CalChamber
CALIFORNIA CHAMBER OF COMMERCE

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P.O. Box 4010
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*Sent electronically to: P65PublicComments@oehha.ca.gov*

**RE: PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6 – CLEAR AND REASONABLE WARNINGS**

Dear Ms. Vela:

The California Chamber of Commerce and the below-listed organizations (hereinafter, "Coalition") thank you for the opportunity to submit comments regarding the Office of Environmental Health Hazard Assessment's ("OEHHA") Notice of Proposed Rulemaking to Article 6 in Title 27 of the California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65") dated November 27, 2015 ("Proposal"). Our Coalition consists of over two hundred California-based and national organizations and businesses of varying sizes that, collectively, represent nearly every major business sector that would be directly impacted by OEHHA's Proposal.

On November 27, 2015, OEHHA noticed its decision not to proceed with its Notice of Proposed Rulemaking to Article 6 in Title 27 of the California Code of Regulations dated January 19, 2015 ("2015 Proposal") to allow sufficient time for public comment regarding modifications to the proposed regulatory language. The Proposal repeals and replaces the 2015 Proposal and thus initiates a new formal rulemaking process under the California Administrative Procedure Act. To ensure that the Coalition's comments on the 2015 Proposal are also part of the administrative record for the Proposal, the Coalition hereby incorporates to this letter by reference its comment letter dated April 8, 2015.[1]

The Coalition appreciates that OEHHA has elected to address some of the concerns raised in our April 8, 2015 letter. However, the Coalition remains very concerned about several aspects of the Proposal and their likelihood to result in compliance difficulties, increased frivolous litigation, and consumer confusion. Accordingly, this letter focuses on (1) the concerns that the Coalition raised in its prior comment letters but that OEHHA elected not to address, and (2) the concerns that OEHHA elected to address but which remain insufficient despite the changes. Where appropriate, we provide textual recommendations. The issues identified in this letter are not provided in any particular order, and accordingly, we respectfully request that OEHHA give equal consideration to every concern and recommendation.

[1] http://www.oehha.ca.gov/prop65/CRNR_notices/WarningWeb/pdf/comments/CalChamberCoalition.pdf

## 1. SECTION 25601(C): CHEMICAL SPECIFICATION REQUIREMENT

The 2015 Proposal would have required warnings to provide the name of one or more of twelve chemicals or chemical categories identified by OEHHA in the regulation. The new Proposal eliminates this requirement and, in its stead, would now require warnings to provide the name of one or more chemicals for which the warning is being provided. Specifically, proposed Section 25601 subsection (c) states as follows:

> [A] warning meets the requirements of this article if the name of one or more of the listed chemicals for which the warning is being provided is included in the text of the warning, to the extent that an exposure to that chemical or chemicals is at a level that requires a warning.

The new chemical specification requirement suffers from ambiguous drafting and, as a result, does not accurately reflect OEHHA's stated intent underlying the Proposal. The Proposal's ambiguity will make it extraordinarily difficult for businesses to assure themselves that they will be in compliance and will result in an increase of unnecessary and frivolous "bad warning" lawsuits similar to those that likely would have arisen from the 12 chemical requirement as discussed in further detail in our April 2015 comment letter. Additionally, as drafted, we are concerned that the revised chemical specification requirement may impose an unlawful burden on businesses and contradict the Act and the intent of the voters in adopting Proposition 65. We now discuss each of these issues in turn and provide recommendations to resolve them.

Section 25601 subsection (c) is problematic from a practical and legal standpoint for four primary reasons.

First, the language can be interpreted to suggest that a warning must specify *all* of the chemicals for which a warning is being provided if the business determines to warn for exposures to multiple listed chemicals. To wit, the requirement to name "one ***or more*** of the listed chemicals for which the warning is being provided" suggests that if there are more than one, the warning would have to specify those as well. As the Coalition understands it, however, OEHHA's intent is to allow businesses to specify *one* chemical in the warning, even if the warning is being provided for multiple chemicals. But given the current drafting ambiguity, some in the private enforcement community may interpret the language to mean that all chemicals must be specified in the warning. Thus, businesses that specify only one chemical when warning for multiple listed chemicals may be targeted for private enforcement actions and be required to defend such litigation in court at significant expense.

Second, we understand that OEHHA intends to allow businesses to identify any listed chemical they select even if they are providing the warning for multiple chemicals. However, under the current language, if a business provided a warning for Prop 65 listed chemicals A and B, it is unclear whether the business can elect to identify chemical A in the warning even if chemical B is somewhat more predominant in the product or facility (which does not necessarily mean it is more predominant in the exposure or poses the greatest effect). This issue will undoubtedly serve as a basis for litigation absent a clear and unequivocal statement that the business has discretion as to which relevant listed chemical it chooses to identify in its warning.

Third, given that it is often the central issue raised in enforcement litigation, the requirement that warnings specify a chemical "to the extent that an exposure to that chemical or chemicals is at a level that requires a warning" is unworkable. It also imposes an unlawful burden on the

defendant that contradicts the Act and the voters' intent in passing it. Specifically, under Proposition 65, the warning requirement shall not apply if "[a]n exposure for which the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause reproductive toxicity . . . ." (Health & Safety Code, § 25249.10.) In enforcement actions, the burden of showing that an exposure meets this criterion is on the defendant. (*Id.*) In other words, under Proposition 65, the defendant's only statutory burden is to demonstrate that *no* warning is required. Yet, proposed Section 25601subdivision (c) would inappropriately, unnecessarily, and unlawfully require businesses to demonstrate that a warning is indeed required. The phrase "to the extent that an exposure to that chemical or chemicals is at a level that requires a warning" should therefore be eliminated in its entirety.

Based on the three issues discussed above, the Coalition recommends the following changes—in bold and underline—to Section 25601 subsection (c) and to the Initial Statement of Reasons (ISOR):

> *Section 25601 subsection (c)*
>
> Except as provided in Section 25603(c), a warning meets the requirements of this article if the name of one or more of the listed chemicals for which the warning is being provided is included in the text of the warning~~, to the extent that an exposure to that chemical or chemicals is at a level that requires a warning~~. **If a warning is being provided for more than one listed chemical, the warning meets the requirements of this article if the name of any one of the listed chemicals for which the warning is being provided is included in the text of the warning.**
>
> *ISOR at p.24*
>
> OEHHA has therefore determined that providing the name of a listed chemical in all warnings is consistent with and furthers the "right-to-know" purposes of the statute and provides more specificity regarding the content of safe harbor warnings. **Specifically, Section 25601 subsection (c) states that if a warning is being provided for one chemical, that chemical must be specified in the warning. If, however, a warning is being provided for more than one chemical, then the person providing the warning may specify any chemical it chooses in the warning. For example, if a warning is being provided for Proposition 65-listed chemicals A, B, and C, the warning may specify chemical A only, chemical B only, chemical C only, a combination of two of the three chemicals, or all three of the chemicals.**

Fourth, absent further drafting adjustments, the proposal for specifying the name of a chemical risks confusion when an exposure involves both listed carcinogens and reproductive toxicants. For example, if an exposure involves both Chemical A (a carcinogen) and Chemical B (a reproductive toxicant) and the business elects to identify only Chemical A in the warning, the warning could falsely suggest to the consumer that Chemical A also causes birth defects or other reproductive harm when it does not (or, alternatively, that the exposure for which the

warning is being given involves carcinogens like Chemical A only). The following example illustrates this problem:

> This product can expose you to Chemical A, a chemical known to the State of California to cause cancer ***and*** birth defects or other reproductive harm. For more information go to www.p65Warnings.ca.gov/product. (emphasis added.)

