

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
PROPOSITION 65**

**NOTICE OF PROPOSED RULEMAKING
TITLE 27, CALIFORNIA CODE OF REGULATIONS**

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

January 8, 2021

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

PUBLIC PROCEEDINGS

Written Comment Period

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

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

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

Because of limited in-office staffing during the COVID-19 emergency, OEHHA strongly recommends that the public submit written information electronically, rather than in paper form. Comments may be submitted electronically through our website at <https://oehha.ca.gov/comments>. Comments submitted in paper form can be mailed, faxed, or delivered in person to the address below, but delays may occur if staff are unable to timely access them.

All non-electronic submissions should be directed to:

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

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

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address, and e-mail may be available to third parties.

Public Hearing

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

CONTACT

Please direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela at (916) 323-2517, or by e-mail to monet.vela@oehha.ca.gov.

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

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

AUTHORITY

Health and Safety Code section 25249.12.

REFERENCE

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BACKGROUND

OEHHA is the lead agency that implements Proposition 65³ and has the authority to promulgate and amend regulations to further the purposes of the Act. The Act requires businesses to provide a clear and reasonable warning before they cause an exposure to a chemical listed as known to the state to cause cancer or reproductive toxicity.⁴ The Act also prohibits the discharge of listed chemicals to sources of drinking water.⁵ The proposed amendments would revise the method of transmission and content of short-form warnings for consumer products. In addition, the proposed amendments would eliminate the use of short-form warnings for internet or catalog purchases.

SPECIFIC BENEFITS OF THE PROPOSED REGULATIONS

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

NO INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS

OEHHA has conducted an evaluation and has determined that Article 6 is the only regulation concerning Proposition 65 warnings. Therefore, the proposed regulatory action is neither inconsistent nor incompatible with any other existing state regulations. The action does not change the existing mandatory requirements on businesses subject

³ Health and Safety Code section 25249.5 et seq., The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65". Hereafter referred to as "Proposition 65" or "the Act".

⁴ Health and Safety Code section 25249.6.

⁵ Health and Safety Code section 25249.5.

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

LOCAL MANDATE/FISCAL IMPACT

Because Proposition 65 by its terms⁶ does not apply to local agencies or school districts, OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action, nor will there be any costs or savings to the state or in federal funding to the state because of the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has initially determined that the proposed regulatory action will have no effect on housing costs because it does not impose any new mandatory requirements on any business.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The proposed regulatory action provides compliance assistance to businesses subject to the Act by providing guidance concerning an existing regulation in that it specifies the method of transmitting and the content of safe harbor short-form warnings for consumer products including food products. The proposed action modifies an optional safe-harbor method that businesses may choose to use to provide the required warning. OEHHA has therefore made an initial determination that the adoption of this action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

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

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

Creation or Elimination of Jobs within the State of California

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

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

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

The Expansion of Businesses Currently Doing Business within the State

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

BENEFITS OF THE PROPOSED REGULATION

The proposed regulatory action will benefit the health and welfare of California residents by providing more meaningful information regarding their exposures to listed chemicals. The action will also provide clarification and specificity regarding the use of short-form warnings for exposures to listed chemicals from food. The action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

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

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

EFFECT ON SMALL BUSINESSES

The proposed regulatory action will not adversely impact very small businesses because Proposition 65 is limited by its terms to businesses with 10 or more employees.⁷

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

Pursuant to Government Code section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA, would be more effective in carrying out the purpose for which Proposition 65 is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the proposed regulation, all the information upon which the regulation is based, and the text of the proposed regulation. These documents are available on OEHHA's web site at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any proposed regulation that is changed or modified from the express terms of this proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on the revised proposed regulation and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and anyone who requests notification from OEHHA of the availability of such change. Copies of the notice and the changed regulation will also be available on the OEHHA Web site at www.oehha.ca.gov.

⁷ Health and Safety Code section 25249.11(b).

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from Monet Vela at the e-mail or telephone number indicated above. The Final Statement of Reasons will also be available on OEHHA's web site at www.oehha.ca.gov.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

Carol Monahan-Cummings
Chief Counsel

Dated: December 23, 2020

**Article 6 Clear and Reasonable Warnings Amendments
Related to Short-Form Warnings for Consumer Product Exposures**

§ 25601. Safe Harbor Clear and Reasonable Warnings - Methods and Content.

(a) A warning is “clear and reasonable” within the meaning of Section 25249.6 of the Act if the warning complies with all applicable requirements of this article.

(b) ~~Except as provided in Section 25603(c), a~~ 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. Where a warning is being provided for more than one endpoint (cancer and reproductive toxicity) the warning must include the name of one or more chemicals for each endpoint, unless the named chemical is listed as known to cause both cancer and reproductive toxicity and has been so identified in the warning.

(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.

(d) Environmental exposure warnings must be provided in a conspicuous manner and under such conditions as to make the warning likely to be seen, read, and understood by an ordinary individual in the course of normal daily activity.

(e) The warning content may contain information that is supplemental to the content required by this subarticle only to the extent that it identifies the source of the exposure or provides information on how to avoid or reduce exposure to the identified chemical or chemicals. Such supplemental information is not a substitute for the warning content required by this subarticle.

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Section 25249.6, Health and Safety Code.

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§ 25602. Consumer Product Exposure Warnings - Methods of Transmission.

(a) Unless otherwise specified in Section ~~25607.4~~ et seq, a warning meets the requirements of this subarticle if it complies with the content requirements in Section 25603 and is provided using one or more of the following methods:

(1) A product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product.

(2) A product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning.

(3) A warning on the product label that complies with the content requirements in Section 25603(a).

(4) A short-form warning on the product label that complies with the content requirements in Section 25603(b). The short-form warning may only be used if:

(A) The total surface area of the product label available for consumer information is 5 square inches or less, and;

(B) the package shape or size cannot accommodate the full-length warning described in Section 25603(a), and;

(C) The entire warning is printed must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

(b) For internet purchases, a warning that complies with the content requirements of Section 25603(a) must also be provided by including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If 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, a warning is not prominently displayed if the purchaser must search for it in the general content of the website.

(c) For catalog purchases, a warning that complies with the content requirements of Section 25603(a) 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.

(d) Where a sign or label used to provide a warning includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

(e) The 2020 amendments to subsections (a)-(c) shall become operative [Office of Administrative Law to insert date that is one year after the effective date of amendments]. A warning for a consumer product manufactured prior to [Office of Administrative Law to insert date that is one year after the effective date of amendments] is deemed to be clear and reasonable if it complies with the August 2016 revision of this section. Nothing in this subsection prevents a business from providing the amended warning prior to the operative date.

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Section 25249.6, Health and Safety Code.

