

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATION

TITLE 27, CALIFORNIA CODE OF REGULATIONS

PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6

PROPOSITION 65 CLEAR AND REASONABLE WARNINGS

May 20, 2016

As required by Government Code section 11346.8(c), and Title 1, section 44 of the California Code of Regulations, the Office of Environmental Health Hazard Assessment (OEHHA) is providing notice of additional changes to the proposed regulation to repeal and add a new Article 6 to Title 27 of the California Code of Regulations.

This proposed regulation was originally the subject of a Notice of Proposed Rulemaking published on November 27, 2015, in the California Regulatory Notice Register (Register No Z-2015-1117-11), which initiated a public comment period. Forty-five written comments were received during the comment period that ended January 25, 2016. In addition, OEHHA heard comments at a public hearing on the proposed regulation held on January 13, 2016. On March 25, 2016, OEHHA published a 15-day Notice of Modification of Text of the Proposed Regulation. The comment period closed on April 26, 2016. Thirty-two comments were received during this comment period. Many of the commenters included discussions of the regulation that were beyond the scope of the changes made in the 15-Notice. OEHHA is not required to respond to comments that are beyond the scope of the Notice. However, these comments will be addressed in the Final Statement of Reasons for this regulation, including comments concerning the following issues:

- The difference between the unlimited sell-through period for products carrying compliant warnings and the two-year phase-in period for use of the new safe harbor warnings.
- The scope of the “grandfathering” provision in Section 25600(e).
- The application of the term “labeling” to warnings provided in owner’s manuals.
- OEHHA’s intent in adopting the manufacturer/retailer responsibility provision in Section 25600.2.
- OEHHA’s intent in requiring that all safe harbor warnings include the name of “one or more” listed chemical.
- Examples of how a warning for more than one chemical or exposure source can be provided.
- Guidance concerning providing warnings in alternative languages.
- Explanation of the differences between the supplemental information on the OEHHA warnings website (www.p65warnings.ca.gov/) and the required elements of a safe harbor warning.

OEHHA also intends to continue to adopt additional provisions in the regulations that address specific exposure situations such as exposures that occur at hotels and apartments, which will supplement the existing regulatory proposal and become effective during the two-year phase-in period for the regulation. Businesses are encouraged to work with OEHHA staff to develop such tailored warnings where they are needed.

OEHHA has carefully considered all the comments received during this rulemaking process. Responses to all the comments will be provided in the Final Statement of Reasons when the regulation is completed. OEHHA has further modified the text of the proposed regulation based on comments received on the modified text published on March 25, 2016. A number of clarifying changes were made to the proposed text of the regulations, most of which are non-substantive. All changes have been highlighted in the text of the regulation.

The most significant changes are summarized below:

- In Section 25600(e) the term “fully” was removed. This provision is intended to be a statement of current law. Specifically, if a party to a court-ordered settlement or judgement complies with the order requiring a particular method or content for a warning, the warnings provided are clear and reasonable as a matter of law. Commenters asked that OEHHA clarify its intent that this provision is not intended to provide a new avenue for enforcement of the law through this provision.
- Section 25600(f) was moved from Section 25601(b) and slightly modified to clarify that businesses are free to provide a warning that is different from the safe harbor methods and content specified in Subarticle 2 as long as the warning complies with Section 25249.6 of the Act.
- Section 25600.1(c) was revised by removing the phrase, “but is not limited to” and adding the words, “company name, location of manufacture” as additional exceptions to the definition of “consumer information”.
- In Section 25600.1(e) the word “consumer” was added to clarify the type of product intended to be included.
- In response to several comments, section 25600.1(f) was revised to delete the words “medium, including but not limited to”, add the term “source, such as”, and add the phrase “or objects”, to better clarify the sources of exposure that should be identified in an environmental exposure warning.
- In Section 25600.2(a) the phrase, “to the extent practicable” was added to parallel the statutory requirement concerning adopting regulations concerning clear and reasonable warnings.
- Section 25601(b) (formerly numbered as subsection (c)) was revised to remove, “for which the person has determined a warning is required” and replaced with, “in the consumer product or affected area for which the warning is being provided” to clarify that the regulation does not impose any new testing or burden of proof requirements for a business. This regulation only applies where a business has already decided to provide a warning; it does not determine when a warning is required.

- Sections 25602(d) and 25607.1(c) were revised to better clarify the circumstances under which a warning must be provided in a language other than English.
- Based on several comments, clarifying changes were made for consistency throughout the regulation to terms that were being used inconsistently including “label”, “warning labels”, “warning materials” and “warning information”.
- The uniform resource locators (URLs) for the general warning content were shortened to “WWW.P65Warnings.ca.gov” for simplicity and consistency with the existing structure of the warnings website.
- In Section 25603(a)(2) and throughout the regulations the term, “such as” was replaced with “including” for the warning content in response to comments suggesting the word is more clear.
- Section 25603(a)(2)(E) was added to allow a business to provide a consumer product warning for a single chemical exposure, by allowing the business to delete the words “chemicals including” from the safe harbor warning content.
- Section 25604(a) was revised to ensure consistency in the format, structure and requirements for environmental warnings.
- Section 25605(a) was revised for readability and clarity. An example of the text of a compliant warning is as follows:

⚠ WARNING: Entering this area can expose you to chemicals known to the State of California to cause cancer, including asbestos, from construction debris. For more information go to www.P65Warnings.ca.gov.

- Section 25605(a) was modified to allow a business to provide an environmental warning for a single chemical exposure.
- Section 25606(b) was added to clarify that occupational exposure warnings for chemicals that are not covered under subsection (a) can be provided using the methods and content requirements set out in the regulations for consumer product or environmental exposures.
- Section 25607.2(a)(4) was revised for consistency with the other consumer product warnings.
- Section 25607.2(a)(6) was added to allow a business to provide a food product warning for a single chemical exposure, by allowing the business to delete the words “chemicals including” from the safe harbor warning content.
- Section 25607.23(a)(3) the warning content for the amusement park tailored warning was revised to replace “[Name of one or more exposure source(s)]” with “Some areas or features” in consideration of the unique characteristics of environmental exposure scenarios in amusement parks. OEHHA intends to develop more information for its website concerning the most common sources of exposures, the chemicals that are likely to be present at amusement parks, and ways patrons can reduce or avoid exposures in order to supplement this warning, just as OEHHA plans to provide more detailed website information for all of the tailored warnings.

Included with this notice are copies of the regulatory language with the modified language provided in yellow highlight, double strikethrough, underline and italics format. These modifications are also available on the OEHHA website at www.oehha.ca.gov, and may be requested from Monet Vela at the OEHHA Legal Office at (916) 323-2517.

OEHHA will accept written comments specifically addressing the changes made in this version of the regulation until **June 6, 2016 at 5:00 p.m.** There is no need for commenters to incorporate by reference their earlier comments on the regulation as OEHHA will respond to all relevant comments in the Final Statement of Reasons for the regulation.

We encourage you to submit comments in electronic form, rather than in paper form.

Comments transmitted by e-mail should be addressed to P65Public.Comments@oehha.ca.gov. Please include "Clear and Reasonable Warnings Regulation" in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the address below. Mailed, faxed or hand-delivered comments should be addressed to:

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