Accordingly, the Coalition proposes that OEHHA simplify its safe harbor language throughout the Proposal into the following single formulation that has previously been embodied in several consent judgments reviewed by the Attorney General's office and approved by state courts and which will be subject to whatever further information OEHHA elects to post on its website to assist the consumer:

> **This product can expose you to chemicals, including [name of one or more chemicals], known to the State of California to cause cancer and/or birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/product.**

## 2. SECTION 25601(b): "CLEAR AND REASONABLE" DEFINITION

This subdivision provides that businesses can warn using content or methods different from those that are deemed "clear and reasonable" under the Proposal as long as the warning complies with the statute. However, unlike under existing regulations, the cardinal phrase "clear and reasonable" is not given any interpretive guidance. The conclusion to be drawn from eliminating prior "clear and reasonable" guidance is that businesses cannot rely on it going forward.

If the current regulation's language explaining what it means for a warning to be "clear and reasonable" is not retained, businesses will be forced to either use the new safe harbor language or risk being subjected to litigation over whether alternative warnings they use, or warnings that inadvertently miss the "safe harbor" mark, are "clear and reasonable" under that now undefined standard. OEHHA's elimination of this language leaves only a vacuum to replace it, and businesses crafting their own warnings will be far more likely to be attacked by private enforcers who take an expansive view of the statute's "clear and reasonable" requirement in order to use the expense businesses face in the litigation process as leverage to continue to extract settlements. In addition, it will waste precious state court resources, which will necessarily be taxed by a new round of senseless Proposition 65 cases.

If the proposed regulation is truly intended to form a new safe harbor only and to continue to permit businesses to provide alternative warnings—as well as establish the basis for defending a non-safe harbor warning—then restoration of the existing regulation's explanation of what "clear and reasonable" means is required. For that reason, we again ask OEHHA to carry forward unaltered the current regulation's introductory language regarding the meaning of "clear and reasonable" into the newly proposed regulation.

## 3. SECTION 25602(3): "LABELING" AS METHOD TO TRANSMIT WARNINGS

The issue of whether a warning can be transmitted using methods such as a package insert, pamphlet or owner's manual to satisfy a manufacturer's warning obligation under Proposition 65 is not clearly addressed in the Proposal and may cause some in the private enforcement

community to claim that it is never allowed. The term "Label" is defined in the Proposal as "affixed to a product or its immediate container or wrapper." The term "Labeling," however, is defined to include "any written, printed, graphic, or electronically provided communication that accompanies a product including tags at the point of sale or display of a product." In the proposed regulations, the section on the methods of transmitting a warning includes "An on-product label that complies with the content requirements in Section 25603(b)." (See §25602(a)(4).) It does not include the term "labeling" in this subparagraph, as is the case in the current regulation.

The current regulation states that a warning may be provided "on a product's label or other labeling." The terms "Label" and "Labeling" in the current regulation have the same general definitions as in the proposed regulation in that "Labeling" includes communication accompanying a product and "Label" does not. To ensure that the regulation continues to allow for methods of transmission such as warnings in a package insert, pamphlet or owner's manual of a complicated product requiring users to review instructions or where other health and safety warnings and information concerning even more prominent risks are contained, OEHHA should make the following revision to Section 25602(a)(4) before it is finalized:

> An on-product label **or other labeling** that complies with the content requirements in Section 25603(b).

**4. SECTION 25600(d): SUPPLEMENTAL INFORMATION**

Proposed Section 25600 subdivision (d) states that "[a] person may provide information to the exposed individual that is supplemental to the warning" but that "[i]n order to comply with this article, supplemental information may not contradict the warning."

Although OEHHA appropriately eliminated the terms "dilute" and "diminish" contained in the 2015 Proposal, the term "contradict" is similarly not concretely defined in the Proposal or the ISOR, but instead OEHHA cites to an example of supplemental information and deems it contradictory to the warning without any explanation or citation. This aspect of the Proposal is thus unconstitutionally vague, and potentially violates the First Amendment commercial free speech rights of affected businesses. The entire phrase and the ISOR's discussion of it should therefore be eliminated. Otherwise, it is inevitable that private enforcers will seize on the elasticity of the example OEHHA provides and that litigation will swell to give judicial context to the term "contradict," all at considerable expense to California businesses and the state's courts.

In the ISOR, OEHHA notes that it is "aware that some companies currently provide information to consumers about their Proposition 65 warnings that appear to be intended to reduce the effectiveness of the warnings by essentially contradicting it and providing other inaccurate information about the law. This type of information does not further the purposes of the Act and is not allowed under this regulation." To support this statement, OEHHA, in a footnote, merely cites to information that a furniture manufacturer provided to consumers regarding wood dust, brass, and PVC in its products. The ISOR does not, however, explain why the example it provides "contradicts" the warning as opposed to merely providing legally and constitutionally permissible context and background. The ISOR's footnote example is therefore particularly problematic and should be eliminated.

Indeed, the U.S. Supreme Court has made clear in commercial speech cases that the First Amendment "embraces at the least the liberty to discuss publicly and truthfully all matters of public concern." *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 530, 534 (1980); *accord, Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 562-63 n.5 (1980). It has also held that speech on matters of public concern (and Proposition 65 certainly qualifies) needs "breathing space"— incorporating subjective or controversial speech and possibly even false or misleading speech—in order to survive. *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964).

More importantly, Proposition 65 is primarily enforced through litigation brought by private individuals or organizations (and their attorneys) who have themselves suffered no loss of money or property or other injury in fact. If the proposed prohibition on "contradictory" language is adopted, and particularly in light of the ISOR's example, then a business that provides supplemental information runs a serious risk of being sued by a private enforcer claiming that the warning is not "clear and reasonable" under the statute and regulations. This is the precise situation in which constitutionally protected speech will be chilled, with the implementing regulations providing the means. There are serious constitutional problems with a law that deputizes private individuals or organizations, who themselves have suffered no injury in fact or loss of money to property, to sue businesses over what they say. As U.S. Supreme Court Justice Stephen Breyer, joined by Justice Sandra Day O'Connor, noted in the context of California's Unfair Competition and False Advertising Laws before they incorporated the requirement that the plaintiff have suffered loss of money or property:

> The delegation of state authority to private individuals authorizes a purely ideological plaintiff, convinced that his opponent is not telling the truth, to bring into the courtroom the kind of political battle better waged in other forums. Where that political battle is hard fought, such plaintiffs potentially constitute a large and hostile crowd freely able to bring prosecutions designed to vindicate their beliefs, and to do so unencumbered by the legal and practical checks that tend to keep the energies of public enforcement agencies focused upon more purely economic harm.
>
> That threat means a commercial speaker must take particular care -- considerably more care than the speaker's noncommercial opponents -- when speaking on public matters. A large organization's unqualified claim about the adequacy of working conditions, for example, could lead to liability, should a court conclude after hearing the evidence that enough exceptions exist to warrant qualification -- even if those exceptions were unknown (but perhaps should have been known) to the speaker. Uncertainty about how a court will view these, or other, statements can easily chill a speaker's efforts to engage in public debate -- particularly where a "false advertising" law, like California's law, imposes liability based upon negligence or without fault. At the least, they create concern that the commercial speaker engaging in public debate suffers a handicap that noncommercial opponents do not.