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§ 25603. Consumer Product Exposure Warnings - Content.

(a) Unless otherwise specified in Section 25607.4 et seq., a warning meets the requirements of this subarticle if it is provided using one or more of the methods required in Section 25602 and includes all the following elements:

(1) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word **“WARNING”**.

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

(A) For exposures to listed carcinogens, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.”

(B) For exposures to listed reproductive toxicants, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

(C) For exposures to both listed carcinogens and reproductive toxicants, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer, and [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

(D) For exposures to a chemical that is listed as both a carcinogen and a reproductive toxicant, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

(E) Where a warning is being provided for an exposure to a single chemical the words “chemicals including” may be deleted from the warning content set out in subsections (A), (B) and (D).

(b) A short-form warning may be provided on the product label pursuant to Section 25602(a)(4) using all the following elements:

(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.”~~ **“Cancer Risk From [Name of one or more chemicals known to cause cancer] Exposure - www.P65Warnings.ca.gov”**

(B) For exposures to listed reproductive toxicants, the words, ~~“Reproductive Harm—www.P65Warnings.ca.gov.”~~ **“Risk of Reproductive Harm From [Name of**

one or more chemicals known to cause reproductive toxicity] Exposure - www.P65Warnings.ca.gov”

(C) For exposures to both listed carcinogens and reproductive toxicants, the words, “Cancer and Reproductive Harm – www.P65Warnings.ca.gov.” “Risk of Cancer From [Name of one or more chemicals known to cause cancer] And Reproductive Harm From [Name of one or more chemicals known to cause reproductive toxicity] Exposure - www.P65Warnings.ca.gov”

(D) For exposures to a chemical that is listed as both a carcinogen and a reproductive toxicant, the words, “Risk of Cancer and Reproductive Harm From [Name of one or more chemicals known to cause cancer and reproductive toxicity] Exposure - www.P65Warnings.ca.gov”

~~(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.~~

~~(dc)~~ Notwithstanding subsection (a)(2) or (b)(2), where a warning for a consumer product exposure or occupational exposure from use of a pesticide is provided on a product label, and the pesticide label is regulated by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, Title 40 Code of Federal Regulations, Part 156; and by the California Department of Pesticide Regulation under Food and Agricultural Code section 14005, and Cal. Code of Regs., title 3, section 6242; the word **“ATTENTION”** or **“NOTICE”** in capital letters and bold type may be substituted for the word **“WARNING”**.

(d) The 2020 amendments to subsections (a)-(d) shall become operative [OAL to insert date that is one year from effective date of these amendments]. A short-form warning on a consumer product manufactured prior to [OAL to insert date that is one year from effective date of these amendments] is deemed to be clear and reasonable if it complies with the August 2016 revision of this section. Nothing in this subsection prevents a business from providing the amended warning prior to the operative date.

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

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§ 25607.1 Food Exposure Warnings - Methods of Transmission. [No changes]

(a) Except as provided in subsection (b), a warning for food exposures, including dietary supplements, meets the requirements of this subarticle if it complies with the content requirements in Section 25607.2 and is provided using one or more of the methods required in Section 25602.

(b) Where the warning is provided on the food product label, it must be set off from other surrounding information, enclosed in a box and comply with the content requirements specified in Section 25607.2.

(c) Where a specific food product sign, label, or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

§ 25607.2. Food Exposure Warnings – Content

(a) A warning for food exposures, including dietary supplements, meets the requirements of this subarticle if it ~~complies with is provided via~~ one or more of the methods specified in Section 25607.1 and includes all the following elements:

- (1) The word “**WARNING:**” in all capital letters and bold print.
- (2) For exposure to a listed carcinogen, the words, “Consuming this product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov/food.”
- (3) For exposure to a listed reproductive toxicant, the words, “Consuming this product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.”
- (4) For exposure to both listed carcinogens and reproductive toxicants, the words, “Consuming this product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer and [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.”
- (5) For exposure to a chemical that is listed as both a carcinogen and a reproductive toxicant, the words, “Consuming this product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.”
- (6) Where a warning is being provided for an exposure to a single chemical the words “chemicals including” may be deleted from the warning content set out in subsections (2), (3) and (5).

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

- (1) The word “**WARNING:**” in all capital letters, in bold print.
- (2) For exposures to listed carcinogens, the words, “Cancer Risk From [Name of one or more chemicals known to cause cancer] Exposure - www.P65Warnings.ca.gov/food.”

(3) For exposures to listed reproductive toxicants, the words, “Risk of Reproductive Harm From [Name of one or more chemicals known to cause reproductive toxicity] Exposure - www.P65Warnings.ca.gov/food.”

(4) For exposures to both listed carcinogens and reproductive toxicants, the words, “Risk of Cancer From [Name of one or more chemicals known to cause cancer] And Reproductive Harm From [Name of one or more chemicals known to cause reproductive toxicity] Exposure - www.P65Warnings.ca.gov/food.”

(5) For exposures to a chemical that is listed as both a carcinogen and a reproductive toxicant, the words, “Risk of Cancer And Reproductive Harm From [Name of one or more chemicals known to cause cancer and reproductive toxicity] Exposure - www.P65Warnings.ca.gov/food.”

(6) The warning must be set off from other surrounding information and enclosed in a box.

(c) The 2020 amendments to subsections (a) and (b) shall become operative [Office of Administrative Law to insert date that is one year from effective date of amendments]. A warning for a food product manufactured or produced prior to [Office of Administrative Law to insert date that is one year from effective date of amendments] is deemed to be clear and reasonable if it complies with the August 2016 revision of this section. Nothing in this subsection prevents a business from providing the amended warning prior to the operative date.

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.

Initial Statement of Reasons
Title 27, California Code of Regulations
Proposed Amendments to Article 6
Clear and Reasonable Warnings:
Short-Form Warnings for Consumer Product Exposures

January 2021



California Environmental Protection Agency
Office of Environmental Health Hazard Assessment

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Summary

Proposition 65¹ 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. In August 2016, the Office of Environmental Health Hazard Assessment (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 more than 30 years ago. The primary purpose of the rulemaking was to provide consumers with more specific information about the chemicals they are exposed to, and to point them to a newly constructed OEHHA warnings website for further to those concerns, OEHHA included the option to provide a “short-form” warning on a product label. An example of a short-form warning is the following:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Implementation of the warning regulations has revealed the need for express limits on the use of the short-form warning for consumer products. The regulation did not limit application of the short-form warning to a maximum label surface area. While OEHHA intended for this warning option to only be used for small products or containers with insufficient space for the longer warning, businesses have used the short form warning on a wide range of consumer products that have more than enough label space for the longer warning. Just as concerning, the short-form warning is also being placed on some products even when the

¹ Health and Safety Code Section 25249.5 et seq., The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as “Proposition 65”. Hereafter referred to as “Proposition 65” or “the Act”.

business has no knowledge of an exposure to a listed chemical requiring a Proposition 65 warning.

