

**Proposition 65**

**Initial Statement of Reasons**

**Clear and Reasonable Warnings**

**Safe Harbor Methods and Content**

**Title 27, California Code of Regulations**

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

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

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

**October 27, 2023**



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

## Contents

I. Summary.....	4
II. Background.....	4
III. Problems to be Addressed by the Proposed Amendments.....	6
Unintended uses and lack of information in short-form warnings.....	6
Need for clarification on warnings for products purchased on the internet or through a catalog.....	10
Other adjustments needed for consumer product safe harbor warnings.....	11
Additional options for warnings for passenger or off-highway motor vehicle and recreational marine vessel parts exposures.....	12
IV. Proposed Amendments.....	14
§ 25601. Safe Harbor Clear and Reasonable Warnings – Methods and Content. ....	14
§ 25602: Consumer Product Warnings – Methods of Transmission .....	15
§ 25602(a): General provisions for consumer product warnings.....	15
§ 25602(b): Internet purchases.....	17
§ 25602(c): Catalog purchases.....	20
§ 25602(d): Translation of labeling into non-English language .....	21
§ 25603. Consumer Product Exposure Warnings – Content.....	21
§ 25603(a): Full-length warning .....	21
§ 25603(b): Short-form warning – new provisions .....	21
§ 25603(c): Existing short-form warning and sell-through.....	25
§ 25603(d): Additional signal word options for pesticides .....	27
§ 25607.2. Food Exposure Warnings – Content. ....	27
§ 25607.2(a): Additional signal word options .....	27
§ 25607.2(b): Short-form warning for food products .....	27
§ 25607.2(c): Acrylamide warning for food – renumbered subsection .....	31
§ 25607.50 Safe Harbor Consumer Product Exposure Warning for Passenger or Off-Highway Motor Vehicle Parts – Methods of Transmission .....	31

§ 25607.51. Passenger or Off-Highway Motor Vehicle Parts Exposure Warnings – Warning Content.....	35
§ 25607.52. Recreational Marine Vessel Parts Exposure Warnings – Methods of Transmission.....	38
§ 25607.53. Recreational Marine Vessel Parts Exposure Warnings – Content.....	40
V. Necessity.....	42
VI. Benefits of the Proposed Amendments.....	43
VII. Other Required ISOR Elements .....	45
Economic Impact Assessment Required by Government Code section 11346.3(b) .....	45
Creation or elimination of jobs within the State of California.....	45
Creation of new businesses or elimination of existing businesses within the State of California .....	45
Expansion of businesses currently doing business within the State of California.....	46
Benefits of the proposed regulation to the health and welfare of California residents, worker safety, and the state’s environment.....	46
Technical, Theoretical, and/or Empirical Study, Reports, or Documents Relied Upon .....	47
Reasonable Alternatives to the Regulation and the Agency’s Reasons for Rejecting Those Alternatives .....	47
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.....	48
Evidence Supporting Finding of No Significant Adverse Economic Impact on Business .....	49
Efforts to Avoid Unnecessary Duplication or Conflicts with Federal Regulations Contained in the Code of Federal Regulations Addressing the Same Issues .....	49
Appendix A – Examples of Existing Short-Form Warnings Being Provided.....	50

## I. Summary

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

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

## II. Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Additional signal words options*

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

#### *Conspicuousness*

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

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

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

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<sup>23</sup> Section 25607.2.

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

#### IV. Proposed Amendments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*§ 25602(b): Internet purchases*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25607.4 must be used, absent an exception.

§ 25602(c): *Catalog purchases*

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

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

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

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

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

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

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

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

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

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

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

*§ 25603(a): Full-length warning*

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

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

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

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

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

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

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

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

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

Proposed subsection 25603(b) would read as follows:

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

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

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

(3) One of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . . .

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

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

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

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

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

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

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

Another option under the proposal is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) One of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>35</sup> Section 25705.

<sup>36</sup> Section 25805.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Consumer information” includes warnings, directions for use, ingredient lists, and nutritional information. “Consumer information” does not include the brand name, product name, company name, location of manufacture, or product advertising.