*Nike, Inc. v. Kasky*, 539 U.S., 654, 676 (Breyer, J., joined by O'Connor, J., dissenting from denial of writ of certiorari (citations omitted).)

Although this risk of litigation over supplemental information has always existed under Proposition 65, it will be greatly increased by OEHHA's proposed prohibition on language that

"contradicts" the warning. That language will open up an entirely new category of Proposition 65 litigation and in the process chill constitutionally protected speech on matters of public concern. OEHHA should not go beyond Proposition 65's mandate and restrict what else a business may choose to say to its customers, potential customers, and members of the public. If OEHHA believes that a statement is inaccurate or misleading, then it may say so and thereby engage in that debate in the public forum. But OEHHA simply cannot attempt to ban the debate.

### 5. SECTION 25600(f): GRANDFATHERING PRIOR COURT-APPROVED CONSENT JUDGMENTS

The Coalition appreciates that OEHHA has agreed to reintroduce express regulatory language stating that warnings provided pursuant to a court-ordered settlement or final judgment is deemed "clear and reasonable" under the Proposal. The Coalition is concerned, however, with two aspects of proposed Section 25600 subdivision (f) that require revision or elimination.

First, proposed Section 25600 subdivision (f) only grandfathers in warnings provided for consumer products or environmental exposures. As OEHHA may be aware, older court-approved consent judgments also address occupation exposures. Indeed, court-approved consent judgments for occupational exposure warnings are just as valid and legally binding as those pertaining to consumer products and environmental exposure warnings. Accordingly, there is no legal or policy basis to exclude them from the regulation. To address this issue, OEHHA should either add the phrase "occupational" to this section or eliminate the phrase "consumer product or environmental" altogether.

Second, the phrase "if the warning fully complies with the order or judgment" could unintentionally be interpreted as opening the door to third-party enforcement of court-ordered settlements or final judgments. That phrase could suggest that a third-party private enforcer, in its sole discretion, may unilaterally determine whether or not the warning "fully complies" with the order or judgment. Such an interpretation is at odds with the *res judicata* protection afforded by court-approved settlements. Further, only the court that presided over the settlement or judgment has the authority to make a compliance determination, after appropriate legal proceedings pursuant to such settlement or judgment have reached their conclusion. Accordingly, the phrase "if the warning fully complies with the order or judgment" should be eliminated in its entirety.

### 6. SECTION 25603(b): PRODUCTS CONTAINING ON-PRODUCT WARNINGS THAT ARE ALSO SOLD VIA INTERNET OR MAIL ORDER CATALOG

In an apparent effort to incentivize the use of on-product warning labels, proposed Section 25603 subsection (b) allows businesses to use a so-called "truncated" warning as a safe harbor warning. Subsection (c) of that same section states that a person using a truncated warning is not required to include within the text of the warning the name or names of a listed chemical.

While the required safe harbor language for truncated warnings is clear, the Proposal is silent and therefore leaves unanswered whether internet or mail order catalog retailers who sell products bearing on-product warning labels must also warn online or within the catalog using the methods of transmission identified in proposed Section 25602 subsections (b) and (c). Absent a regulatory clarification, the Proposal can be interpreted to promote an unprecedented warning regime wherein certain products would require *two* Proposition 65 warnings merely because of the manner in which they are sold. Of course, if on-product warning labels in

brick-and-mortar stores are clear and reasonable under the law, then so too should on-product warning labels for products sold online or via mail order catalogs. In both scenarios, the consumer would receive a warning prior to exposure, in furtherance of the purpose of Proposition 65.

The Proposal's lack of clarity on this issue, however, fundamentally undermines OEHHA's intent to encourage the use of on-product warnings. To achieve OEHHA's goal and avoid such an unprecedented warning burden, the Proposal must include an express statement that a business providing an on-product warning label pursuant to Section 25603 subsection (b) need not provide a warning using any other method. The Coalition therefore recommends adding newly proposed subdivision (d) to Section 25603:

> **(d) A retail seller that sells a product containing an on-product warning label pursuant to subsection (b) via mail order catalog or the internet is not required to provide an additional warning for that product using the methods of transmission identified in Section 25602 subsection (b) or (c).**

### 7. SECTIONS 25602(a)(4) AND 25603(b): MEANING OF "ON-PRODUCT"

Proposed Sections 25602 subsection (a)(4) and 25603 subsection (b) use the term "on-product" to refer to, in the ISOR's terminology, "a specific short version" of the warning language that may appear on labels of products and serve as a safe-harbor warning. The term "on-product" is not defined within the text of the regulations. Although in context the Coalition believes it clearly refers to warnings that are on the exterior packaging of the product or on the product itself, the Coalition believes that the regulations would benefit from clarifying that the "on-product" warning need not appear on the product itself but can instead appear on its label or other exterior packaging.

### 8. SECTION 25600.2(e): ACTUAL KNOWLEDGE IN RETAILER CONTEXT

Proposed Section 25600.2(d) seeks to implement Section 25249.11(f) of the Act, which directs OEHHA to develop regulations to reduce the burden on retailers in providing warnings when they are not responsible for creating an exposure to a listed chemical. In particular, Proposed Section 25600.2(d)(5) would limit retailer exposure to enforcement lawsuits by allowing an opportunity to avoid those lawsuits where a foreign or exempt vendor (a vendor who has fewer than 10 employees) supplied the product, and by defining the "actual knowledge" giving rise to a warning obligation in relation to receipt of a pre-suit notice of violation. 25600.2(d)(5)(C).

Section 25600.2(d)(5) states that a retailer is responsible for providing the warning required by Section 25249.6 in certain prescribed circumstances, one of which is when the product is supplied by a foreign or exempt vendor and the retailer has "actual knowledge" of the potential exposure. As defined in Section 25600.2(d)(5)(C), a retailer is deemed to have "actual knowledge" two business days after a retailer receives a notice served pursuant to Section 25249.7(d)(1) of the Act, thereby providing the retailer an exemption from the warning obligation if it has taken action on the notice within two business days.

