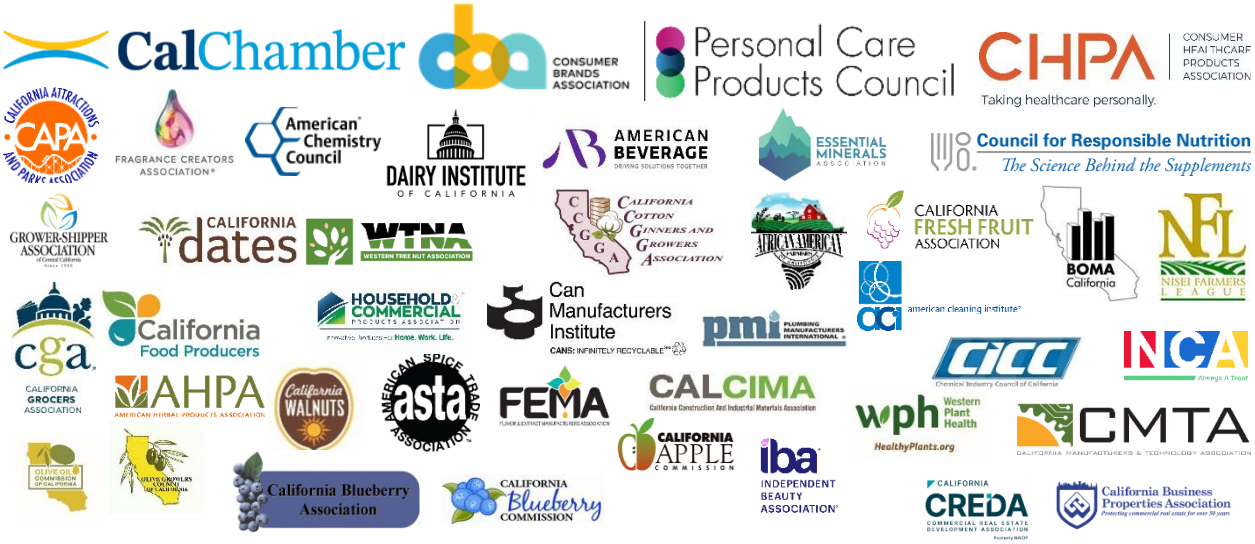

September 8, 2026

Dr. Kristina Thayer, Director
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
P.O. Box 4010
Sacramento, California 95812-4010

Via electronic submission to: https://oehha.ca.gov/comments

RE: COMMENTS ON PROPOSED AMENDMENTS TO TITLE 27, CALIFORNIA CODE OF REGULATIONS

Dear Dr. Thayer:

The California Chamber of Commerce (CalChamber), the Consumer Brands Association (CBA), the Personal Care Products Council (PCPC), The Consumer Healthcare Products Association (CHPA), and the undersigned associations (collectively, "the Coalition") appreciate the opportunity to provide comments on the Office of Environmental Health Hazard Assessment's "omnibus" discussion draft proposals for amendments to Title 27 of the California Code of Regulations implementing Proposition 65. The Coalition recognizes the considerable time and effort OEHHA has devoted to developing the discussion draft and appreciates OEHHA's continued engagement with the regulated community as it considers revisions to the Proposition 65 regulations. The Coalition offers the following comments to identify areas of concern, express opposition to aspects of the proposals, express support for aspects of the proposals, and suggest revisions where appropriate.

CalChamber is a non-profit, non-partisan association representing employers of all sizes across nearly every industry in California. For more than a century, it has advocated for California businesses before the Legislature, administrative agencies, and courts, including in Proposition 65 matters. CBA is the national trade association for the consumer packaged goods industry,

representing roughly 70 to 75 corporate members and nearly 2,000 brands across food, beverage, household, and personal care—an industry contributing approximately $2 trillion to the U.S. economy. PCPC is a national trade association representing cosmetics and personal care products companies who contributed $242.4 billion to the U.S. gross domestic product and supported more than 2.6 million U.S. jobs. PCPC advocates for its members and the broader cosmetic and personal care industry before Congress and state and local legislative bodies, regulatory agencies, and courts. Because so many of its members are directly impacted by Proposition 65, PCPC has historically been and continues to be deeply involved in a variety of Proposition 65-related regulatory and litigation matters. CHPA, founded in 1881, is the national trade association representing the leading manufacturers and marketers of consumer healthcare products, including over-the-counter medicines, dietary supplements, and over-the-counter medical devices. For more than 144 years, CHPA has served as a vital advocate for the consumer healthcare products industry. A member-based trade association, CHPA represents the leading manufacturers and marketers of OTC medical products. CHPA members provide millions of Americans with safe, effective, and affordable therapies to treat and prevent many common ailments and diseases. Together, the Coalition represents a substantial cross-section of the California business community and a significant share of the businesses that would be directly affected by the proposed amendments.

The Coalition offers the following comments on several aspects of the amendments contained in the discussion draft. As discussed below, the Coalition

- opposes the proposed changes to the Carcinogen Identification Committee and Developmental and Reproductive Toxicant Identification Committee quorum and voting requirements (Topic 3);
- opposes the proposed revisions to the naturally occurring exemption (Topic 4);
- opposes the proposed dual-warning requirement for internet purchases (Topic 5); and
- supports a QR-code safe harbor warning with modifications (Topic 7).

I. OEHHA Should Reconsider the Proposed CIC and DARTIC Voting Amendment (Section 25302).

The Coalition has serious concerns with OEHHA's proposed amendment to Section 25302(f), which would change the vote required for the Carcinogen Identification Committee ("CIC") and the Developmental and Reproductive Toxicant Identification Committee ("DARTIC") to take action. Although the proposed revision appears modest—replacing a majority of members "appointed" with a majority of members "present"—its practical effect is significant. It would permit Committee action, including the listing of a chemical, on fewer affirmative votes than the existing regulation requires.