This rulemaking would amend the safe harbor warning regulations to improve the short-form warnings by communicating additional information about chemical exposures to consumers including the chemical name, so the consumer can obtain more specific information about it on the OEHHA website. The rulemaking would expressly modify the existing short-form warning provisions as follows:

- Only allow use of the short-form warning on products with 5 square inches or less of label space.
- Eliminate use of short-form warnings for internet and catalog warnings.
- Clarify how short-form warnings can be used for food products.
- Require that the name of at least one chemical be included in the short-form warning.

For businesses that choose to use the modified short-form warning, the proposed regulation provides a one-year phase-in period for existing products to allow a smooth transition to the modified warning. Further, the proposed regulation provides an unlimited sell-through period for products that had compliant warnings when they were manufactured, thus allowing businesses to avoid recalling items in the stream of commerce to apply the modified short-form warning.

An example of the proposed short-form warning is the following:

 **WARNING:** Cancer Risk From Formaldehyde and Reproductive Risk From Toluene Exposure - www.P65Warnings.ca.gov.

Without these changes, use of the short-form warning will continue to be inconsistent with the intent of the Act and OEHHA's intent in adopting the 2016 regulations — that warnings communicate meaningful information about chemical exposures to consumers, and that short-form warnings be used only on labels for small products that cannot accommodate the full-length warning content described in Section 25603(a)².

Background/Problem to be Addressed by the Proposed Rulemaking

OEHHA seeks to address in this regulatory proposal the following primary concerns with the current uses of the short-form warnings: 1) Businesses are not required to identify a chemical or chemicals in the short-form warning, which significantly limits the usefulness of the warnings to consumers, 2) Businesses

² Article 6 Clear and Reasonable Warnings, Initial Statement of Reasons (2015), p.31.

use the short-form warning for products that can easily accommodate a longer warning, and 3) Businesses use the short-form warning prophylactically when no warning is required.

OEHHA explained its intent regarding use of short-form warnings in the Initial Statement of Reasons (ISOR)³ and Final Statement of Reasons (FSOR)⁴ for the 2016 rulemaking:

Subsection (b) sets out a specific short version of the warning that may only be used for on-product warnings. This provision proposes a very limited level of content to be included in an on-product warning *to accommodate some product manufacturers' stated concern that a longer warning message will simply not fit on the labeling or packaging of some small products*. OEHHA is proposing a label that strikes a balance between this concern and the requirement in the statute that a person receive a warning prior to exposure. OEHHA believes that this approach will provide useful information to individuals while avoiding unwieldy on-product warnings. Further, the warning is clearer and more direct than the existing safe harbor warnings being used by many businesses. Recognizing the *potentially limited space available* for a warning, under subsection (c) the name of the listed chemical being warned for is not required.⁵ (emphasis added)

After OEHHA adopted the Article 6 regulations in August 2016, OEHHA discovered that many businesses were using the short-form warning for all kinds of consumer products, regardless of product size. OEHHA also did not anticipate the widespread use of short-form warnings for food products but received numerous inquiries from businesses seeking clarification as to how and whether the short-form warning could be used as a safe harbor warning for food products. Further, OEHHA determined that many businesses are using the short-form warning because it protects them from potential litigation without requiring them to name a specific chemical exposure. As a result, these businesses likely have provided warnings for exposures that do not or cannot occur from use of their products.

OEHHA frequently receives inquiries from the public regarding exposures from a

³ Article 6 Clear and Reasonable Warnings Regulations, Initial Statement of Reasons (2015), available at <https://oehha.ca.gov/media/downloads/cnr/112715warningreg20isor.pdf> (last accessed May 15, 2020).

⁴ Article 6 Clear and Reasonable Warnings Regulations, Final Statement of Reasons (2016), available at <https://oehha.ca.gov/media/downloads/cnr/art6fsor090116.pdf> (last accessed May 15, 2020).

⁵ Article 6 Initial Statement of Reasons (2015), *supra* note 3.

wide range of consumer products labeled with a short-form warning. An informal tally of public inquiries to OEHHA related to Proposition 65 warnings during December 2019 through December 2020, nearly 70% of consumer inquiries requested more information about a specific product, and at least 18% of consumer inquiries included a request for information regarding a short-form consumer product exposure warning. These consumers wanted to know the name of the chemical to which they might be exposed.

As an example, during the current COVID-19 emergency, OEHHA has received multiple inquiries from members of the public concerning short-form warnings provided on HEPA vacuum filters because consumers were using the filters in home-made face masks. Consumers wanted information regarding the chemical(s) for which the businesses were providing a warning, so that they could make an informed decision whether to use the product.

Further, while a short-form warning may be appropriate for a small item such as specialty adhesives in very small tubes or similar products where label space is very limited, short-form warnings have been provided on a wide range of consumer products which do not have such constraints. For example, many manufacturers are providing short-form warnings on large appliances such as refrigerators, ranges, washers, and dryers; as well as on miscellaneous consumer products such as backpack leaf blowers, guitars, nursery plant containers, luggage, and vacuum cleaners.^{6,7} There is no reason to use short-form warnings for such products. There is ample space on the packages of these products for businesses to provide warnings that name a chemical or chemicals so consumers know they can be exposed to those chemicals through use of the product.

To address these types of issues and obtain information for the public regarding consumer exposures to listed chemicals, OEHHA sent 17 letters during 2019-2020 to businesses providing short-form warnings requesting chemical exposure information for the Proposition 65 Warnings Website (<http://www.p65warnings.ca.gov>) as allowed by Section 25205 of the regulations. OEHHA received limited chemical exposure information from some businesses; other companies failed to respond to OEHHA's request for information. Most did not identify an exposure that likely needed a warning.

For example, a manufacturer of appliances displaying short-form warnings

⁶ See Appendix A for examples of actual short-form warnings in use on consumer products.

⁷ In one instance, a hunting, shooting, and fishing retailer posted short-form warnings for cancer and reproductive toxicity at the front entrance of one of their retail locations. Such a warning clearly does not comply with the safe harbor requirements of Article 6.

stated,

“...due to the complexity of the appliances we manufacture, many of the components are located within interior parts of our appliances, and thus, the average consumer may not ever be exposed to the listed chemicals. Despite this, [manufacturer] chooses to include the Proposition 65 warning out of an abundance of caution.”

