consumer-facing warning that is prominently displayed and available before purchase.”

Revision 3: Add Equity, Reliability, and Content Safeguards for QR Code Warnings

MONARCH urges OEHHA to revise the QR code proposal so that QR codes enhance consumer understanding rather than becoming a substitute for meaningful notice. The current proposed QR code language requires a machine-readable code that accesses a webpage containing a Section 25603-compliant warning and states that the QR code should be accompanied by the sentence: “Proposition 65 Warning for [name of one or more chemicals]. For more information, scan the QR code.” That is a useful starting point, but it is not enough.

i. Require a Non-Smartphone Fallback

OEHHA should require that any QR code warning be accompanied by the yellow triangle with an exclamation mark, along with text that includes, at minimum, the chemical name, the endpoint, and a general Proposition 65 resource. The fallback should tell the consumer whether the chemical is listed for cancer, reproductive harm, or both.

This safeguard is necessary because the warning must be likely to be seen, read, and understood by an ordinary individual. The proposed Section 25601(c) standard focuses on whether the warning is likely to be seen, read, and understood under customary conditions of purchase or use. A QR code cannot meet that standard for consumers who cannot scan it.

A QR-primary approach risks excluding consumers without smartphones, reliable internet access, data plans, visual acuity, or digital confidence. Low-income and elderly consumers should not receive less warning information than digitally connected consumers.

Fallbacks reduce friction. A consumer should not have to scan, load, navigate, and interpret a webpage to learn the basic hazard.

Suggested regulatory concept:

“A QR code warning shall be accompanied by a text warning that includes the eye-catching yellow triangle and black exclamation point, identifies the listed chemical or chemicals, states whether the chemical is listed for cancer, reproductive toxicity, or both, and directs consumers to www.P65Warnings.ca.gov or another OEHHA-approved public resource.”

ii. Require Stable, Product-Specific Links

OEHHA should require QR code links to remain active for at least twice the product’s reasonable expected use life, with an appropriate minimum period for durable goods, and should require unique product-specific URLs rather than general company pages.

Legally, this safeguard ensures that the warning remains meaningful for exposures that occur after purchase. Durable products may expose consumers for years. A QR code that later goes dead undermines the warning’s function.

Stable links matter for secondhand purchasers and low-income consumers who use products longer than the initial purchaser or beyond the ordinary replacement cycle. These consumers should not lose access to warning information because a manufacturer reorganized its website.

Additionally, consumers may revisit warning information later, especially after a pregnancy, a child enters the home, a product is damaged, or the consumer changes how the product is used. A dead link defeats that behavior.

Suggested regulatory concept:

“A QR code warning shall direct to a unique product-specific webpage that remains active and contains the required warning content for at least twice the product’s reasonable expected use life, and in no event less than five years for durable consumer products.”

iii. Require Substantive QR-Linked Content

OEHHA should require the QR-linked page to provide meaningful, actionable information. At minimum, it should identify each listed chemical triggering the warning; state whether each chemical is listed for cancer, reproductive harm, or both; identify where the chemical is found in or on the product; identify the exposure route; explain how to avoid or reduce exposure; explain post-exposure mitigation steps, such as handwashing or ventilation; and provide testing or analytical information supporting the warning unless protected by a valid trade-secret basis.

QR codes create space for information that cannot reasonably fit on a small label. If OEHHA permits QR codes, it should require that the linked warning does more than repeat boilerplate. The proposed QR code provision already requires the webpage to contain a warning that complies with Section 25603. OEHHA can strengthen that

requirement by specifying the minimum information necessary to make the digital warning useful.

QR codes offer a unique opportunity to help consumers who need practical exposure-reduction guidance. A parent, pregnant consumer, worker, or caregiver should know not only that a chemical exists, where it is found and how exposure can occur, how exposure may be reduced, and what to do after contact. QR-linked content should answer those questions.

Suggested regulatory concept:

“The webpage accessed through a QR code warning shall include: the identity of each listed chemical triggering the warning; whether each chemical is listed for cancer, reproductive toxicity, or both; the location of the chemical in or on the product; the reasonably foreseeable exposure route; measures to avoid or reduce exposure; post-exposure mitigation steps where applicable; and a summary of testing or analytical data supporting the warning, subject to lawful trade-secret protections. The regulation should not limit a warning provider’s ability to include additional accurate risk-reduction information.”

iv. Require a Centralized Manufacturer Product Page

OEHHA should require any manufacturer using QR code warnings to maintain a public webpage listing all products for which the manufacturer provides QR code warnings, with links to the product-specific warning pages.

This promotes transparency and makes safe-harbor compliance easier to verify. Consumers can then compare products without physically accessing each product label. A centralized page supports real-world research behavior: consumers often look up product information before purchase, after purchase, and when deciding whether to keep or discard a product.

Suggested regulatory concept:

“A manufacturer, producer, packager, importer, supplier, or distributor using QR code warnings shall maintain a publicly accessible webpage listing all products for which QR code warnings are provided, with links to each product-specific warning page.”

Conclusion

MONARCH commends OEHHA for proposing thoughtful updates to the Proposition 65 warning regulations. The Omnibus 2026 proposals overall improve clarity.

MONARCH respectfully urges OEHHA to strengthen the proposal in three ways: require warnings to identify the most hazardous listed chemical when multiple chemicals trigger a warning; clarify that Safety Data Sheets do not substitute for prominently displayed consumer-facing warnings available before purchase; and add equity, reliability, and content safeguards for QR code warnings.

These revisions would advance the statutory goal of clear and reasonable warnings while recognizing how consumers actually shop, read labels, use technology, and respond to chemical-risk information. Proposition 65 warnings should not merely be technically compliant. They should tell Californians what they need to know, when they need to know it, in a form they can access and use.

Respectfully submitted,


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