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

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

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

Proposed section 25607.50(b) reads:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed new section 25607.51(b) reads as follows:

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

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

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

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

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

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

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

The proposed text for section 25607.52 would be as follows:

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

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

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

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

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

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

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

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

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

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

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

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

The proposed text for new section 25607.53 is as follows:

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

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

*§ 25607.53(a): Tailored warning content*

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

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

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

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

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

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

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

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

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

## **V. Necessity**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **VII. Other Required ISOR Elements**

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

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

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

This regulatory action will not impact the creation or elimination of jobs within the State of California. The proposed amendments will help businesses comply with the requirements of Proposition 65 by providing non-mandatory guidance for businesses concerning how safe harbor warnings can be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts. The proposed regulatory action will not impact the creation or elimination of jobs within California because the proposed regulatory action will not impose any mandatory requirements on small businesses. The regulations are non-mandatory guidance that businesses *may* use, but are not required to use, to comply with Proposition 65's "clear and reasonable" warning requirements. It should be noted that Proposition 65 expressly exempts businesses with less than 10 employees<sup>43</sup> from the requirements of the Act.

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

This regulatory action will not impact the creation of new businesses or the elimination of existing businesses within the State of California. The proposed amendments do not impose new regulatory requirements on businesses. Instead, the proposed amendments will help businesses comply with the requirements of Proposition 65 by providing non-mandatory guidance for businesses concerning how safe harbor warnings should be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts. No new businesses will be created because the proposed amendments do not impose a new regulatory requirement, and no businesses will be eliminated, as discussed below.

To the extent some businesses currently using the existing short-form safe harbor warning will choose to modify their warnings to comply with the amended short-form

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

safe harbor warning, and some businesses will choose to use the new tailored warning options for passenger or off-highway motor vehicle parts or recreational marine vessel parts, OEHHA estimates the overall total cost to businesses to be approximately \$14,694,927.67. OEHHA estimated that:

- the short-form amendment will result in costs associated with changing existing short-form warning labels and internet and catalog warnings totaling approximately \$14,538,327.67, or \$4,273.46 per business;
- the new passenger or off-highway motor vehicle parts tailored warning will result in costs associated with adoption of new tailored warning signs totaling approximately \$154,800.00, or \$697.30 per business; and
- the new recreational marine vessel parts warning will result in costs associated with the adoption of new tailored warning signs totaling approximately \$1,800.00, or \$81.82 per business.

The basis for these calculations is described in more detail in the Economic Impact Statement (STD 399).<sup>44</sup>

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

This regulatory action will not impact the expansion of businesses within the State of California. The proposed amendments will provide non-mandatory guidance for businesses concerning how safe harbor warnings should be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts.

*Benefits of the proposed amendments to the health and welfare of California residents, worker safety, and the state's environment*

The proposed regulatory action will benefit the health and welfare of California residents by providing more meaningful information regarding their exposures to listed chemicals and help eliminate over-warning for non-existent exposures to listed chemicals. The proposed action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety by providing consumers with information

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<sup>44</sup> OEHHA, Economic and Fiscal Impact Statement (Regulations and Orders) STD 399, Amendments to Title 27 CCR § 25601-25603, 25607 et seq. – Clear and Reasonable Warnings, Safe Harbor (August 2023).

that can assist them in making informed choices about their exposures to listed chemicals. OEHHA has concluded that the public would benefit from the proposed amendments because they will provide a more specific warning option for businesses to use when they provide warnings for passenger or off-highway vehicles and marine vessel parts. The action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

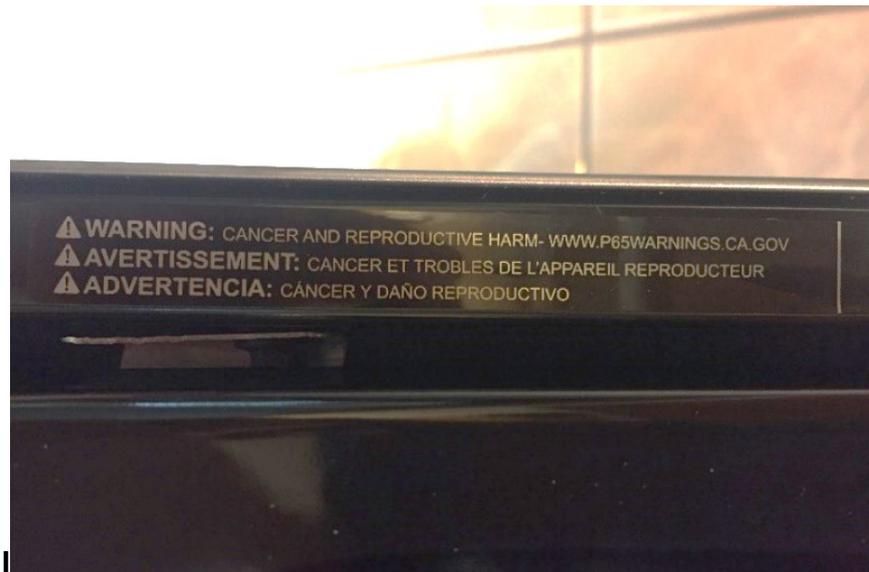
OEHHA does not anticipate that the regulation will have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulatory action will provide non-mandatory guidance for businesses, including content for a warning for exposures to listed chemicals and for exposures from lead and phthalates from passenger and off-highway vehicle and recreational marine vessels. Businesses remain free to provide any warning they deem to be “clear and reasonable,” albeit without safe harbor protection. It should be noted that Proposition 65 expressly exempts businesses with less than 10 employees from the requirements of the Act. To the extent some businesses currently using the existing short-form safe harbor warning will choose to modify their warnings to comply with the amended short-form safe harbor warning, and some businesses will choose to use the new tailored warning options for passenger or off-highway motor vehicle parts or recreational marine vessel parts, OEHHA estimates the overall total cost to businesses to be well below the threshold that would trigger a Standardized Regulatory Impact Analysis (SRIA).

