



Travel Goods Association
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January 19, 2022

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

RE: Proposed Modified Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings

Dear Coordinator Vela:

On behalf of the U.S. travel goods industry, small, mostly family-owned businesses and our 100,000 American workers, that make, market, and sell travel goods – luggage, totes, backpacks, handbags, and other products for people who travel – I am submitting these comments in opposition to the Office of Environmental Health Hazard Assessment's (OEHHA) proposed modified amendments to Prop 65 and urge OEHHA to withdraw the proposed modified amendments.

TGA opposes OEHHA's proposed modified amendments to Article 6 of Prop 65 for the reasons below:

Proposed Modifications to Short-Form Warning Label Would Confuse & Mislead Consumers

We understand that the goal of the modified proposal is to educate consumers who are confused by the current short-form warning or who don't understand why the product has a warning. However, it is disingenuous to frame the proposed modification to the short-form warning label as a means of empowering consumers with more information. Instead, the proposed modifications to the short-form warning label do not give the consumer any meaningful information with which to make an educated choice in purchasing products. With more than 900 chemicals on the Prop 65 list, listing only one or two specific chemical names on a warning label represents an arbitrary selection of the chemicals to which a consumer *could* be exposed by using that product.

If a consumer wants to avoid, for example, Prop 65 listed chemical A, and they purchase a product that warns of potential exposure to Prop 65 listed chemical B, then they would have no way to know if the product could also expose them to chemical A or any of the 900 other Prop 65 listed chemicals. In fact, the proposed modified short-form warning label would deceive the consumer into believing the product does not contain chemical A, much less possibly dozens, if not hundreds, of other Prop 65-listed chemicals.

The proposed changes to the short-form warning label would make the consumer feel like they have more information about a product, when in reality, it gives no context about the actual risk, measurable content of the listed chemical(s), or even a full picture of the other Prop 65 listed chemicals to which a consumer may be exposed by using the product. As such, the proposed modifications to the short-form warning label would greatly mislead and confuse the consumer.

On the other hand, the current short-form warning label provides the consumer with accurate and actionable information. If a consumer wants to avoid all Prop 65 listed chemicals, then the current short-form warning label most efficiently supports that goal by warning the consumer not to buy that product. That is indeed the express purpose of the law, to educate consumers so that they can avoid exposure to ALL chemicals OEHHA has deemed harmful, if they so choose.

Inconsistency of Regulations

Our industry is comprised of mostly small, family-owned companies. Our industry has been devastated by the current pandemic as it brought travel to a standstill. Constantly changing requirements for warning labels leads to costs and resources that our members simply cannot afford. Because of the costs of redesigning labels and because of inventories of labels already built up, many of our members have just adjusted to the warning label changes OEHHA implemented in 2018, less than four years ago. And now, at a time we can least afford it, OEHHA has proposed to change the warning label requirements yet again.

Further, the fact that some form of this proposal has been public for almost a year has also had a chilling effect and created immense confusion among our members, just when Californians were starting to travel again and our industry's sales were slowly recovering.

It is important that OEHHA maintains a consistent regulatory system, so that there is not a constantly moving regulatory target with which companies must comply, assuming immense and unnecessary costs, while doing nothing to further product or public safety. This is especially true with OEHHA providing only a year to put the proposed warning label changes in place.

OEHHA states that a primary driver for the proposed modified amendments is that the short-form warning is currently being used inconsistently with the intention for which OEHHA created that label. However, in [OEHHA's Questions and Answers for Businesses](#), it states that "There is currently no limitation on using the short-form warning on larger products." The proposed amendments walk back that allowance for the use of the short-form warning on any product. This moving target and inconsistency of regulations increase costs for businesses, at a time when our industry can least afford it, and create confusion for businesses and consumers alike.

Over-Labeling

OEHHA has stated repeatedly that it does not recommend that companies use warning labels on products that do not need them. However, given that OEHHA has created a system in which any unlabeled product is subject to litigation and financial penalty, companies will continue to be forced to use labeling as their only recourse to protect their business.

For example, the small family-owned businesses that comprise our industry pride themselves in producing safe products. Yet our industry has been relentlessly targeted by Prop 65 litigators, forcing many to use the short-form warning labels. The labels are not used to inform consumers of the remote possibility that there may be harmful chemicals in these products but instead are used to indemnify these small family-owned companies from lawsuits they cannot win and from settlements they cannot afford.

In short, these proposed amendments will just further feed the larger issue that Prop 65 morphed beyond its original intent of public safety into a system that incentivizes over-labeling and endless litigation.

In conclusion, we appreciate your consideration of our comments. Again, we strongly oppose OEHHA's modified proposal because the proposed modified short-form labeling would not meet its stated purpose of better informing consumers but would instead mislead and confuse consumers. Further, the constant and repeated changes, have made it difficult, and costly, for our industry, small, family-owned companies, at a time when they can least afford it. Finally, the modified proposal would further encourage the over-labeling that has ravaged our industry and seriously diminished the effectiveness of Prop 65.

Therefore, we again oppose the proposed modified amendments and urge OEHHA to immediately withdraw the proposal.

Thank you for your time and consideration in this matter. Please contact Nate Herman of my staff at 301-775-7633 or nate@travel-goods.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Michele Marini Pittenger". The signature is written in a cursive, flowing style.

Michele Marini Pittenger
President