A guitar manufacturer replied,

“...two chemicals were listed as ingredients in paint ... that is applied on to some guitars ... that under normal use conditions ... [manufacturer] does not anticipate that its guitars would expose a customer to these chemicals, but that the warnings were provided out of an abundance of caution.”

Some 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 but when asked would not provide the name of the listed chemical that the warning was provided for, because the business is not required to do so, because such information is “confidential”, or the specific chemical name is unknown. These practices are contrary to the statutory requirement to give clear and reasonable warnings 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.

The current short-form warning facilitates such “over-warning” by providing businesses with safe harbor protection from enforcement actions without requiring the business to provide sufficient information to consumers. The warning includes the address of OEHHA’s Proposition 65 warnings website, but the sheer number and variety of products with short-form warnings have made it impossible for OEHHA to obtain and post information about many of these products on its website. Thus, consumers must contact the manufacturer or seller of the product to try to determine why they are being warned, and what the warning means.

After carefully assessing businesses’ use of the short-form warning since the regulations were adopted in 2016,⁸ OEHHA has determined that changes to the regulations are necessary. Without these proposed changes, use of the short-form warning will continue to result in many warnings being inconsistent with the intent of the Act, OEHHA’s intent in adopting the 2016 regulations, and its stated intent for adopting the short-form warning⁹.

⁸ The revised Article 6 Clear and Reasonable Warnings regulations were adopted on August 30, 2016 and became operative on August 30, 2018.

⁹ Article 6 ISOR (2015), *supra* note 3.

Based on OEHHA's experience with the current short-form warning, OEHHA has determined that, in order for a business to obtain safe harbor protection, consumer product warnings must include the name of at least one listed chemical to which the consumer may be exposed. While OEHHA still acknowledges the need for product warnings on very small packages, OEHHA does not believe the small size of a package justifies the failure to include any chemical-exposure information. Further, OEHHA anticipates that some businesses may stop the practice of over-warning as a strategy to receive safe harbor protection 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 where a chemical exposure is unlikely to occur and ensuring that consumers are provided with truthful, accurate information about anticipated exposures to listed chemicals from consumer products where they can occur. Each of the proposed amendments to the warning regulations is discussed below.

Proposed Amendments

§ 25601 Safe Harbor Clear and Reasonable Warnings – Methods and Content

Subsection (b)

The phrase, "Except as provided in Section 25603(c)," would be deleted, along with Section 25603(c). Section 25603(c) currently provides that a short-form consumer product exposure warning does not require the name of a listed chemical. By removing Section 25603(c), the proposed amendments to Section 25603, discussed in detail below, would require a business to provide the name of one or more listed chemicals for which the warning is being given. Thus, the reference in Section 25601(b) would also be removed.

§ 25602. Consumer Product Exposure Warnings – Methods of Transmission.

Subsection (a)

OEHHA is proposing a non-substantive amendment to subsection (a) by replacing the existing reference to Section 25607.1 with a reference to Section 25607. This change is proposed to correct a typographical error in the existing regulation.

OEHHA is additionally proposing substantive changes to subsection (a). The word "product" would be added before the word "label" in subsections (a)(3) and (a)(4), to clarify that use of this warning method is limited to the physical

parameters of a consumer product label and therefore cannot be used in other circumstances such as warnings for environmental exposures.

Amendments to Subsection (a)(4) specify the three conditions that would allow for the use of a short-form warning on a consumer product. Namely, a short-form warning may only be used if:

- (A) the total surface area of the product available for labeling is 5 square inches or less, and;
- (B) the package shape or size cannot accommodate the full-length warning content described in Section 25603(a), and
- (C) the entire warning is printed in a type size no smaller than the largest type size used for other consumer information on the product, but in no case no smaller than 6-point type.

Appendix B to this initial statement of reasons provides examples of the proposed short-form warning content in 6, 8, and 10-point type sizes on an approximately 5 square inch surface area.

In Subsection 25602(a)(4)(C), which sets forth the minimum 6-point type in a short-form warning,¹⁰ the words “must be” are deleted as no longer necessary because of the proposed addition of the phrase “may only be used if” in subsection (a)(4). The words “is printed” were added for consistency with the requirement that the short-form warning be used only on product labels.

These proposed requirements would assure uniform prominence, conspicuousness, and readability of the warning on small product packages while eliminating the use of the short-form warning on labels for larger consumer products that can easily accommodate the full warning message. The amendments will ensure that a short-form warning option is still available for consumer products sold in small packages.

Subsections (b) and (c)

Because there are generally fewer space limitations on a webpage or in a catalog, use of a short-form warning is not appropriate in those contexts. The amendments would delete the provisions stating, “If a warning is provided using the short-form warning label..., the warning provided on the website may use the same content” and “If a short-form warning is being provided on the label...the warning provided in the catalog may use the same content” respectively. This amendment is consistent with OEHHA’s determination that the short-form warning should only be used for products with small packaging, and that there

¹⁰ The existing type size requirement of Section 25602, subsection (a)(4) is unchanged by this rulemaking proposal.

are no comparable space limitations on a webpage or product catalog. Because, as discussed below, the short-form warning will include specific chemical-exposure information, the additional information needed for a website or catalog warning will be minimal. In addition, these amendments will help reduce potentially unnecessary warnings for products sold online or via a catalog when the business does not know there is an exposure to a listed chemical from that consumer product. OEHHA believes these amendments will discourage unnecessary prophylactic warnings which dilute the effectiveness of warnings for actual exposures to listed chemicals.

Subsection (e)

New subsection (e) would provide a one-year delayed operative date after the effective date of the amendments to allow businesses time to make the necessary changes to their safe harbor warnings. During this one-year phase-in period, businesses would have the option of using either the 2016 version of the short-form regulations that became operative in 2018, or the amended provisions. OEHHA is aware that modifying the short-form warning provisions may require some retooling by businesses who chose to comply with these safe harbor regulations. These effects should be short-term, however, and any related costs can be spread over the one-year phase in period.

Proposed subsection (e) also includes a “sell-through” provision to facilitate compliance with the amended regulations. During the 2016 rulemaking, some manufacturers expressed concern over anticipated logistical and economic costs associated with changing the warnings on products already produced and distributed to the marketplace. This was of particular concern to businesses dealing in durable goods produced with compliant warnings and a long shelf-life. To alleviate similar concerns, OEHHA has included a “sell-through” provision for products manufactured before the operative date of the amendments to the short-form warning provisions.

In other words, short-form warnings on products manufactured prior to the operative date of the amendments will continue to be considered compliant if they comply with the earlier regulations. Although the proposed amendments are narrowly focused and will impact only those businesses currently providing short-form safe harbor warnings, OEHHA believes the sell-through period will help mitigate or avoid potential logistical issues and will allow manufacturers and retailers sufficient time to transition to the new content without the need to locate and re-label products already in the chain of commerce. Similar sell-through provisions would be added to the amended consumer product exposure warnings content in Section 25603 and the food exposure warnings content in Section 25607.2.