A. The Proposed Change

Section 25302 establishes two committees of OEHHA's Science Advisory Board: the Carcinogen Identification Committee ("CIC") and the Developmental and Reproductive Toxicant Identification Committee ("DARTIC"). Section 25302(f) currently ties both the quorum and voting requirements to the number of members appointed to the Committee. OEHHA proposes to revise the voting requirement as follows:

> A quorum of the Committee shall be a majority of the members appointed to the Committee. An affirmative vote of the majority of the ~~appointed~~ members present shall be required for any action of each Committee. A vacancy on a Committee shall not impair the right of the remaining members to exercise all powers of the Committee.

The amendment would leave the quorum requirement unchanged but alter the number of affirmative votes required for Committee action. Rather than requiring approval by a majority of the members appointed to the Committee, the proposal would require only a majority of the members present at the meeting. Although OEHHA characterizes the amendment as technical and "streamlining," the change would materially reduce the number of affirmative votes required whenever fewer than all appointed members participate.

B. The Existing Voting Requirement Better Reflects the Unique Role of the State's Qualified Experts.

Proposition 65 provides several mechanisms by which a chemical may be added to the list of chemicals known to the State to cause cancer or reproductive toxicity. Among them is the "state's qualified experts" mechanism. Unlike the authoritative bodies and other administrative listing mechanisms, this pathway relies upon the scientific determination of the CIC and DARTIC—expert scientists appointed by the Governor from specified disciplines including epidemiology, medicine, public health, biology, statistics, and toxicology.

The state's qualified experts (SQE) listing mechanism serves a particularly important function. It informs the Governor of scientific opinion concerning a listing where the chemical toxicity identification has not already been done through one of Proposition 65's other listing mechanisms. The question posed to the Committees is whether the chemical has been "clearly shown through scientifically valid testing according to generally accepted principles" to cause cancer or reproductive toxicity. In practical terms, the Committees' votes can result in the listing of a chemical and trigger the regulatory and enforcement consequences that follow.

The committee process reflects the significance of that responsibility. OEHHA staff first prepare a hazard identification document evaluating the relevant scientific evidence, which is subject to public review and comment. The Committee then considers that evidence and public testimony at a public meeting before voting on whether the statutory standard has been satisfied.

Section 25302(f) currently imposes two related requirements. A quorum requires participation by a majority of the members appointed to the Committee, and Committee action requires the affirmative vote of a majority of those appointed members. Thus, where nine members have been

appointed, five members must participate for the Committee to conduct business and five affirmative votes are required for the Committee to act.

C. The Proposed Amendment Would Permit a Small Minority of the Committee to Make Consequential Decisions.

The proposed amendment would retain the first requirement but significantly reduce the second. A quorum would continue to consist of a majority of the appointed members, but once a quorum is present, Committee action would require only a majority of the members participating in the meeting. For a nine-member Committee, five affirmative votes are presently required regardless of whether five, seven, or all nine members participate. Under the proposal, if there are nine members, a bare quorum of five could take Committee action, including listing a chemical, on only three affirmative votes—a mere one-third of the committee members. That is a meaningful substantive change, not merely a technical revision to Committee procedure.

Each committee must have a minimum of seven and a maximum of eleven members. Currently, the committee can take action on the approval of four members (if 7 members), five members (if 8 or 9 members), or six members (if 10 or 11 members). The proposal would lower those thresholds to three members (if 7, 8, or 9 members) or four members (if 10 or 11 members).

The existing rule ensures that a listing determination reflects the agreement of a majority of the State's appointed qualified experts. The proposed rule would instead allow the required vote to fluctuate depending upon the vagaries of attendance at a particular meeting. The identical scientific record could therefore result in different outcomes depending solely on the number of Committee members who happen to participate.

This concern is particularly significant because Section 25302(f) governs "*any* action" of the Committees. Those actions can be to list chemicals under Proposition 65, to prioritize chemicals for future review, to identify the "authoritative bodies" outside of California state government whose formal identifications can qualify chemicals for listing by the authoritative bodies mechanism, to review safe harbor levels, and to review and propose scientific standards for OEHHA.

D. The Proposal Departs From the Representative Decision-Making Principles Underlying the Committee Process and Does So Without Justification.

The rulemaking history for this regulation reflects a longstanding concern that decisions by the State's qualified experts should meaningfully represent the expert body charged with making them.

In the original 1988 rulemaking, OEHHA's predecessor as the lead agency explained that the voting and quorum requirements were designed to ensure that recommendations concerning additions to the Proposition 65 list were representative of the entire Committee. At the same time, the lead agency recognized the practical difficulties that absences could create and sought

to establish a quorum that would allow the Committees to function despite the unavailability of up to half the members. What the lead agency did not do was permit either Committee to take consequential actions with the approval of less than a majority of its appointed members.

That history reflects an effort to balance two legitimate objectives: ensuring that the expert committees remain operational while also ensuring that consequential scientific decisions reflect meaningful participation by the body as a whole. The proposed amendment overturns that balance.

It is unclear what problem OEHHA is trying to address with this proposal. The Coalition is unaware of any impediment to decision-making that has ever been presented by the current majority voting requirement. Meetings of the two Committees are usually scheduled months in advance, increasing the likelihood that the vast majority of members can attend. Committee members take their roles quite seriously and appear to make every effort to attend. They also serve at the Governor's pleasure, so that chronic absences or other lack of participation can be addressed promptly. Furthermore, OEHHA has never approached the consequential decisions that the Committees make as needing urgent action; on the contrary, the scientific data is often compiled over months.

Permitting action based on fewer than a majority of appointed committee members would also undermine the statutory purpose of Proposition 65. The fewer votes that support the listing of a chemical, the less likely that chemical is to have been "clearly shown" to cause the toxicity of concern, as required by Proposition 65. Cal. Health & Safety Code § 25249.8(b). A "clearly shown" standard should, in fact, be enforced with a supermajority voting requirement, not a majority of a quorum. Moreover, the fewer votes that support a listing, the fewer scientific disciplines are likely to be represented by those committee members voting. The regulations specifically emphasize a range of scientific experience that should be present on the Committees. *See* §§ 25302(b)(1)(i) and 25302(b)(2)(i). The range of experience noted in the regulations is much better achieved by maintaining the current regulation or revising it to require a supermajority of appointed members to take action.