As stated in the Coalition's April 2015 comment letter, the two-business-day time frame for taking action in response to a notice will be unworkable for the vast majority of the state's retailers. The following list of issues highlights numerous concerns demonstrating that it will be the exception that a retailer of any size will be able to remove products from sale or provide warnings within the two-business-day time frame.

***Ensuring the Notice Gets to the Right Person(s)***

Section 25903(c)(4), pertaining to the service of 60-day notices of intent to sue, requires a notice of violation to be served on the Chief Executive Officer, President, or General Counsel of a business. Typically, that person is not the individual in a retail organization responsible for assessing and responding to such a notice; the notice directed to the CEO, President or General Counsel will likely never reach that person initially, but instead must be processed by that person's administrative staff; and the notice must then be routed to the individual in the company responsible for handling the company's response to the notice. In our experience, this alone can take two or more business days.

***Understanding What is at Issue in the Notice***

Even when the 60-day notice finally reaches the correct individual within the retailer organization, that individual may still have difficulty understanding what product, exactly, is the subject of the notice. There are two issues here. First, the overwhelming majority of notices sent to retailers identify an "exemplar" but also a category of products (e.g., "Hand Tools with vinyl/PVC grips," including but not limited to "Wrench, SKU 12345, UPC 1 23456 78909 8"). The first issue, then, is whether the retailer is able to accurately identify the specific wrench. This problem is substantially exacerbated when the notice identifies foods, like "baking ingredients," containing a listed chemical. Not infrequently, the retailer needs more information (such as a receipt or the ticket on the product, or even a photo if the exemplar item cannot be located) in order to be able to identify the actual product and the supplier. As such, the retailer would need to reach out to the party serving the notice to request that information (which the noticing party is not required to provide under current regulations).

Second, although OEHHA has added the requirement that notices provide a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Section 2509(b)(2)(D), as noted in our April 2015 comment letter, courts, in interpreting this section, have ruled inconsistently on whether notices that include exemplar products but purport to provide notice over a type of product (such as "Hand Tools with vinyl/PVC grips") comply with this mandate.

***Interacting with the Vendor***

Retailers and their manufacturers and suppliers have a business relationship that often dictates or anticipates the handling of products. Retailers typically need to reach out to the product manufacturer or supplier (who may or may not be named in the notice) to find out whether they want the retailer to take any particular course of action with respect to the products they manufactured or supplied. The manufacturer may not want a warning to be placed on the product and be prepared to defend it, or may want the product pulled from sale in California or elsewhere. Communicating with suppliers often in and of itself takes more than two business days, and the retailer should not be put in the position of having to make a decision about whether to warn or stop sale of a product without obtaining necessary information from the supplier and affording the supplier with an opportunity to be involved in that decision.

***Taking Action***

If the retailer decides that it wants to avail itself of the limited warning exemption and avoid a lawsuit by subsequently providing a warning or removing the product from sale within two

business days of the notice, it then needs to quickly implement this corrective action. Implementation involves several steps, depending on the size of the retail entity. For large retailers, often with several hundred stores in the state, implementation involves:

- Crafting a communication to stores;
- Potentially programming a stop-sale in the point-of-sale software system, and/or a do not ship notice at the distribution centers; and
- Programming the actual action that needs to be taken to either post a sign, sticker the identified product in all stores, or remove the product from all shelves.

Assuming the retailer has reached a decision to take affirmative action, it will typically take at least two to three business days for this process alone to effectively conclude and even then assuming that a business is able to start the process on the day it receives notice.

OEHHA has justified limiting the actual knowledge requirement to two business days because it is claimed to be "consistent with policies for recalls by the federal Food and Drug Administration and Consumer Product Safety Commission." (2015 ISOR at p. 21.) OEHHA's Proposal is not consistent with these recall policies. Under Section 417 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 350l) the FDA may order a firm to recall various products, but only after giving the firm an opportunity to respond, which is typically fifteen working days from receipt of such request. (See, e.g., Warning Letter CMS # 476745 (August 8, 2015); [requesting a response "within fifteen (15) working days"]; CMS # 4333344 (September 18, 2014) [same].).

While the ISOR does not cite to any CPSC policies, CPSC regulations requiring that manufacturers, distributors, or retailer submit reports of potentially defective products pursuant to Section 15 of the Consumer Product Safety Act, require that any reports be filed "immediately" (15 U.S.C. § 2064(b)). While the regulations define "immediately" as within 24 hours (16 C.F.R. § 1115.14(e)), they also recognize that companies need time to process information and investigate. CPSC does not impute knowledge to a firm until knowledge of product safety related information is received by "an official or employee who may reasonably be expected to be capable of appreciating the significance of the information." (16 C.F.R. §1115.11(a) "Under ordinary circumstances, five days should be the maximum reasonable time for information to reach the Chief Executive Officer or the official or employee responsible for complying with the reporting requirements of Section 15(b) of the CPSA." (16 C.F.R. § 1115.14(b).) The regulations provide that a firm may take up to 10 days to investigate information that may support the conclusion that a product is defective. (16 C.F.R. § 1115.14(d).)

Other federal regulatory schemes have similar rules. The Reportable Food Registry ("RFR") is an electronic portal for food producers to notify the FDA of foods that will cause serious adverse health consequences. A responsible party must submit a report to FDA through the RFR if a food creates a "reasonable probability that the use of, or exposure to, the related article of food will cause serious adverse health consequences or death to humans or animals." 21 U.S.C. § 350f(a)(2). The report must be submitted "as soon as practicable, but in no case later than 24 hours after a responsible party determines" that an article of food is reportable. Id. at § 350f(d)(1).

The National Highway Traffic Safety Administration ("NHTSA") requires manufacturers to report that a safety defect or non-compliance exists within five working days. 49 C.F.R. § 573.6. The five day timeline begins when a safety defect or non-compliance "has been determined to exist." Id. at § 573.6(b). Per NHTSA's Safety Recall Compendium, this means that the timeline begins "once a manufacturer has decided that a safety defect or noncompliance exists."

All of these reporting and remedial action requirements follow two basic approaches: either they require immediate reporting but allow a company to investigate and determine that there is an issue before being obligated to report, or they require action only upon the company's determination that there is some issue that requires action. And this is the right result for Proposition 65 notices of violation, as well. The information provided to retailers in such notices is invariably insufficient on their face, to allow a retailer to determine whether the allegations have any merit and thus to determine whether to continue to sell the product or provide a warning.[2] Indeed, this was recognized in the recent AB 227 (Gatto 2013) amendment to Proposition 65, which allows 14 days for a retailer to avoid liability for an alleged Proposition 65 violation, in certain limited circumstances.

In light of these realities, the Coalition submits that the absolute minimum time frame for a retailer to take corrective action in response to a pre-suit notice should be 10 business days. The regulation should also clarify that actual notice is limited to the "exemplar" – the product actually described in the notice, not the broader category or "specific type" of product, and that the enforcer must provide identifying information on request of the retailer, which request tolls the time period until it has been received by the retailer.