§ 25603. Consumer Product Exposure Warnings – Content.

Subsection (a)

OEHHA is proposing a non-substantive amendment to subsection (a) by replacing the existing reference to Section 25607.1 with a reference to Section 25607. This change is proposed to correct a typographical error in the existing regulation.

Subsection (b)

The proposed amendments would revise subsections (b)(2)(A) – (b)(2)(C) and add new subsection (b)(2)(D). The words “pursuant to Section 25602(a)(4)” are proposed for addition to subsection (b) to make clear that short-form warnings may only be used when the applicable requirements of Section 25602(a)(4) concerning the available surface area on a product label and the ability to accommodate a full-length warning, and the minimum type size requirements are met. The amended regulation would change the safe harbor short-form warning content to require that the name of one or more listed chemicals for which the warning is being provided is stated in the warning. Subsection (b)(2)(D) would be added to provide short-form warning content for an exposure to a chemical that is listed as both a carcinogen and reproductive toxicant. This is consistent with the full-length warning in Section 25603(a)(2)(D) which addresses the same scenario.

The warning content has also been modified by adding the terms “risk” and “exposure” to warn a consumer that there is a risk of cancer and/or reproductive harm from exposure to a listed chemical from a consumer product. This warning is more precise and informative than the current short-form warning that only refers to the end point, i.e., “Cancer” and/or “Reproductive Harm”.

The term “risk”, added with reference to the applicable endpoint(s), will help better convey the risk a consumer is facing from exposure to the listed chemical. OEHHA has previously determined that informing people regarding *exposures* to listed chemical chemicals is consistent with the right-to-know purpose of the Act. As OEHHA noted in the 2015 ISOR for Article 6:

“Further, Proposition 65 is a right-to-know law. The purpose of the statute is to provide people with notice concerning their exposures to listed chemicals. The preamble to the law states in part that:

‘Section 1. 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’

(Emphasis added)

Clearly, the citizens who voted for the law wanted to be informed about actual exposures to carcinogens and reproductive toxicants. They did not anticipate that they would receive vague warnings about the content of the products they purchase and use without providing any context for that information. Such general warnings generate confusion and encourage businesses to provide a warning even when none is required, precisely because they are so vague and meaningless. Requiring that the warnings include more specific, relevant information will further the right-to-know purposes of the law and reduce the likelihood that businesses will provide unnecessary warnings for non-existent or insignificant exposures.”¹¹

OEHHA has determined that the concept of exposure is an important component of the full-length Proposition 65 safe harbor warnings and should likewise be incorporated in the short-form consumer product exposure warnings. As an example, a short-form warning for a consumer product exposure to the carcinogen Diisononyl Phthalate (DINP) would read thus:

⚠ WARNING: Cancer Risk From
Diisononyl Phthalate (DINP) Exposure –
www.P65Warnings.ca.gov.

The short form warning authorized in the proposed regulations thus would provide businesses with the continued option to use truncated, short-form warning content for consumer products that have little available surface space for a warning. At the same time, the inclusion of the name of at least one listed chemical (or two chemicals if the exposures are to a carcinogen and a reproductive toxicant) would further consumers’ right-to-know about listed chemicals they may be exposed to from a consumer product.

The proposed modifications would also help curb the current business practice of providing unnecessary “prophylactic” warnings without knowledge of any exposure to a listed chemical from the consumer product.

Subsections (c) and (d)

Subsection (c) would be deleted because the changes to subsections (b)(2)(A) – (b)(2)(C) and new subsection (b)(2)(D) would require the name of one or more listed chemicals in short-form consumer product exposure warnings. The elimination of subsection (c) necessitates the renumbering of current subsection (d) to (c).

New subsection (d) would be added to include the one-year delayed operative

¹¹ Article 6 ISOR (2015), *supra* note 3.

date discussed above for the amendments to Section 25603 to facilitate transition to the amended safe harbor warnings. It would also provide a sell-through provision, as described above in the discussion of Section 25602. Additionally, the amended regulations would not become operative until one year after their adoption. During this one-year period, businesses will have the option of using either 2016 version of the short-form warning provisions that became operative in 2018, or the modified short-form warning. The “sell-through” provision in subsection (d) applies to products manufactured before the operative date of the amendments to this section. Under this provision, compliance with the 2016 version of the short-form warning regulation will be considered compliant with the proposed regulation if the consumer product was manufactured prior to the operative date of the proposed amended regulation.

§ 25607.2. Food Exposure Warnings – Content.

The proposed amendments would add new subsections (b)(1) – (b)(6) and (c) to the tailored warning for food exposures. When OEHHA adopted the short-form warning content for safe harbor consumer product exposure warnings in the 2016 Clear and Reasonable Warnings rulemaking, OEHHA did not anticipate businesses using short-form warnings for food products. As businesses began providing Proposition 65 warnings using the new safe harbor warning methods and content, OEHHA 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. This proposed rulemaking would clarify 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 (i.e., the warning symbol is not required for foods, but the warning must be enclosed in a box).

Subsection (a)

Subsection (a) would be modified by replacing the words “is provided via” and adding the words “complies with” to emphasize that compliance with the methods in Section 25607.1 for food exposure warnings is required for safe harbor protection. Existing Section 25607.1(a) requires that the safe harbor warning for food exposures be provided using one or more of the methods required in Section 25602 for consumer product exposures, in addition to the requirements specific to food exposures described in Section 25607.1, subsections (b) and (c).

Subsection (b)

OEHHA has determined that certain elements of the existing tailored warning for food exposure warnings should be retained in the short-form warning content. New subsections (b)(1)-(6) would provide short-form warning content that is

generally consistent with the other proposed amendments to the short-form warning content for consumer product exposure warnings and would incorporate existing elements of the full-length warning content for food exposures. Thus the proposed short-form food exposure warning would be subject to the requirements in Section 25602(a)(4) regarding available surface space on a product label and the inability to accommodate a full-length warning, and the minimum type-size requirements; would omit the warning symbol and would require the warning to be enclosed in a box on food labels, consistent with the current full-length warning for food exposures.¹² The warning message would include the signal word “**WARNING**”, the endpoint (cancer and/or reproductive toxicity), the name of one or more of the listed chemicals for which the warning is being provided, and the food exposure warnings URL: www.P65Warnings.ca.gov/food.

As an example, a short-form warning for a food product exposure to the carcinogen and reproductive toxicant benzene would read thus:

WARNING: Risk of Cancer and
Reproductive Harm From Benzene
Exposure – www.P65Warnings.ca.gov/food.