## **Efforts to Avoid Unnecessary Duplication or Conflicts with Federal Regulations Contained in the Code of Federal Regulations Addressing the Same Issues**

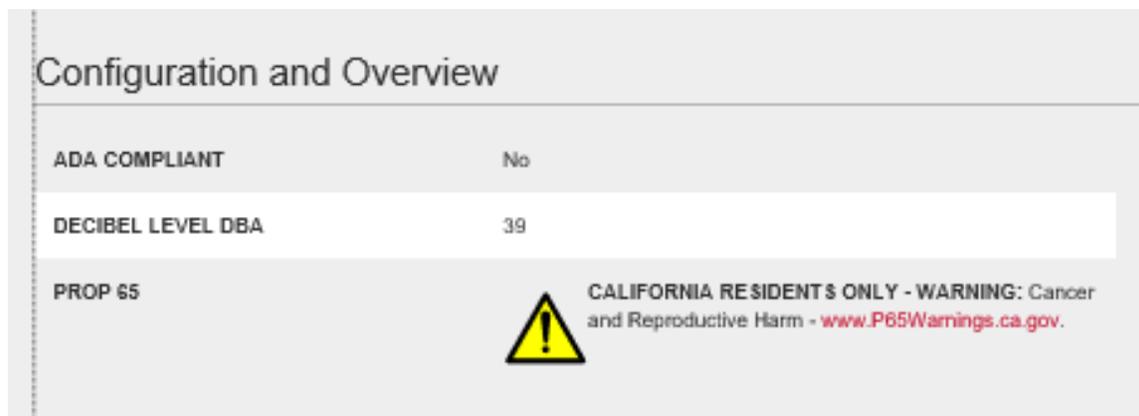
Proposition 65 is a California law that has no federal counterpart. OEHHA has determined that the regulations do not duplicate and will not conflict with federal regulations.



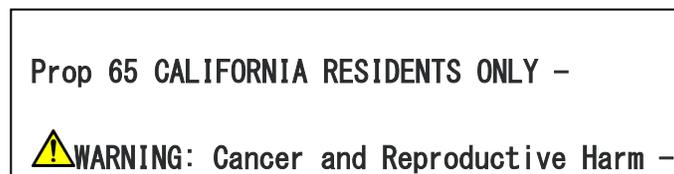
## Appendix A – Examples of Actual Short-Form Warnings, cont.



Electric Range – On-Product Label



Dishwasher - Website Warning



Top Freezer Refrigerator - Website Warning

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



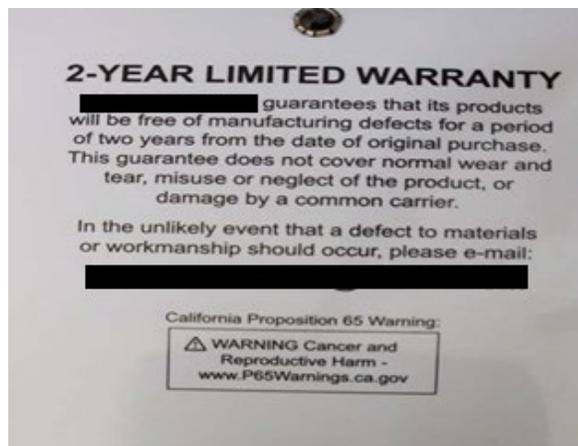
**Refrigerator - On-Product Label**

Prop 65 **CALIFORNIA RESIDENTS ONLY**

**Clothes Dryer - Website Warning**

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

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



**Luggage – On-Product Label**