The listing decisions and other decisions made by the Committees have significant consequences for those doing business in California. Furthermore, the federal courts have made clear in four cases decided in the last few years that the warning provision of Proposition 65 cannot be enforced, consistent with the U.S. Constitution, if it is not "purely factual and uncontroversial" that the listed chemical causes cancer in humans through the applicable route of exposure. *California Chamber of Commerce v. Council for Education and Research on Toxins*, 29 F.4th 468 (9th Cir. 2022) (acrylamide); *National Association of Wheat Growers v. Bonta*, 85 F. 4th 1263 (9th Cir. 2023) (glyphosate); *Personal Care Products Council v. Bonta*, No. 2:23-cv-01006-TLN-JDP (E.D. Cal. Aug. 12, 2025) (titanium dioxide); *Personal Care Products Council v. Bonta*, No. 2:26-cv-00682 (E.D. Cal. June 24, 2026) (diethanolamine). None of those cases involved a chemical listed by either Committee, but this standard makes it all the more important that the

listing decisions of the Committee reflect a considered consensus of at least a majority of *all* members as opposed to a subset of members who attended a particular meeting.

Reducing the affirmative votes required to list a chemical necessarily changes the decision-making process at the front end of the Proposition 65 regulatory system, with significant consequences for regulated businesses downstream. There is no justification for this proposal.

E. OEHHA Should Also Require a Written Statement Identifying the Scientific Basis for a Listing Determination.

The proposed amendment also presents an opportunity to address a related procedural gap in the SQE process, one that has actually caused practical problems and considerable uncertainty within the regulated community. When the CIC or DARTIC votes to list a chemical, there is presently no concise, official statement identifying the scientific findings underlying the Committee's determination.

The pre-meeting hazard identification document reflects OEHHA staff's evaluation of the evidence, not necessarily the basis ultimately adopted by the Committee. The meeting transcript, in turn, records individual members' discussions but does not provide an authoritative statement of the findings on which the Committee majority agreed. This becomes particularly important where the Committee's determination differs from the analysis in the hazard identification document, where members rely on different studies or scientific rationales, or where DARTIC adopts a narrower reproductive or developmental endpoint.

Although the public's interest in transparency, and OEHHA's interest in scientific clarity, would be furthered by a requirement for a written statement of decision, the absence of a clear statement of basis has practical consequences beyond these principles. Health and Safety Code section 25249.10(c) and OEHHA's implementing regulations look to the scientific evidence and standards underlying a listing when determining the applicable NSRL or MADL for the listed chemical. That comparison becomes unnecessarily uncertain and arduous where the scientific basis for the Committee's determination must later be reconstructed from a meeting transcript and the comments of individual members, which can be ambiguous as to "the evidence and standards which form the scientific basis for the listing of such chemical…."

The Coalition has raised this concern before. In comments submitted in 2014, a broad coalition of businesses and trade associations urged OEHHA to require SQE listing determinations to be accompanied by statements explaining the basis for the decision. The concern remains equally applicable today.

The Coalition therefore recommends that, following a vote to list a chemical based on a majority of those appointed, the CIC or DARTIC issue a short written statement identifying: (1) the principal studies or evidence relied upon by the Committee majority; (2) the cancer or reproductive toxicity endpoint or endpoints determined to be applicable to the listing; and (3) any

material respect in which the Committee's determination differs from the analysis presented in OEHHA's hazard identification document.

This need not be burdensome or resemble a judicial opinion. A concise statement would provide OEHHA, regulated businesses, courts, and the public with a clear record of what the State's qualified experts actually determined. It would also facilitate OEHHA's subsequent development of safe harbor levels and reduce uncertainty in later Proposition 65 compliance and enforcement proceedings.

II. OEHHA Should Withdraw the Proposed Amendment to Section 25501.

The Coalition appreciates OEHHA's interest in providing greater clarity regarding the scope of the naturally occurring exemption. The issue is an important one for the Coalition's members. Foods, cosmetics, personal care products, over-the-counter drug ("OTC") products, supplements, and ingredients of all of these products routinely contain listed chemicals that originate in the plant, animal, soil, or other natural environment from which the food material is derived. Products that are not themselves foods are formulated from many food-derived ingredients including essential oils, botanical extracts, plant butters, and waxes. Those food materials also routinely undergo ordinary processing before reaching consumers in foods and consumer products—including drying, milling, pressing, extraction, concentration, roasting, and other forms of manufacture. Section 25501 has long provided the framework for determining what portion of a listed chemical in those products constitutes an "exposure" under Proposition 65.

The proposed amendment would materially change that framework and the settled understanding of the naturally occurring regulation. The proposal would add language stating that a listed chemical "which has been extracted or concentrated from any source, such as a plant, may be present in a product as the result of human activity even if the extraction or concentration did not change the Chemical Abstract Services Registry Number." In doing so, the proposal shifts the naturally occurring inquiry away from the source of the listed chemical and toward the processing of the food containing it.

That shift has substantial consequences for foods and food ingredients in non-food products, and it is difficult to reconcile with the remainder of Section 25501 as well as the regulatory history and judicial interpretation of the regulation. For the reasons discussed below, the Coalition respectfully requests that OEHHA withdraw the proposed amendment.

A. The Proposed Change

Section 25501(a)(3) currently provides that a chemical is naturally occurring "only to the extent that the chemical did not result from any known human activity," with specified exclusions for agronomic practices (sowing, planting, irrigation, plowing, and other mechanical preparation of soil) and one express inclusion (the addition of chemicals to irrigation water applied to soil or crops). OEHHA proposes to add the below highlighted sentence to subsection (a)(3).

Section 25501. Exposure to a Naturally Occurring Chemical in a Food.

(a) Human consumption of a food shall not constitute an "exposure" for purposes of Section 25249.6 of the Act to a listed chemical in the food to the extent that the person responsible for the exposure can show that the chemical is naturally occurring in the food.

(1) For the purposes of this section, a chemical is "naturally occurring" if it is a natural constituent of a food, or if it is present in a food solely as a result of absorption or accumulation of the chemical which is naturally present in the environment in which the food is raised, or grown, or obtained; for example, minerals present in the soil solely as a result of natural geologic processes, or toxins produced by the natural growth of fungi.