The Coalition also reiterates the need to require specificity in a pre-suit notice to a retailer where the notice will be used to determine the retailer's actual knowledge. The current regulation simply states that the notice must contain "sufficient specificity" to meet the requirement of the notice regulation. Courts often find that generic notices (e.g., "handbags," "clothing," footwear," "tools with vinyl grips") are sufficient under 27 Cal. Code Regs. § 25903(b)(2)(D), even though retailers often carry many products within such product categories, and such generic notices do not allow retailers to determine which products (manufactured by others) are alleged to violate the Act and which are not. Accordingly, OEHHA should clarify in the Final Statement of Reasons that a pre-suit notice to a retailer does not provide actual knowledge of an exposure for any consumer product not specifically identified by manufacturer and model number or other product identifying information. At a minimum, this allows the retailer to focus its investigation in response to a notice.[3]

Moreover, OEHHA may wish to consider the following additional actions to allow retailers to respond more effectively to notices:

- Amend Section 25903 to allow companies to register an email address with OEHHA for service of pre-suit notices.

[2] The Coalition notes that private enforcers are not required to serve a notice of violation within two business days of learning of an alleged violation; indeed, they have as much time as the statute of limitations allows to investigate an alleged violation. It seems incongruous that a retailer, with little to no knowledge of how a product is manufactured, should shoulder the impossible burden of assessing the merits of such a notice within two business days.

[3] The same clarification needs to be made for proposed § 25600.2(g), which requires sufficient specificity for a request to a retailer for the identity of the manufacturer, producer, packager, importer or distributor of a consumer product.

- Amend Section 25903 to require private enforcers to provide copies of receipts and pictures for notices served on retailers for consumer products, including food.

- Address the ambiguity in Section 25903 that is created by the description in the Final Statement of Reasons for that section that allows notices to describe "spray paint," "ceramic tableware," etc. to explain that such terms do not substitute for the requirement in the proposed regulation that a notice provide "sufficient specificity to inform the recipients of the nature of the items allegedly sold in violation of the law and to distinguish those products or services from others sold or offered by the alleged violator for which no violation is alleged."

## 9. SECTION 25602(d): FOREIGN LANGUAGE REQUIREMENT

Section 25602(d) provides that if any "label, labeling or sign that provides consumer information about a product is provided in a language or languages other than or in addition to English, then a warning for that product meets the requirement of this article only if the warning is also provided in the same language or languages on that label, labeling or sign." This section generally suffers from vagueness, does not give proper guidance to businesses on how to comply, and thus will directly lead to more lawsuits.

First, as noted in our April 2015 comment letter, the subsection does not indicate what amount of another language needs to be present on a label to trigger a warning in that language. It is not difficult to foresee an aggressive plaintiff finding an otherwise compliant label with one or two non-English words and bringing suit. For example, consumer products may be branded with a single common non-English word (e.g., "hola beautiful," "blue and belle," "ciao comfort," etc.). These popular non-English words are common in the American lexicon. In an apparent attempt to address this issue, the Proposal now states that the foreign language requirement is triggered only if "consumer information" about a product is provided in a foreign language. The ISOR then notes that "OEHHA does not intend for this provision to apply where only the name of the product is provided in a language other than English." The term "consumer information" is extraordinarily broad, however, and may indeed encompass product names notwithstanding OEHHA's stated intent to the contrary in the ISOR. If OEHHA truly intends to limit the application of this provision, then it must specifically identify what constitutes "consumer information" and must further provide an unequivocal statement that the foreign language requirement does not trigger if a product name contains non-English words.

Second, while the proposed regulations give detailed and precise requirements for the language to be employed in the English-language warnings, they do not give an indication of how these warnings are to be properly translated. As the safe-harbor warnings have been replaced by these provisions, businesses do not have guidance on the content that must be included in the non-English warnings. Allegedly improperly translated warnings may further prompt suits. Defending such a suit will require engaging linguistic experts to prevail, making a forced settlement inevitable. Accordingly, the regulation should specify precisely what warnings must say when provided in other languages. At the very least, OEHHA should provide that translated warnings are subject to the "rule of reason" so as to reduce the likelihood that private enforcers will pursue frivolous translation lawsuits.

Third, the foreign language proposal does not take space limitations into account. At the very least, the foreign language requirement should, where triggered in the consumer product context (as distinct from the environmental exposure contact), be limited to the provision of only

one language in addition to English with the additional language being the one most likely to be understood by consumers of that product in California (i.e., Spanish in most cases, except where the product is targeted predominately for use by a different ethnic subpopulation). In addition, given tri-lingual NAFTA labeling requirements (which indeed require products to provide "consumer information"), there is little sense or upside to requiring Proposition 65 warnings to be printed in French given that very few people in California even speak it. Further, because of space limitations and the heightened need for an importance of nuance and context, there should, at the very least, be an exemption in the multiple languages requirement for food labels.

Fourth, this provision also appears to create greater burdens on retailers, against the goals of Section 65200.2. 65200.2(d)(5) states that retailers will be held responsible for warning requirements when a manufacturer, producer, packager, importer or distributor of a product cannot be compelled to comply, because they are foreign persons, and if the retailer has actual knowledge of the product exposure. Therefore, retailers selling foreign goods, with labeling in other languages, may be required to provide extra warning labels in the other language.

With these practical and legal issues in mind, it should be noted that during the March 25 public hearing on the previously proposed regulation, OEHHA stated that it intends to include translated warnings on its proposed website. OEHHA can eliminate the problems the Coalition has identified with respect to the foreign language requirement by including translated warnings on its website in multiple languages in lieu of requiring businesses to provide them whenever another language is present on a label. This would reduce unnecessary burdens on the regulated community, ensure that businesses aren't targeted with frivolous litigation with respect to this aspect of the Proposal, and further satisfy OEHHA's stated objective of ensuring that non-English speaking members of the public have access to information about chemical exposures in their primary language.

Alternatively, if OEHHA remains inclined to require businesses to provide warnings in multiple languages on labels, it would only make sense for the foreign language requirement to be triggered if other *health-related* warnings for a product are given in multiple languages, not based solely on the mere use of multiple languages on a label related to "consumer information." Even then, OEHHA should limit the requirement to one additional language.

### 10. SECTION 25602: METHODS OF TRANSMISSION FOR CONSUMER PRODUCT WARNINGS

***Font Size***

Section 25602 subsections (a)(1), (a)(3), (a)(4), (b) and (c) all state that the warning must be in a type size no smaller than one half the largest type size used for other "consumer information." This provision, although improved from the previous Proposal, requires clarification. Specifically, similar to the Coalition's concerns with respect to the foreign language requirement discussed above, the term "consumer information" is extraordinarily broad and, without guidance in the regulation or the ISOR, may be a phrase subject to unnecessary and frivolous litigation. Accordingly, the regulation or the ISOR should be revised to specifically identify what constitutes "consumer information" in this context so that the regulated community can select a font size without risking the threat of litigation.

***Warnings Prior to Purchase***

Since its inception, Proposition 65 has mandated warnings for consumers prior to exposure to a listed chemical. Section 25601 of the current regulations reiterates that warnings should be timed such as to communicate their message "prior to exposure." This requirement allows businesses to employ a broad range of possible methods to warn consumers of exposures.