As with other safe harbor warnings, including those on consumer products other than food, where a chemical is both a carcinogen and reproductive toxicant the level of exposure may require a warning for one endpoint but not the other. In this scenario a warning should be given only for the endpoint requiring a warning. For example, for the carcinogen and reproductive toxicant acrylamide, if the exposure exceeds the No Significant Risk Level of 0.2 micrograms/day for cancer but is below the Maximum Allowable Dose Level of 140 micrograms/day for reproductive toxicity, a warning should be given only for the increased risk of cancer:

WARNING: Cancer Risk From Acrylamide
Exposure – www.P65Warnings.ca.gov/food.

Subsection (c)

Subsection (c) provides the same one-year delayed operative date for the amendments and sell-through provision as described in the discussion of Sections 25602 and 25603 above. The sell-through provision in subsection (c)

¹² Section 25607.1(b).

applies to warnings on food products manufactured or produced and labeled before the operative date of the amendments to this section. As noted above, the version of the short-form warning which became operative in 2018 will be considered compliant with the proposed regulation if the food product was manufactured or produced prior to the operative date of the amended regulation.

Necessity

The proposed regulation is necessary to stop businesses' use of the short-form warning described above on large packages, in catalogs and on-line to discourage its use to warn prophylactically. Those uses of the short-form warning are contrary to OEHHA's intention when adopting the 2016 warning regulations that businesses provide consumers with more meaningful and informative warnings, avoid over-warning, and only use the short form warning where the full-length warning will not fit on the label. The same is true for warnings provided in catalogs and on-line as there are not the same space limitations in those situations. In addition, the proposed regulation is necessary to ensure that, when appropriately used on products with small packages, the short-form warning names at least one chemical and clarifies that use of the product can cause a chemical exposure. .

Benefits of the Proposed Regulation

The health and welfare of California residents will likely benefit because the regulation will improve the quality of information provided in Proposition 65 consumer-product warnings by ensuring all safe-harbor warnings name at least one listed chemical to which the user of the product can be exposed. The regulation will also benefit Californians by discouraging and reducing unnecessary prophylactic warnings that can mislead consumers into thinking a product causes an exposure to a listed chemical when that is not the case.

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

OEHHA did not rely on any technical, theoretical, and/or empirical studies, reports, or documents as part of this rulemaking.

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

OEHHA considered repealing the short-form warning provisions entirely. OEHHA decided that in certain limited circumstances, namely when product packaging size constraints cannot accommodate full-length warnings, provisions for shortened yet informative warnings are necessary. Thus, OEHHA has

determined there are no reasonable alternatives to the proposed regulatory action that would carry out the purposes of the Act. The action provides clarification and specificity to the existing regulations.

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 alternative of repealing the short-form provisions in their entirety but determined that the short-form warnings are necessary when the surface area of a product label is very limited and the package shape or size cannot accommodate a full-length warning, as was originally intended when OEHHA adopted the short-form warning as a safe harbor warning method for consumer product exposures. OEHHA has determined that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA, including alternatives that would lessen any adverse impact on small business, would be as effective or less burdensome on small business. In addition, OEHHA has determined that the proposed regulatory action will not impose any mandatory requirements on small businesses. Proposition 65 expressly exempts businesses with less than 10 employees¹³ from the requirements of the Act.

Evidence Supporting Finding of No Significant Adverse Economic Impact on Business

The proposed regulatory action will not have a significant adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The action does not impose any new requirements upon private persons or businesses because the safe harbor regulations are non-mandatory guidance.

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 regulatory action does not duplicate and will not conflict with federal regulations.

¹³ Health and Safety Code section 25249.11(b).

Economic Impact Assessment Required by Gov. Code section 11346.3(b)

Creation or Elimination of Jobs within the State of California

The proposed regulatory action will not impact the creation or elimination of jobs within California. The proposed amendments will ensure that the safe harbor short-form warnings are only used where, due to limited label space on a consumer product, a full-length warning will not fit. The proposed warnings will include the name of at least one listed chemical to which the person may be exposed to provide consumers with sufficient information about the exposure. The proposed action will also provide clarification and specificity regarding use of short-form warnings for exposures to listed chemicals from food.

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

The proposed regulatory action will not impact the creation of new businesses or the elimination or expansion of existing businesses within California. The proposed amendments will ensure that the safe harbor short-form warnings are only used where, due to limited label space on a consumer product, a full-length warning will not fit. The proposed warnings will include the name of at least one listed chemical to which the person may be exposed to provide consumers with sufficient information about the exposure. The proposed action will also provide clarification and specificity regarding the use of short-form warnings for exposures to listed chemicals from food.

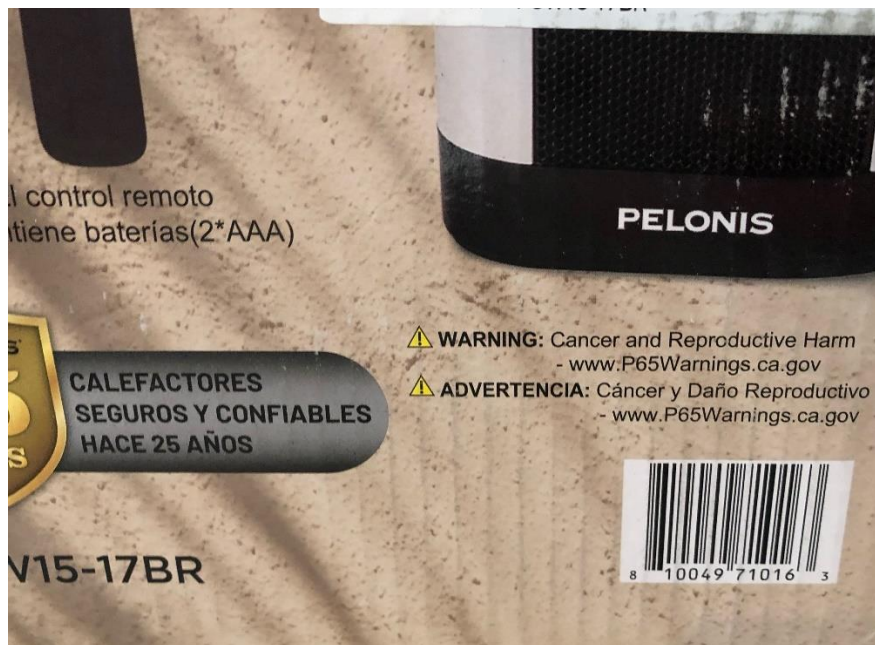
Benefits of the Proposed Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

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 action will also provide clarification and specificity regarding the use of short-form warnings for exposures to listed chemicals from food. The proposed action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety.