(2) The "naturally occurring" level of a chemical in a food may be established by determining the natural background level of the chemical in the area in which the food is raised, or grown, or obtained, based on reliable local or regional data.

(3) A chemical is naturally occurring only to the extent that the chemical did not result from any known human activity. Where a food contains a chemical, in part naturally occurring and in part added as a result of known human activity, "exposure" can only occur as to that portion of the chemical which resulted from such human activity. For purposes of this section, "human activity" does not include sowing, planting, irrigation, or plowing or other mechanical preparation of soil for agricultural purposes; but does include the addition of chemicals to irrigation water applied to soil or crops. A listed chemical which has been extracted or concentrated from any source, such as a plant, may be present in a product as the result of human activity even if the extraction or concentration did not change the Chemical Abstract Services Registry Number.

(4) Where a chemical contaminant can occur naturally in a food, the chemical is naturally occurring only to the extent that it was not avoidable by good agricultural or good manufacturing practices. The producer, manufacturer, distributor, or holder of the food shall at all times utilize quality control measures that reduce natural chemical contaminants to the "lowest level currently feasible," as this term is used in Title 21, Code of Federal Regulations, Section 110.110, subdivision (c) (2001).

(b) A person otherwise responsible for an exposure to a listed chemical in a consumer product, other than food, does not "expose" an individual within the meaning of Section 25249.6 of the Act to the extent that the person can show that the chemical was a naturally occurring chemical in food, and the food was used in the manufacture, production, or processing of the consumer product. Where a consumer product contains a listed chemical, and the source of the chemical is in part from a naturally occurring chemical in food and in part from other sources, "exposure" can only occur as to that portion of the chemical from other sources.

B. Section 25501 Establishes an Integrated Framework for Determining Whether a Chemical Is Naturally Occurring.

The starting point is the text and structure of Section 25501 itself.

Proposition 65 requires a warning only where a business causes an "exposure" to a listed chemical. Section 25501 provides that human consumption of a food "shall not constitute an 'exposure'" to the extent the person responsible can establish that the chemical is naturally occurring in the food. The regulation therefore defines the extent of the exposure itself rather than simply excusing an exposure that has otherwise occurred. The subdivisions of Section 25501 work together to answer that question.

First, subdivision (a)(1) identifies the circumstances in which a chemical is naturally occurring. A chemical may be a natural constituent of the food itself, or it may be present because the food absorbed or accumulated the chemical from the environment in which it was raised, grown, or obtained, a contaminant. The regulation expressly identifies minerals naturally present in soil and toxins produced through the natural growth of fungi as examples.

Second, subdivision (a)(2) addresses one way that the naturally occurring level may be established, including through reliable local or regional background data.

Third, subdivision (a)(3) addresses the contribution of human activity. A chemical is naturally occurring "only to the extent that the chemical did not result from any known human activity." Where a chemical is present partly naturally and partly as a result of human activity, only the human-caused portion constitutes an exposure. The provision is thus expressly apportioning.

The examples included in subdivision (a)(3) are instructive. Sowing, planting, irrigation, plowing, and other mechanical preparation of soil for agricultural purposes are excluded from "human activity." By contrast, adding chemicals to irrigation water is expressly included. The evident distinction is whether human activity contributed the chemical to the food or its growing environment, not merely whether people engaged in some activity in producing the food.

Indeed, this was the distinction that the Court of Appeal relied on in rejecting a challenge to the naturally occurring regulation. *Nicolle-Wagner v. Deukmejian*, 230 Cal. App. 3d 652, 659 (1991) (finding that the relevant "sources indicate that Proposition 65 sought to regulate toxic substances which are deliberately added or put into the environment by human activity."). The Court read the "knowingly and intentionally" requirement of the statute to suggest that "some degree of human activity which results in toxins being *added* to the environment is required." *Id.* (emphasis added). And it noted, "A chemical is not 'put' into the environment if it is naturally occurring in, for example, fruits and vegetables." *Id.* The Court went on:

> Use of terms such as "knowingly and intentionally" and "putting" implies that human conduct which results in toxins being *added* to the environment is the activity to be

> controlled. The opponents of the initiative expressly indicated that only "man-made" substances would be regulated.

Id. at 660. As the Court of Appeal noted, citing OEHHA's Final Statement of Reasons for the regulation, if chemicals that are not put into the environment prompt Proposition 65 warnings, "such warnings would be diluted to the point of meaninglessness if they were to be found on most or all food products." *Id.* at 661.

Fourth, subdivision (a)(4) provides an additional safeguard for naturally occurring contaminants (as opposed to constituents). A contaminant is naturally occurring only to the extent it could not be avoided through good agricultural or good manufacturing practices, and businesses must use quality-control measures that reduce naturally occurring contaminants to the "lowest level currently feasible."

Finally, subdivision (b) expressly carries the same principle into non-food consumer products. This is the operative provision for cosmetics, personal care, and OTC products. A business does not "expose" an individual to a listed chemical "in a consumer product, other than food," to the extent the person shows the chemical "was a naturally occurring chemical in food, and the food was used in the manufacture, production, or processing of the consumer product." Where the chemical comes partly from a naturally occurring chemical in food and partly from other sources, only the other-source portion is an "exposure." Cosmetics, personal care, and OTC products are often formulated from food- and plant-derived materials—for example, essential oils, botanical extracts, plant butters and waxes that are produced by the "manufacture, production, or processing" of the source food or plant. By its terms, subdivision (b) expressly contemplates that such processing occurs and does not destroy naturally occurring status.

These provisions are not independent of one another. Together, they establish an integrated framework: identify the source of the chemical; determine whether and to what extent human activity contributed to it being added to the environment; and, for contaminants (as opposed to constituents), determine whether good agricultural or manufacturing practices could reduce that naturally occurring amount further.

