

ITI Comments on the Concept for Regulation Addressing Proposition 65 Warnings

The Information Technology Industry Council (ITI) thanks you for the opportunity to provide comments on the concept regulation addressing Proposition 65 Warnings. ITI's member companies have long been leaders in innovation and sustainability, often taking measures to exceed regulatory requirements on environmental design, energy efficiency and product stewardship. ITI appreciates OEHHA's efforts to update the Proposition 65 label to include web-based and other means of distributing information, however, we are concerned with the significant amount of information that the Agency is looking to add to the labels. Overall, warning labels on products have become so ubiquitous that they are largely ignored, and with that in mind, a desire to establish minimum requirements for a "clear and reasonable warning" is understandable. However, any changes to product labels that require additional information on labels must be examined carefully since label space is limited, and often product labels also need to meet other requirement, such as stringent Federal Hazardous Substance Act (FHSA) type size requirements.

Specific Comments on the proposed changes to the labels are below:

- 1) A requirement that a warning inform an individual that he or she will be exposed to a listed chemical.

It is not clear if this requirement is calling for the label to list the chemical involved. Based on the sample labels, this does not appear to be the case. The Agency will need to be specific as to the exposure information required.

- 2) The minimum information that must be included in all warnings, including the health effect (cancer, male reproductive toxicity, female reproductive toxicity, developmental toxicity) for which the chemical(s) involved in the exposure was listed; information on how a person will be exposed; and, where applicable, simple information (such as washing hands) on how to avoid or reduce an exposure.

It is unclear if the mention of "male reproductive toxicity, female reproductive toxicity, developmental toxicity" is meant to mean that we must distinguish these type of reproductive toxicity in the warning text. We would oppose that given label space constrictions, and also that such language is probably not meaningful to ordinary people. The current safe harbor text ("birth defects or other reproductive harm") probably is more meaningful.

Information on how a person is being exposed is much less needed for products, and should not need to be provided. Given many/most chemicals would have an effect though multiple routes of exposure (inhalation, dermal contact and/or ingestion), most labels would need to include a generic statement saying exposure may occur via all of these routes. Such generic statements end up being ubiquitous and are largely ignored by the general population. In short, detailed exposure information would not be practical on a label.

However, area-specific and environmental warnings may need some more requirements on specificity on how one is exposed. The classic version ("WARNING This Facility Contains Chemicals Known To The State Of California To Cause Cancer And Birth Defects Or Other Reproductive Harm.") does seem unhelpful. We would need more time to consider what might be appropriate requirements that still allow flexibility. For example, that information cannot be provided on the sign.

Information on how to avoid or reduce exposure would most likely be provided on a label by FHSA precautionary statements, and so there does not need to be a separate Proposition 65 requirement to provide this information on labels.

- 3) Approved warning methods and content for use by product manufacturers and retailers regarding exposures to listed chemicals from consumer products, including products

sold at retail establishments and products sold via the internet. These approved methods may include alternatives to on-product warnings.

ITI supports alternatives to on-label warnings, as long as flexibility is maintained, including the ability to continue using the label. For products sold over the internet, requiring the purchaser to be aware of the warning before purchase is problematic. A label warning meets the requirement to provide a warning before exposure, however, there is no requirement to provide a warning prior to purchase. Since many companies simply label products to avoid a lawsuit, rather than based on a risk assessment, having text on the website may unfairly stigmatize products. If web customers want to know exposure information before purchase, they can contact the company.

ITI supports flexibility in locating the warning label following the current requirement for “prominently displaying” the label. ITI requests clarification about any proposed changes to the current requirement for label placement to achieve their desired goal of approved warning methods that would alter this current requirement.

To achieve the “Approved warning methods and content...”, manufacturers should be provided the flexibility to develop language specific to their products. ITI requests clarity from the Agency regarding content of warning labels vis-à-vis the entity for whom responsibility of developing specific warning content will be assigned by the statute.

In order to provide greater clarity and certainty of warnings, are labels required on products with demonstrated transient exposures to listed chemicals which last less than 30 to 120 days? If labels are required, can labels be removed from the product when the exposure period ends?

- 4) Approved warning methods and content for use by manufacturers and retailers regarding exposures to listed chemicals in foods, including foods sold at retail establishments and food products sold via the internet. These approved methods may include alternatives to on-product warnings.

ITI has no comments on item 4.

- 5) Approved warning methods and content for environmental exposures, including exposures an individual may experience when entering or spending time in an area

where listed chemicals are present. OEHHA intends to provide specific warning language and methods for some common environmental scenarios, such as parking structures, food courts, hotels, apartments and other businesses, to provide greater clarity and certainty where appropriate.

As mentioned before, ITI supports flexibility in providing warnings, and believes that clarity is necessary to combat the flood of warnings consumers encounter daily. Does the Agency intend to include common workplace environments in "...other businesses..."? ITI would need to see the details of this proposal to offer further comment.

- 6) Requirements and approved methods for providing additional contextual information to persons concerning exposures to listed chemicals. Such information would allow individuals to learn more about some or all of the specific chemicals involved in the exposure, and the applicability of other state and federal laws to these exposures. This information would not have to be provided prior to the exposure, but instead would have to be available to the public on a web site or other generally accessible location.

We urge the Agency to think creatively when it comes to getting this information to consumers, and generally supports having additional means by which to relay important environmental and safety information. We would suggest allowing for the use of 800 numbers in addition to web-based information.

- 7) Reasonable transition times for businesses to come into compliance with this regulation and recognition of existing warnings that are included in court-approved settlements.

ITI supports efforts to reduce the administrative burdens on compliance.

Conclusion:

We strongly urge the Agency to think creatively when it comes to getting this information to consumers, rather than remaining tied to information on a label. Research continues to show that beyond immediate hazards (e.g., "choking hazard," or "corrosive"), labeling of a product is an ineffective way to warn consumers of potential hazards. The Agency must consider what

immediate, tangible harms (such as the aforementioned choking hazard) will be dismissed by the consumer due to a lengthy and distracting paragraph provided directly on the packaging regarding chemical exposure, hazard traits and environmental and toxicological endpoints. At what point is more information too much information for a product package? We urge the Agency to consider what size fonts will be needed to fit the information on a product, especially smaller products. Further, would only English be acceptable, or would multiple languages be required?

ITI thanks OEHHA for the opportunity to provide these comments on the concept for regulation. We hope to continue working with the department to ensure these regulations ensure maximum necessary public health protection, while not overwhelming the public and the manufacturer with requirements for information printed on labels. Please do not hesitate to contact Chris Cleet at (202) 626-5759 or cleet@itic.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Cleet', with a long horizontal flourish extending to the right.

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