Appendix A – Examples of Actual Short-Form Warnings

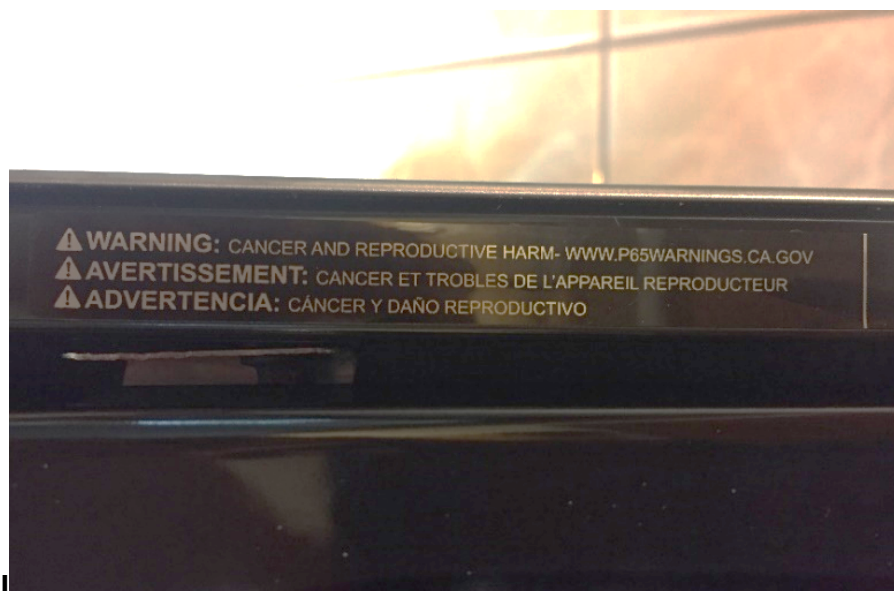


Residential Trash Bin Warning



Ceramic Tower Heater – On-Product Label

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



Electric Range – On-Product Label



Dishwasher - Website Warning

**Prop 65 CALIFORNIA RESIDENTS ONLY –
⚠️ WARNING: Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.**

Top Freezer Refrigerator - Website Warning

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



Refrigerator - On-Product Label

Prop 65 CALIFORNIA RESIDENTS ONLY –
WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

Clothes Dryer - Website Warning

WARNING: Cancer and Reproductive Harm - www.p65Warnings.ca.gov.

Guitar, Bass and Ukulele - Website Warning




Luggage – On-Product Label


Appendix B - Examples of Short-form Warnings Compliant with the Proposed Amended Regulations on 5 sq. in Product Surface Area*

*all dimensions are approximate


Short-form warning on 5" x 1" product surface area

 **WARNING:** Risk of Reproductive Harm From Toluene Exposure – www.P65Warnings.ca.gov.

Reproductive Harm risk (8 pt.)

 **WARNING:** Risk of Cancer and Reproductive Harm From Benzene Exposure – www.P65Warnings.ca.gov.

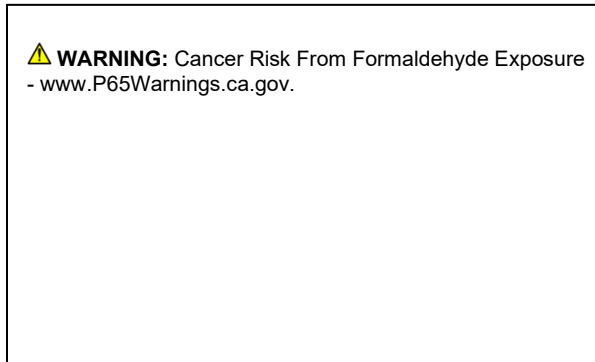
Cancer and Reproductive Harm risk from same chemical (8 pt.)

 **WARNING:** Risk of Cancer From Formaldehyde and Reproductive Harm From Toluene Exposure – www.P65Warnings.ca.gov.

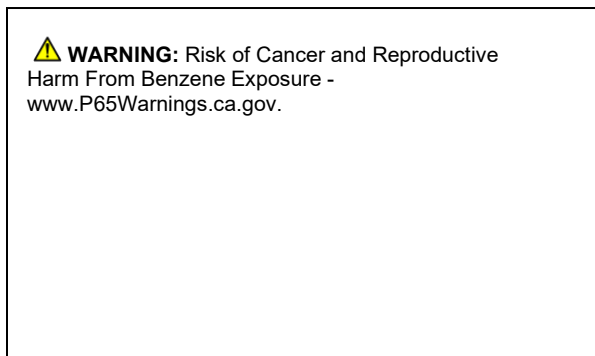
Cancer and Reproductive Harm risk from different chemicals (8 pt.)

Examples of Short-form Warnings Compliant with the Proposed Amended Regulations on 5 sq. in, cont.

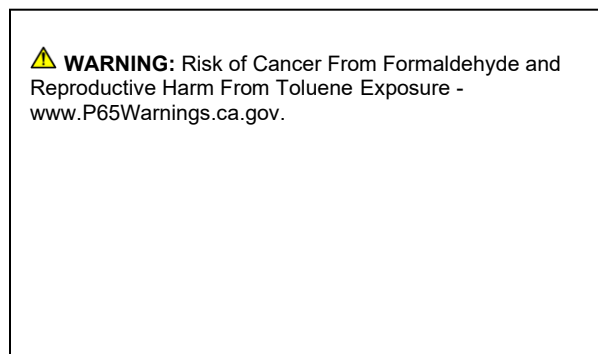
Short-form warning on 3" x 1.75" Product Surface Area



Cancer risk (8 pt.)



Cancer and Reproductive Harm risk from same chemical (8 pt.)




Cancer and Reproductive Harm risk from different chemicals (8 pt.)

Examples of Short-form Warnings Compliant with the Proposed Amended Regulations on 5 sq. in, cont.

Short-form warning on 2.5" x 2" Product Surface Area

 **WARNING:** Risk of Reproductive Harm
From Toluene Exposure -
www.P65Warnings.ca.gov.

Reproductive Harm risk (8 pt.)

 **WARNING:** Risk of Cancer and
Reproductive Harm From Benzene Exposure -
www.P65Warnings.ca.gov.

**Cancer and Reproductive Harm
risk from same chemical (8 pt.)**

 **WARNING:** Risk of Cancer From
Formaldehyde and Reproductive Harm From
Toluene Exposure - www.P65Warnings.ca.gov.

**Cancer and Reproductive Harm risk
from different chemicals (8 pt.)**

and strengthen needy families and there are no known expected costs associated to the individuals.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses because these regulations are only applicable to state and county agencies. These regulations are mandated by SB 80 and are only applicable to CalWORKs applicants and recipients; therefore, they do not have a cost impact on the private sector, including small businesses.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The implementation of this regulatory action will benefit CalWORKs applicants and recipients. There are no additional benefits for worker safety or the state's environment, as the regulations only affect individuals receiving or applying for CalWORKs benefits.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS did not consider alternatives because regulations for Welfare and Institutions Code (WIC) sections 11155, 11265.3, and 11451.5 are required by SB 80, Sections 34, 41, 42, 59 and 60. CDSS is legally bound to develop regulations for this WIC section.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as 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.