C. The Existing Framework Has Been Applied to Naturally Derived Constituents That Remain Present Following Processing.

Traditionally, the regulation has been read by both OEHHA and the courts to focus on *how* the chemical came to be present in the raw plant—whether it was introduced by pollution, pesticide use, or some other human intervention, as opposed to occurring through the plant's own natural biochemistry. What a business does after the crop is grown—harvesting, steam-distilling, vacuum-distilling, blending, concentrating—has been understood as processing that changes the concentration of an already naturally occurring chemical, not steps that convert a naturally occurring chemical into a human-caused one. OEHHA's historical treatment of naturally occurring plant constituents illustrates how this framework has been understood in practice.

The clearest example is methyleugenol. In January 2002, OEHHA's Chief Counsel considered whether methyleugenol naturally present in basil and other herbs and spices retained its naturally occurring status after being separated from the plant and subsequently incorporated into another food or consumer product. OEHHA concluded that methyleugenol produced naturally by the plant was naturally occurring and that separation did not, by itself, alter that conclusion where the methyleugenol remained chemically unchanged. Consistent with the *Nicolle-Wagner* decision that interpreted and upheld the regulation as consistent with Proposition 65, the letter treated the origin of the chemical as central. Human processing that separated an already naturally occurring constituent from its source did not automatically mean that the constituent itself had "resulted from" human activity.

Many other listed constituents of foods are widely used fragrance and essential-oil materials incorporated into perfumes, colognes, lotions, shampoos, soaps, and other cosmetic, personal care, and OTC products. Similar naturally derived flavor and fragrance constituents may remain chemically identical—retaining the same CAS Registry Number—as the source material moves from a whole plant to an oil, extract, powder, concentrate, or other processed ingredient, and as that ingredient is formulated into a finished product.

These examples should not be read to confine the issue to isolated fragrance and flavor compounds. The same principle applies throughout the food, cosmetic, personal care product, and OTC product industries. Nearly every packaged consumer product undergoes some form of processing to render the product fit for human consumption, protect consumer safety, or support consumer convenience. Processing may change the form of these foods and food ingredients. It may also change the concentration of naturally present chemicals by weight. For example, drying a grape to make a raisin may concentrate heavy metals that are present in the fruit, just as steam-distilling basil leaves into an essential oil may increase the concentration of methyleugenol in them. In each case, the processing changes the form and concentration of a naturally occurring chemical, but it does not create, add, or chemically alter the listed chemical or change its naturally occurring character.

D. The Proposal Creates Significant Uncertainty and Conflicts with Long-Established Precedent.

OEHHA's proposal would upend this settled understanding – that chemicals in food ingredients are naturally occurring if they are not added into the environment by humans. Lead from pollution is not exempt. But lead of geologic origin, that has been taken up into the plant's fibrous tissues through natural biological processes, is exempt. And it is exempt regardless of whether it is later concentrated in a finished product by drying or some other form of food processing consistent with good agricultural and manufacturing practices.

Indeed, the regulation is relatively as to post-harvest processing of foods and food ingredients because those processes normally do not "put" any chemicals into the food ingredients. The regulation calls out certain human actions as excluded from "human activity," but those are all

pre-harvest ("sowing, planting, irrigation, plowing, and other mechanical preparation of soil for agricultural purposes"). Post-harvest activities, which do not add any chemicals into the food, were not considered to be disqualifying "human activity."

OEHHA's proposal reverses the long-established understanding that chemicals formed by nature in a plant do not constitute an exposure. For the first time, the proposal would treat common food processing, including harvest in some instances, as well as "extraction or concentration" to be disqualifying. The following ordinary food-processing steps all would potentially disqualify a food or food ingredient from being considered naturally occurring: water removal (drying, dehydration, freeze-drying, evaporation, juice concentration), fraction separation (pressing, expelling, defatting, protein isolation, solvent extraction), size reduction (milling, grinding, pulverizing), thermal processing (roasting, which drives off moisture), and component removal (hulling, shelling, sifting, air classification). Similarly, ordinary processing methods used in manufacturing cosmetics, personal care, and OTC products – such as steam and vacuum distillation of essential oils, solvent and CO2 extraction of botanicals, expression of citrus peel oils, production of absolutes and concretes, and concentration or fractionation of food-derived ingredients for skincare and fragrance – would also be disqualified. Every one of these increases the concentration of some chemicals (whether constituents or contaminants) in the finished product. Although OEHHA may not have intended to propose removing all of these processes from the scope of the regulation, the proposed language would do so.

Furthermore, the naturally occurring regulation recognizes that there will be post-harvest processing of a food ingredient, but that such processing does not entail "human activity" that takes the chemical out of the naturally occurring exemption. Subsection (b) expressly preserves the naturally occurring exemption where a naturally occurring chemical that is itself a food is carried into a consumer product through "manufacture, production, or processing." The regulation therefore already contains a considered judgment that post-harvest processing does not, by itself, destroy naturally occurring status. Read together, the proposed sentence would withdraw the very exemption that subsection (b) grants, an internal contradiction that leaves manufacturers of non-food products with no way to reconcile the two provisions.

III. OEHHA Should Not Require Duplicative Safe Harbor Warnings for Internet Purchases (Sections 25600.2, 25602).

The Coalition opposes the proposed amendments to Section 25602(b) that would require, as a condition of safe harbor protection, that businesses selling products online provide both a warning associated with the physical product (such as a label warning) and a separate warning to the purchaser online before the transaction is completed. This proposed requirement is inconsistent with three provisions of Proposition 65 as enacted by the voters.

First, Proposition 65 requires that businesses provide warnings to consumers before they are exposed to a listed chemical. "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or

reproductive toxicity without first giving clear and reasonable warning to such individual ….” Health & Safety Code section 25249.6. Proposition 65 does not require consumers to receive a warning before they purchase a product, and particularly not before they purchase it over the internet, where the product is miles and perhaps a continent away and therefore cannot physically expose the consumer to anything.

Second, Proposition 65 contains an explicit directive “to minimize the burden on retail sellers of consumer products….” Health & Safety Code § 25249.11(f). The voters directed that the warning regulations “shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical … into the consumer product in question.” *Id.* In practice, this means that if a packaged consumer product received from a third party already bears a warning on its label, the retail seller should be able to sell it like any other product without having to provide a shelf sign (for brick and mortar stores) or an internet warning (for online sales). Perhaps the law should treat differently a private label product bearing the brand name of the retailer, or a product actually made by the same entity that is selling it, because in that circumstance there is no practical distinction between the retailer and the “producer or packager.” But otherwise, to require the retailer to provide a Proposition 65 warning at the point of sale for a product that already bears a warning on the label violates the electorate’s directive to minimize the burden on retail sellers of consumer products.