Proposed Section 25602 would exceed this clearly established element of the law. Section 25601's "prior to exposure" language has been completely removed from the proposed regulations. It is replaced instead with the proposed language of 25602(a)(2), which would require warnings to be provided "prior to or during the purchase of the product." This is inconsistent with the statutory text and beyond the authority granted to OEHHA in enacting regulations for Proposition 65. This clearly will subject the proposed regulations to litigation if adopted in its current form.

That the proposed regulations seek to impose a new regime of "prior to purchase" warnings is highlighted by Section 25602(b), which requires warnings to be prominently displayed prior to the purchase of a product online. Further, this requirement appears to be implied for product labels as well, as the new regulations exclude references for warnings "prior to exposure."

OEHHA has failed to clearly delineate how this narrower approach is authorized by the law or why it is necessary. In fact, contrary to the Proposal itself, the ISOR continues to use the statutorily supported "prior to exposure" standard throughout its explanations and OEHHA has repeatedly stated publicly that its position is that warnings must be provided prior to exposure. Once again, the regulated community cannot be called upon to shoulder the burden of OEHHA's lack of clarity on this point.

Further, OEHHA's proposed approach would invalidate several effective warning methods now employed by businesses. Currently, businesses provide warnings using a variety of methods that warn consumers prior to exposure, but potentially post-purchase. Such methods include user manuals, use and care guides, warnings on internal packaging, and on product packaging for products bought over the internet. These warning methods would now be subject to challenge under the proposed regulations, while doing little to improve consumers' access to information, reduce frivolous litigation, or introduce predictability and clarity to businesses. Lastly, implementing warnings that are provided "prior to purchase" will be unduly expensive, particularly for small businesses.

***Warning Via Electronic Devices***

Beyond 25602(a)(2)'s unauthorized shift in the required timing of warnings, it suffers from a host of other problems which render it unworkable for business and subject to legal challenge. As described in the ISOR, 25602(a)(2) is intended as a "catch-all" provision, encompassing an array of devices and tools that may be employed to provide consumers with a warning. However, such devices may only be employed in a manner that does not require the purchaser to "seek out the warning."

There is no described threshold for what actions a purchaser must have to take in order to be considered "seeking out a warning." The ISOR lists several methods that may be suitable for providing a warning, including "electronic shopping carts, smart phone applications, barcode scanners, self-checkout registers, pop-ups on Internet websites and any other electronic device

that can immediately provide the consumer with the required warning." However, several of these devices would likely require a purchaser to take proactive steps with the device in order to access the warning. For example, barcode scanners would require a consumer to scan a product prior to purchase.

One would assume that OEHHA intends for these devices to be sufficient methods of providing a warning. However, the ISOR also states that the provision should not be read as allowing business to rely on such devices, if a consumer must "seek out the warning." Through this vague guidance, the subsection and the ISOR leaves unanswered the question: at what point is a purchaser being required to "seek out a warning"? Due to this lack of clarity about what methods are permitted, many businesses are unlikely to provide warnings under this subsection, even if it may be the most effective method. This vagueness is fodder for frivolous lawsuits and creates uncertainty for businesses, especially given the fact that the proposed regulations considerably limit the available methods of warning.

***Internet Purchases***

The proposed "prior to purchase" requirements will especially impose substantial economic and compliance burdens on internet retailers. Section 25602(b) appears to require warnings to be given prior to an internet purchase, even if the product has proper labels that have been included by a manufacturer.

It is unclear how this requirement is meant to harmonize with the proposed allocation of responsibility under Section 25600.2(b), which purportedly seeks to minimize the burden on retail sellers. Under that section, it would appear that a retailer has no stated responsibility to warn if the manufacturer affixes a warning label to the product. In such a scenario, retailers are only responsible for warnings if they "covered, obscured or altered a warning label" – absent this, retailers seem to have no obligations. Section 25602(b), on the other hand, imposes an affirmative burden to warn on internet retailers, regardless of whether a warning has been provided on the product label by the manufacturer. As a result, the proposed regulations are inconsistent.

Requiring such a warning to be provided in every instance for every covered product is a massive burden to put on internet retailers of any size. Large internet marketplaces selling a massive volume of products from a variety of manufacturers will be prime targets for frivolous lawsuits, as a failure to provide a "prominently displayed" warning on the site will be enough to trigger a suit against the retailer. On-product labeling, apparently, will be inadequate to protect the seller.

This lack of protection will be equally crippling to small retail sites, as they may lack the economic or staff resources to constantly update the coding on their website to comport with their current inventory. The simple mistake of failing to check a product label to see if the manufacturer included a warning, thereby requiring the retailer to include a warning on their website, could trigger costly litigation.

***Pamphlets and Other Systems of Warning***

The current regulations suggest that pamphlets, public advertisements, and other systems of providing Proposition 65 warnings may be appropriate warning methods (see e.g., 27 CCR § 25603.1(d)). Proposed Section 25602 should be revised to continue to reflect this so that no

inference might be drawn that pamphlets, advertisements and other systems of communicating warnings are not appropriate warning mechanisms.

### 11. SECTION 25600(b): USING NEW WARNINGS PRIOR TO EFFECTIVE DATE

Proposed Section 25600 subsection (b) states that "[a] person may provide a warning that complies with this article prior to its two-year effective date." Elaborating on this provision, the ISOR states that "[f]or two years following adoption of the regulations, businesses will have the option of using either the old safe harbor warnings or the newly adopted safe harbor warnings."

Although proposed Section 25600 subsection (b) is clear that businesses may warn in accordance with the new regulations after the date of adoption but prior to the effective date, the regulations do not clearly state that such warnings would be deemed a safe harbor notwithstanding the fact that the effective date has not transpired. Accordingly, the Coalition recommends the following revisions to proposed Section 25600 subsection (b):

> (b) This article will become effective two years after the date of adoption. A person may provide a warning that complies with **all applicable requirements of** this article prior to its two-year effective date. **A warning that complies with all applicable requirements of this article prior to the article's two-year effective date is "clear and reasonable" within the meaning of Section 25249.6 of the Act.** A warning for a consumer product manufactured prior to the effective date of this article is deemed to be clear and reasonable if it complies with the September 2008 revision of this article.