AUTHORITY AND REFERENCE CITATIONS

Welfare and Institutions Code sections 10553, 10554, 10604, 11265, 11450, 11451, 11155, and 18900; SB 80 (Chapter 27, Statutes of 2019); 34 CFR VI.

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. To allow interested persons an opportunity to submit statements or arguments concerning these regulations noticed to the public for a minimum of 45 days in accordance with Government Code Section 11346.4.

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 PROPOSITION 65

PROPOSED AMENDMENTS TO ARTICLE 6 CLEAR AND REASONABLE WARNINGS

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

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

and Section 25607.1 Food Exposure Warnings — Methods of Transmission.

the public hearing date. The notice will provide the date, time, and information for accessing the hearing.

PUBLIC PROCEEDINGS

CONTACT

Written Comment Period

Any written comments concerning this proposed regulatory action, regardless of the form or method of transmission, must be received by OEHHA no later than March 8, 2021, the designated close of the written comment period. Due to the COVID-19 emergency, OEHHA is providing a longer period than required under the Administrative Procedure Act. All written comments will be posted on the OEHHA website at the close of the public comment period.

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.

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

Because of limited in-office staffing during the COVID-19 emergency, OEHHA strongly recommends that the public submit written information electronically, rather than in paper form. Comments may be submitted electronically through our website at <https://oehha.ca.gov/comments>. Comments submitted in paper form can be mailed, faxed, or delivered in person to the address below, but delays may occur if staff are unable to timely access them.

AUTHORITY

Health and Safety Code section 25249.12.

All non-electronic submissions should be directed to:

REFERENCE

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

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Assessment
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**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

BACKGROUND

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address, and e-mail may be available to third parties.

OEHHA is the lead agency that implements Proposition 65³ and has the authority to promulgate and amend regulations to further the purposes of the Act. The Act requires businesses to provide a clear and reasonable warning before they cause an exposure to a chemical listed as known to the state to cause cancer or reproductive toxicity.⁴ The Act also prohibits the discharge of listed chemicals to sources of drinking water.⁵ The proposed amendments would revise the method of transmission and content of short-form warnings for consumer products. In addition, the proposed amendments would eliminate the use of short-form warnings for internet or catalog purchases.

Public Hearing

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

**SPECIFIC BENEFITS OF THE
PROPOSED REGULATIONS**

The proposed regulatory action will facilitate businesses' compliance with the Act by providing clarifying guidance concerning the provision of safe

² Executive Orders N-25-20 and N-29-20.

³ Health and Safety Code section 25249.5 et seq., The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65". Hereafter referred to as "Proposition 65" or "the Act".

⁴ Health and Safety Code section 25249.6.

⁵ Health and Safety Code section 25249.5.

harbor warnings under Proposition 65. The health and welfare of California residents will likely benefit by increasing the public's ability to understand the warnings they receive for certain consumer products they may choose to purchase.

**NO INCONSISTENCY OR INCOMPATIBILITY
WITH EXISTING REGULATIONS**

OEHHA has conducted an evaluation and has determined that Article 6 is the only regulation concerning Proposition 65 warnings. Therefore, the proposed regulatory action is neither inconsistent nor incompatible with any other existing state regulations. The action does not change the existing mandatory requirements on businesses subject to Proposition 65, state or local agencies and does not address compliance with any other law or regulation.

LOCAL MANDATE/FISCAL IMPACT

Because Proposition 65 by its terms⁶ does not apply to local agencies or school districts, OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action, nor will there be any costs or savings to the state or in federal funding to the state because of the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has initially determined that the proposed regulatory action will have no effect on housing costs because it does not impose any new mandatory requirements on any business.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESS, INCLUDING
ABILITY TO COMPETE**

The proposed regulatory action provides compliance assistance to businesses subject to the Act by providing guidance concerning an existing regulation in that it specifies the method of transmitting and the content of safe harbor short-form warnings for consumer products including food products. The proposed action modifies an optional safe-harbor method that businesses may choose to use to provide the required

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

warning. OEHHA has therefore made an initial determination that the adoption of this action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

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

Creation or Elimination of Jobs within the State of California

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

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

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

The Expansion of Businesses Currently Doing Business within the State

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

BENEFITS OF THE PROPOSED REGULATION

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

know purposes of the statute and therefore promotes public and worker health and safety.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action. The action does not impose any new requirements upon private persons or businesses. Instead, it modifies an existing, non-mandatory safe harbor warning method.

EFFECT ON SMALL BUSINESSES

The proposed regulatory action will not adversely impact very small businesses because Proposition 65 is limited by its terms to businesses with 10 or more employees.⁷

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

Pursuant to Government Code section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA, would be more effective in carrying out the purpose for which Proposition 65 is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the proposed regulation, all the information upon which the regulation is based, and the text of the proposed regulation. These documents are available on OEHHA's website at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any proposed regulation that is changed or modified from the express terms of this

⁷ Health and Safety Code section 25249.11(b).

proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on the revised proposed regulation and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and anyone who requests notification from OEHHA of the availability of such change. Copies of the notice and the changed regulation will also be available on the OEHHA web site at www.oehha.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from Monet Vela at the e-mail or telephone number indicated above. The Final Statement of Reasons will also be available on OEHHA's website at www.oehha.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NUMBER 2080-2020-011-01

Project: Lower Moffett Creek Scour — DES Brokered Project

Location: Siskiyou County

Applicant: California Department of Transportation

Background

California Department of Transportation (Applicant) proposes to replace the bridge over Moffett Creek on State Route 3 (SR 3), approximately 6 miles north of Fort Jones, and 11.6 miles south of Yreka, in Siskiyou County. The Lower Moffett Creek Scour — DES Brokered Project (Project) includes the demolition of the existing bridge and replacement with a new bridge that completely spans the creek within the same alignment as the existing bridge. The existing bridge is deteriorating in the structural steel of the deck and supporting pillars. The new bridge will provide widened shoulders, reduced long-term maintenance, and will be a full span over Moffett Creek, thus eliminating a pier that is situated in Moffett Creek supporting the current bridge. The work is planned for a single work season and an alternate routing of SR 3