Third, Proposition 65 makes clear that warnings “need not be provided separately to each exposed individual….” Health & Safety Code § 25249.11(f). The regulations mirror this admonition: “A person is not required to provide separate warnings to each exposed individual.” 27 Cal. Code Regs. § 25600(d). If the electorate directed that every exposed individual is not entitled to a warning, it is certainly inconsistent for OEHHA to require, in exchange for safe harbor protection, the purchasers of products on the internet receive two warnings—one on the website before they make their purchase, and a second when the product is delivered.

A. The Proposed Change

OEHHA proposes to amend Section 25602(b) to “clarify” that businesses selling consumer products on an internet website or digital application comply with ***both*** (a) one of the physical-product warning methods specified in Section 25602(a)(3) (long-form on label) or (a)(4) (short-form on label), and (b) one of the following online warning methods: a warning on the product display page, a clearly marked hyperlink using the word “WARNING,” “CA WARNING,” or “CALIFORNIA WARNING” on the product display page that links to the warning, or an otherwise prominently displayed warning provided to the purchaser prior to completing the purchase.

The companion changes to Section 25600.2(b) remove the upstream party’s compliance options, so that a manufacturer, producer, packager, importer, supplier, or distributor must provide a package label and an internet warning, either directly or by notifying all of the possible retailers

who may sell the product. The provision also expressly names retailers and distributors selling on a website or digital application. Specifically the changes are as follows:

Section 25600.2. Responsibility to Provide Consumer Product Exposure Warnings.

[. . .] (b) The manufacturer, producer, packager, importer, supplier, or distributor of a product may comply with this article ~~either~~ by providing a warning ~~on the product label or labeling that satisfies Section 25249.6 of the Act,~~ that complies with Section 25602 or by providing a written notice directly to the authorized agent for the business to which they are selling or transferring the product or to the authorized agent for a retail seller, so long as the business to which they are providing the notice is subject to Section 25249.6 of the Act. The written notice shall:

Section 25602. Consumer Product Exposure Warnings – Method of Transmission. [. . .]

(b) Internet purchases

(1) ~~For internet purchases, a warning meets the requirements of this subarticle if it complies with the~~A manufacturer, producer, packager, importer, supplier, distributor, or retailer, selling or distributing a product on an internet website or digital application (including a Web application, mobile device application, or dedicated sales software application) must comply with the warning content requirements of Section 25603 and ~~the warning must also be provided using one or more of the following methods:~~ both of the following warning methods: (a) the warning method requirement(s) of Section 25602(a)(3) or (4), and one of the following:

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

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

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

B. The Proposed Amendment Burdens Retailers and Sets a Standard that Manufacturers Cannot Meet.

The proposed amendment is not merely a clarification of the existing internet-warning requirement. It creates a virtually mandatory dual-warning regime. That distinction is particularly notable because OEHHA considered an express dual-warning requirement during the 2023–2024

rulemaking. OEHHA proposed separate requirements for warnings provided before purchase and upon delivery, but did not retain that structure in the final regulation. OEHHA now proposes to require expressly what the prior rulemaking ultimately did not.

Furthermore, the safe harbor warning regulations adopted in 2016, which overhauled the prior regulations and for the first time explicitly addressed warnings for online sales, did not require manufacturers to provide duplicate warnings. Under Section 25600.2(b), a manufacturer can *either* provide a warning on the label of a product *or* inform all of the retailers who sell the manufacturer's product into California to provide a warning on a shelf sign (for brick and mortar stores) or on the product description page (for online sales). For manufacturers who are confident that their products are not sold in California through retailers with which they have no business relationship, this approach permits them to avoid placing a warning on the label of the product, where it would be seen by consumers outside of California (because virtually every product sold in California is also sold in the rest of the United States in the same packaging with the same label). And if a manufacturer is not certain it can control or know who sells its products into California, the practical option is to place a warning on the label of the product and bear whatever implications that may have for sales in states outside of California as well as in California.

That is the safe harbor warning regime adopted by OEHHA in its regulatory text in 2016. OEHHA nevertheless stated, in the Final Statement of Reasons for that regulation that it had "determined that providing a warning to a person who makes a purchase via the internet only after purchasing the product online and potentially exposing the person upon delivery of the product, is inconsistent with the purposes of Proposition 65." OEHHA went on: "Additionally, a person would then have to choose between keeping an item that exposes them to a listed chemical or repackaging and returning the item while potentially incurring shipping costs and/or restocking fees depending on the return policy of the online vender." Further guidance from OEHHA directs businesses to this interpretation.[1]

This statement, and other guidance from OEHHA, is inconsistent with the plain language of the regulations. It goes beyond Proposition 65's requirement that consumers be warned before they are exposed, by establishing a safe harbor requirement that consumers be warned before they click "purchase." It burdens retailers in particular, who are named in notices of violation if a warning is not provided on their website but is provided on the label of the product. And it has created a cottage industry of private enforcers who serve notices of violation on manufacturers whose product labels bear a compliant Proposition 65 warning but are purchased from a website, and sometimes an obscure website, where no online warning was provided. These notices create the same expense and litigation burdens on businesses as notices for products that bear no warnings, who often settle such claims out of business necessity, even though the key

[1] *See* FAQ for Businesses, at https://www.p65warnings.ca.gov/business-resources/frequently-asked-questions-businesses.

requirement of Proposition 65 has been met: the business warned the consumer before any exposure. Health & Safety Code § 25249.6.

The proposed amendment would require an online warning *and*, separately, require the product to satisfy one of the physical warning methods in Section 25602(a)(3) or (a)(4). What this means is that the manufacturer, in order to have safe harbor protection, now must place a warning on the label of the product and inform every online retailer who may ever sell the product to consumers in California that they need to also provide a warning on the product description page for the product. And if an internet retailer does not receive that information and post the warning, then both the retailer and the manufacturer will be outside the safe harbor.