Additionally, the ISOR attempts to elaborate on this provision, but in doing so, appears to suggest that in between the regulation's adoption date and effective date, businesses are limited to only using either the old safe harbor warnings or the newly proposed safe harbor warnings. (ISOR at p.11.) However, as OEHHA is aware, both the current and newly proposed regulations also expressly allow businesses to provide alternative warnings other than the safe harbor warnings. (See 27 CCR § 25601 [current regulations] and Proposed 27 CCR § 25601(b) [proposed regulations].) Accordingly, the ISOR should be revised to clarify that businesses may continue to provide such alternative warnings during the two-year period between the adoption date and the effective date. The Coalition recommends the following clarification:

> Subsection (b) provides a two-year delayed effective date for the new regulations. For two years following adoption of the regulations, businesses will have the option of using either **(1)** the old safe harbor warnings**,** ~~or~~ **(2)** the newly adopted safe harbor warnings**, or (3) alternative warnings that comply with either the requirements specified in 27 CCR § 25601 of the current regulations or proposed Section 25601 subsection (b) of the new regulations.**

### 12. SECTION 25607(b): SPECIFIC PRODUCT, CHEMICAL AND AREA EXPOSURE WARNINGS

Section 25607 subsection (b) states that if a person does not cause an exposure to a listed chemical required to be identified in a tailored warning, then the name of that listed chemical need not be included in the tailored warning in order for the warning to be deemed "clear and reasonable" under the Act. Instead, like the general consumer product warning requirements, the name of at least one listed chemical requiring a warning must be included in tailored warnings.

The Coalition appreciates the underlying intent of this provision; however, the ISOR discussion adds confusion to what should otherwise be a simplistic explanation regarding the purpose of this aspect of the Proposal. First, the ISOR potentially imposes a similarly unlawful burden on businesses as discussed in Section 1 above. Specifically, the ISOR notes that if a listed chemical that is required to be included in the tailored warning "is not present at a level requiring a warning," a person is not required to include that chemical in the warning. This language is unnecessary and should be replaced with language that does not unnecessarily raise potential issues regarding statutory legal burdens. Second, the ISOR notes that if a person "does not knowingly and intentionally cause an exposure" to at least one listed chemical, no warning is required at all. It appears that OEHHA is intending to state that one who sells a product or owns an area identified in the tailored warnings need not provide a warning at all if no exposure is occurring. Third, the ISOR would benefit from providing an example illustrating what OEHHA intends by including Section 25607 subsection (b) in the Proposal. Accordingly, the Coalition recommends the following:

> (b)The tailored warning methods described in Section 25607, et seq. require the names of listed chemicals for which a warning has been required within certain industries. Under subsection (b)**,** if a listed chemical that is required to be included in the tailored warning is not ~~present at a level requiring a warning~~ **causing an exposure**, a person is not required to include that chemical in the warning **in order for the tailored warning to be deemed "clear and reasonable" under Section 25249.6 of the Act. Specifically**~~however~~, **if a person providing a tailored warning is causing an exposure to a chemical or chemicals other than the one(s) specified in the tailored warning,** the **warning is deemed to be "clear and reasonable" under Section 25249.6 of the Act if the** name of at least one chemical for which a warning is being provided ~~must be~~ **is** included in ~~all~~ **the tailored** warning~~s~~. ~~If a business does not knowingly and intentionally cause an exposure to at least one listed chemical, no warning is required at all.~~ **A person who does not cause an exposure to any listed chemicals need not provide a warning under this Section.**
>
> **The following example illustrates how Section 25607 subsection (b) would work in practice: Tailored warnings for petroleum products require the warnings to specify "toluene" and "benzene." (See Section 25607.25.) However, a person providing a petroleum products warning need not specify toluene or benzene in a tailored warning if the person determines that no exposure is being caused to toluene or benzene. If, however, the person is causing an exposure to listed chemical A (i.e., a listed chemical other than toluene and benzene), then chemical A must be included in the tailored warning in order to be deemed "clear and reasonable" under Section 25249.6 of the Act. If no exposures are being caused to toluene, benzene or any other listed chemicals, then no warning is required.**

Further, with the understanding that Section 25607 subsection (b) provides an exception to Section 25607 subsection (a), the following clarification should be inserted into subsection (a) to avoid unnecessary confusion:

> This section provides warning methods and content for specific types of exposures that are subject to the warning requirements of Section 25249.6 of the Act. **Unless otherwise specified in Section 25607(b),** ~~W~~**w**here warning

methods or content are included in this section, a person must use the warnings specified in this section in order to satisfy the requirements of this subarticle.

### 13. SECTION 25603(a)(1): PICTOGRAM

To comply with this section, a Proposition 65 warning would need to include an American National Standards Institute (ANSI) symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. It is unclear why any symbol should be included with a Proposition 65 warning, especially one that has been used for other purposes and will not be meaningful to the receiver of the warning. Specifically, this very symbol is associated with more significant or acute hazards than those that fall within Proposition 65's reach, such as choking or allergic reaction risks.

Borrowing the ANSI symbol and pairing it with a "WARNING" in all capital letters will inadvertently and perversely increase consumer confusion. Its widespread appearance on products such as earrings, headphones, and garden hoses will seriously dilute, by overwarning, the ANSI Z535 committee's careful standardization work since 1979 to "promote a single, uniform graphic system used for communicating safety and accident prevention and information." (ANSI Z535.4-2011, Foreword, page vii.) The use of this symbol and "WARNING" is clearly intended for potential accident situations where death or a serious potential injury is possible. (ANSI Z535.4-2011, clause E4.3, page 31.)

Accordingly, it would be more consistent with the statute and make more sense to use within a symbol a "P65" or "65" that associates with the basis for why the warning is being given and provides a URL to go to the website where more explanatory and contextual information will be available.

### 14. SECTION 25604: ENVIRONMENTAL EXPOSURE WARNINGS

Proposed Section 25604 contains elements that, if not improved, will create significant financial costs to businesses and increase the risk of unnecessary enforcement actions.

Subsection (a)(1) describes signage to be used to transmit the warning. Under this subsection, warnings transmitted via signs must be "provided in a conspicuous manner and under such conditions as to make it likely to be read, seen and understood by an ordinary individual in the course of normal daily activity…." Yet, proposed Section 2600.1(j) already defines "sign" in virtually the identical way. The ISOR does not explain how that definition and subsection(a)(1) interact. This apparent duplication is confusing, making it difficult for a business to understand exactly what is required and, worse, rendering it a target for exploitation via bounty hunter lawsuits.

The requirement to provide warnings in other languages imposes significant burdens on business and makes them vulnerable to lawsuits. Subsection (a)(3)(C), for example, may require a business to canvass a particular area to make the factual determinations necessary to determine whether a warning in another language must be given. Such investigation would require significant resources; even so, it may not reveal information that could trigger a second language warning requirement (e.g., whether a foreign language newspaper is being circulated to the affected area).

Difficulties also arise with subsection (a)(2)'s reference to "language ordinarily used by the business." That language perfectly sets up a dispute of fact, to be litigated by the parties, about what language is "ordinarily" used. This requirement should be eliminated.