As for the proposed change to Section 25600.2(b), presumably it relates to businesses who post items for sale on internet platforms themselves, creating the product description and accompanying text themselves. But for a business that has manufactured a product and sold it to a distributor who then sells it to multiple retailers or to other distributors who then sell it to multiple retailers, some of which may sell the product online, this provision requires something that is impossible: to somehow require a retailer with which the manufacturer has not done business to post a Proposition 65 warning on the retailer's product listing. It also requires that retailer, if it wishes to ensure that it is compliant with Proposition 65 and therefore protected from Proposition 65 bounty hunters, to do something that, in modern commerce, is also nearly impossible: to review the label of every product it offers for sale on its website to see if it bears a Proposition 65 warning and then to copy that warning onto the product description page. That is a burden on the retailer, in contravention of Section 25249.11(f).

The proposal, and OEHHA's approach to online sales, imposes significant packaging and coordination burdens, creates uncertainty regarding responsibility among manufacturers, retailers, and online marketplaces, and sets a standard that neither retailers nor manufacturers can consistently meet.

C. Instead of Establishing a Duplicate Warning Requirement, OEHHA Should Clarify the Regulations to Provide Safe Harbor Protection When a Warning Is Provided Either Before Purchase or Before Exposure.

As explained above, the dual warning requirement that OEHHA did not adopt in the 2016 regulations (but apparently wished it had) should not be adopted now. It is inconsistent with three provisions of the statute enacted by the voters. Yes, if adopted, it would merely be a safe harbor, which is optional, and businesses are free to provide a "clear and reasonable" warning however they like. But as everyone knows who is familiar with Proposition 65's private enforcement provisions and the practical issues of 60-day notices and the burden placed on businesses, the safe harbor regulations are practically requirements because "the seas beyond the safe harbor are so perilous that no one risks a voyage." *California Chamber of Commerce v. Bonta*, No. 2:19-cv-02019-KJM (Mar. 30, 2021).

The change proposed by OEHHA will have significant economic consequences. Government Code Section 11346.3(b) requires a Standardized Regulatory Impact Assessment ("SRIA") for a major regulation, including an assessment of the regulation's effects on California businesses, employment, investment, and competitive conditions. If OEHHA proceeds, it will need to evaluate whether the proposed amendments, collectively, meet the threshold for a major regulation and, if so, to prepare an SRIA that accounts for their full economic impact. That analysis should consider not only direct compliance costs, but also effects on business creation and elimination, competitive advantages and disadvantages, employment, and investment. A complete assessment of those impacts is particularly important here because many of the costs may fall disproportionately on small and mid-sized businesses, whether manufacturers or retailers.

The Coalition therefore urges OEHHA to not proceed with its proposal but instead to revise its guidance, which is what has introduced the very confusion that OEHHA now seeks to address by changing the text of the regulations. Under current section 25600.2(b), it is clear that a manufacturer is entitled to safe harbor protection if it *either* has provided a warning on the label of its product *or* if it has informed all of its retailers of the need to provide a warning at the point of sale (whether that is a shelf or a webpage).

IV. The Coalition Supports a QR-Code Warning Safe Harbor, With Targeted Revisions to Preserve Its Utility (Sections 25601, 25602).

The Coalition supports OEHHA's proposal to expressly authorize QR codes as a method of providing Proposition 65 warnings. The proposal is a meaningful modernization of the warning regulations and recognizes the increasingly common manner in which consumers obtain product information. If implemented properly, a QR-code safe harbor could reduce unnecessary packaging changes, provide businesses greater flexibility as Proposition 65 requirements evolve, and allow consumers to access clearer and more useful warning information than can reasonably fit on many product labels.

The value of the proposal, however, depends on preserving a meaningful distinction between the signal accompanying the QR code and the warning delivered through the QR code. As currently drafted, the proposal risks requiring so much warning-specific information on the physical package that much of the benefit of moving the substantive warning online would be lost. The Coalition therefore supports the proposal but recommends several targeted revisions to make the safe harbor workable in practice.

A. The Proposed Change

OEHHA proposes to amend Sections 25601 and 25602 to expressly permit a QR code as an additional method for providing Proposition 65 warnings on consumer products. Specifically,

Section 25601. Safe Harbor Clear and Reasonable Warnings – Methods and Content.

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

Section 25602. Consumer Product Exposure Warnings – Method of Transmission.

(a) Unless otherwise specified in Section 25607 et seq., a consumer product exposure warning meets the requirements of this subarticle if it complies with the content requirements in Section 25603 and is provided using one or more of the following methods:

(1) A product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product.

(2) (A) Except as provided in subsection (2)(B), a ~~A~~ product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning. This subsection does not apply to internet purchases, which are subject to the provisions of subsection (b).

(2) (B) A product-specific warning provided by a "Quick response (QR) code," a machine-readable code, consisting of an array of squares, used for storing and accessing a web page containing a warning that complies with the content requirements in Section 25603. The QR code shall be on a posted sign, shelf tag, shelf sign, or on a label or labeling. The warning provided by a QR code shall be provided upon scanning the QR code. The QR code should be accompanied by a statement that reads: "Proposition 65 Warning for [name of one or more chemicals]. For more information, scan the QR code."

B. A QR-Code Safe Harbor Would Provide Meaningful Benefits to Businesses and Consumers.

In 2016, OEHHA amended Article 6 to replace the prior generic safe harbor warning with a chemical-specific format. Under Section 25603, consumer product warnings were required to include a yellow triangle symbol, the signal word "WARNING" in bold capital letters, a statement identifying at least one chemical at issue, the applicable endpoint language, and the Proposition 65 URL. OEHHA also permitted short-form warnings and has since refined them and restricted them.

Section 25601(c) currently requires that consumer product exposure warnings be "prominently displayed on a label, labeling, or sign" with conspicuousness sufficient to render the warning "likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use." Section 25602(a)(2) permits electronic warnings that "automatically provide[]

the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning."