Finally, the Coalition again questions why the Proposal would eliminate as an option the posting of signs in a manner described in Title 3, California Code of Regulations, Section 6776(d). That section sets forth the requirements for a property operator to provide signs about pesticides that have been applied on the property. The reference to Section 6776(d), which is found in the current safe harbor environmental warning regulations, is not a mere duplication of the occupational exposure warning regulations. The reference was specifically intended to establish another means for businesses to transmit warnings, particularly for unfenced outside areas. As the Health & Welfare Agency stated in the Final Statement of Reasons for adopting this provision in the current regulations:

> One commentator recommended that the regulation expressly permit signs on the business perimeter. (Exh. 21,p. 20.) The Agency adopted this suggestion in part by referring in the regulation to the posting requirement of Section 6776(e)(1) of title 3 of the California Code of Regulations. That section provides for the posting of entrances, and every 600 feet where a facility is unfenced and adjacent to a right-of-way. This should cover, but is not limited to, most agricultural operations, ***where the entire posted location presents a potential for exposure*** and the purpose of the posting is to keep people out of the field. Adopting the same approach may not be appropriate for fenced sites, such as industrial plants, where the exposure occurs at a discrete location inside the facility but it is intended that people will enter the premises.

(1989 Revised Final Statement of Reasons, 22 California Code of Regulations, Division 2, Section 12601 - Clear and Reasonable Warning, at p. 43 (emphasis added).) Accordingly, the Coalition urges OHEHA to retain this option for environmental exposure warnings.

Thank you for the considering our comments. We appreciate the opportunity to participate in this very important regulatory process.

Sincerely,

Anthony Samson
Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

ACH Food Companies, Inc.
Adhesive and Sealant Council
Advanced Medical Technology Association (AdvaMed)
Agricultural Council of California
All-Coast Forest Products, Inc.
Alliance of Automobile Manufacturers
Allwire, Inc.
Alpha Gary

American Apparel & Footwear Association
American Architectural Manufacturers Association
American Beverage Association
American Brush Manufacturers Association
American Chemistry Council
American Cleaning Institute
American Coatings Association
American Composites Manufacturers Association
American Fiber Manufacturers Association
American Forest & Paper Association
American Frozen Food Institute
American Herbal Products Association
American Home Furnishings Alliance
American Lumber Company
American Wood Council
Amway
APA – The Engineered Wood Association
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Apartment Association, California Southern Cities
Associated Roofing Contractors of the Bay Area Counties, Inc.
Association of Home Appliance Manufacturers
AXIALL LLC
Automotive Specialty Products Alliance
Belden
Berk-Tek
Bestway
Betco Corporation
Bicycle Product Suppliers Association
Biocom
Biotechnology Innovation Organization
Brawley Chamber of Commerce
Breen Color Concentrates
Building Owners and Managers Association of California
Burton Wire & Cable
California Apartment Association
California Asphalt Pavement Association
California Association of Boutique & Breakfast Inns
California Association of Firearms Retailers
California Association of Health Facilities
California Attractions and Parks Association
California Automotive Business Coalition
California Building Industry Association
California Business Properties Association
California Cement Manufacturers Environmental Coalition
California Citizens Against Lawsuit Abuse
California Construction and Industrial Materials Association
California Cotton Ginners Association
California Cotton Growers Association
California Farm Bureau Federation

California Furniture Manufacturers Association
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California Independent Oil Marketers Association
California Independent Petroleum Association
California League of Food Processors
California Life Sciences Association
California Manufacturers and Technology Association
California Metals Coalition
California/Nevada Soft Drink Association
California New Car Dealers Association
California Paint Council
California Rental Housing Association
California Restaurant Association
California Retailers Association
California Self Storage Association
California Small Business Alliance
California Travel Association
Can Manufacturers Institute
CAWA – Representing the Automotive Parts Industry
Central Valley Building Supply
Chambers of Commerce Alliance Ventura and Santa Barbara Counties
Chemical Fabrics & Film Association, Inc.
Chemical Industry Council of California
Civil Justice Association of California
Coast Wire & Plastic Tec., LLC
Communications Cable and Connectivity Association
Composite Panel Association
Computing Technology Industry Association (CompTIA)
Consumer Technology Association
Consumer Healthcare Products Association
Consumer Specialty Products Association
Copper & Brass Fabricators Council, Inc.
Council for Responsible Nutrition
Crenshaw Lumber Company
Dow Chemical Company
DuPont
East Bay Rental Housing Association
Economy Lumber
Fairfax Lumber & Hardware
Family Winemakers of California
Fashion Accessories Shippers Association
Federal Plastics Corporation
Flexible Vinyl Alliance
Footwear Distributors & Retailers of America
Frozen Potato Products Institute
Ganahl Lumber
Global Automakers
Greater Bakersfield Chamber of Commerce

Grocery Manufacturers Association
Halogenated Solvents Industry Alliance, Inc.
Hardwood Plywood Veneer Association
Independent Lubricant Manufacturers Association
Industrial Environmental Association
Information Technology Industry Council
International Crystal Federation
International Franchise Association
International Council of Shopping Centers
International Fragrance Association, North America
IPC – Association Connecting Electronics Industries
ISSA, The Worldwide Cleaning Industry Association
J.R. Simplot Company
Juvenile Products Manufacturers Association
Loes Enterprises, Inc.
Lonseal, Inc.
LP Building Products
Medical Imaging & Technology Alliance
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California
Mexichem
Motor & Equipment Manufacturers Association
NAIOP of California, the Commercial Real Estate Development Association
National Association of Chemical Distributors
National Council of Textile Organizations
National Electrical Manufacturers Association
National Federation of Independent Business
National Lumber and Building Material Dealers Association
National Shooting Sports Foundation
Natural Products Association
NorCal Rental Property Association
North American Home Furnishing Association
North Orange County Chamber
North Valley Property Owners
Nutraceutical Corporation
OCZ Storage Solutions
Orange County Business Council
Osborne Lumber Company
Outdoor Power Equipment Institute
Pacific Coast Producers
Pacific Water Quality Association
Pactiv Corporation
Parterre Flooring Systems
Personal Care Products Council
PGP International, Inc.
PhRMA
Plumbing Manufacturers International
Polyurethane Manufacturers Association
Power Tool Institute
Printing Industries of California

Procter & Gamble
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
Reel Lumber Service
Resilient Floor Covering Institute
Roadside Lumber & Hardware Inc.
San Diego County Apartment Association
San Diego Regional Chamber of Commerce
San Joaquin Lumber Company
Santa Barbara Rental Property Association
Searles Valley Minerals
Sentinel Connector System
Sika Corporation
Simi Valley Chamber of Commerce
Specialty Equipment Market Association
SPI: The Plastic Industry Trade Association
SPRI, Inc.
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Straight-Line Transport
Styrene Information and Research Center
Superior Essex
Taiga Building Products
TechNet
The Adhesive and Sealant Council
The Art and Creative Materials Institute
The Association of Global Automakers
The Kitchen Cabinet Manufacturers Association
The Chamber of the Santa Barbara Region
The Vinyl Institute
The Vision Council
Toy Industry Association
Travel Goods Association
Treated Wood Council
USANA Health Sciences, Inc.
USHIO America, Inc.
Van Matre Lumber
Visalia Chamber of Commerce
Water Quality Association
WD-40 Company
West Coast Lumber & Building Materials Association
Western Agricultural Processors Association
Western Growers Association
Western Mining Alliance
Western Plant Health Association
Western Propane Gas Association
Western State Petroleum Association
Western Wood Preservers Institute
Window & Door Manufacturers Association

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