QR codes have functionally existed as a mechanism to deliver warning information for some time, but OEHHA has not codified them as an express regulatory safe harbor. In the 2016 Final Statement of Reasons, several coalition members expressed concern that the electronic-warning provision's "seek out" language could be read to prohibit any consumer interaction. OEHHA rejected the proposed wording change but clarified that the regulation does not require complete consumer passivity: a compliant electronic warning can require a simple affirmative step, such as clicking a link or scanning a code, so long as the consumer first receives reasonable notice that a warning exists.

OEHHA now proposes to expressly recognize a QR code placed on a sign, shelf tag, shelf sign, label, or labeling as an additional safe-harbor method, with the substantive Proposition 65 warning made available when the consumer scans the code. The Coalition supports that approach.

The most obvious benefit is label space. Food packaging is already subject to substantial federal and state labeling requirements. Nutrition Facts, ingredient statements, allergen disclosures, net quantity statements, manufacturer information, and other mandatory and voluntary information compete for limited space. The problem is especially acute for small-format products such as confections, spice containers, teas, supplement bottles, condiment packets, and single-serve foods. A QR code allows the substantive Proposition 65 warning to be provided without requiring additional warning text to consume a significant portion of the physical label.

The more important benefit, however, is flexibility. A Proposition 65 warning printed directly on packaging becomes part of the package artwork. If the chemical requiring a warning changes because of a new listing, new testing, a supplier or formulation change, or a change in the relevant exposure analysis, the business may need to revise artwork, obtain internal and regulatory approvals, modify printing plates, manage existing packaging inventory, and undertake a new production run. Furthermore, other states have adopted disclosure requirements, and California has adopted specific disclosure requirements for some products such as baby foods, making QR codes an effective means of complying with multiple requirements.

A QR-code warning can substantially reduce those burdens because the substantive warning resides on a webpage rather than in the package artwork. The physical package can remain unchanged while the warning reached through the QR code is updated to reflect the product's current Proposition 65 profile. For businesses managing hundreds or thousands of SKUs, the distinction is significant: a change in warning content can become a content-management exercise rather than a packaging and inventory project.

The proposal will also benefit consumers. Consumer familiarity with and access to QR codes has grown significantly, making digital disclosure an increasingly practical way to provide product

information and transparency. Recent GS1 US research found that 77% of consumers consider product information important when making purchasing decisions, while 79% are more likely to purchase a product when a scannable QR code provides the information they want.[2] Food-specific research reinforces that point: 66% of consumers reported that they would scan a QR code on food packaging to obtain information such as ingredients, freshness and shelf life.

The CPG marketplace is already reflecting that consumer acceptance. According to Consumer Brands Association's 2026 report on digital disclosure and smart packaging, hundreds of millions of CPG units, spanning more than 1,000 brands and 100,000 products, already use QR codes or similar digital disclosure technology.[3] These tools allow consumers to access information that may be difficult to accommodate on a physical label, including more detailed nutritional information, allergen information, sourcing, traceability and sustainability information.

This is also not simply a temporary packaging trend, and we encourage OEHHA to take note of recent growth and research. Through GS1's Sunrise 2027 initiative, brands and retailers are transitioning toward 2D barcodes, including QR codes, that can serve both traditional retail functions and provide consumers with richer product information through a smartphone scan. Retailers are working toward the capability to process these codes at point of sale by the end of 2027, and major global brands are participating in the transition. Taken together, consumer usage, widespread CPG adoption and the broader retail transition toward 2D barcodes demonstrate that QR codes have become an increasingly familiar and accessible means of obtaining product information rather than a niche or novel technology.

The update can occur in real time, with respect to products that are already in distribution or even already in a consumer's possession. There is no lead time or lag time, and certainly no need for a recall of inventory. The information is simply up to date all the time. What is more, smartphone access is now nearly ubiquitous nationally, with Pew reporting that 91% of U.S. adults own a smartphone and 86% use their smartphones at least several times each day. Although Pew does not publish a California-specific ownership estimate or state-level QR-code usage rate, available California data likewise reflect widespread reliance on mobile internet access.[4]

These are meaningful improvements. The Coalition therefore supports OEHHA's decision to create an express QR-code safe harbor, ideally covering all two-dimensional (2D) barcodes so as to cover QR codes today as well as successor technologies that may exist in the future. Several aspects of the proposed language should be revised, however, to ensure that the new method realizes those benefits.

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[2] https://www.gs1us.org/industries-and-insights/by-topic/sunrise-2027

[3] https://consumerbrandsassociation.org/report/the-state-of-digital-disclosure-and-smart-packaging-for-the-cpg-industry/ and https://consumerbrandsassociation.org/wp-content/uploads/2026/05/CBA-State-of-Digital-Disclosure-Whitepaper.pdf

[4] https://www.pewresearch.org/internet/fact-sheet/mobile/

C. The Signal Language Should Be Streamlined.

OEHHA's proposal would require the QR code to be accompanied by a statement that reads:

> Proposition 65 Warning for [name of one or more chemicals]. For more information, scan the QR code.

A bare QR code, without any indication of its purpose, would not adequately inform a consumer that scanning the code will provide Proposition 65 warning information. Language such as "Prop 65 Warning" or "Proposition 65 Warning" provides a straightforward solution. The proposal goes unnecessarily further, however, by requiring the signal itself to identify the chemical.

If the on-package signal must identify the chemical by name, then the chemical name remains frozen into the package artwork. A manufacturer whose testing, sourcing, formulation, or exposure analysis changes may still need to redesign the label merely to change the chemical identified next to the QR code. This substantially reduces the principal flexibility gained by moving the substantive warning online.

More fundamentally, the signal begins to resemble the very warning the QR code is supposed to replace. If the package must already tell the consumer that the product carries a Proposition 65 warning, identify the chemical, and direct the consumer to additional information, the QR code method becomes less an alternative warning method than a conventional warning accompanied by a hyperlink.

The result is a QR-code method that solves only part of the problem. The substantive warning may be electronic, but the package itself would still contain product-specific warning content requiring revision when the relevant chemical changes. That is unnecessary to place a consumer on notice. The function of the signal should be to tell the consumer what information the QR code provides. The function of the linked webpage should be to provide the warning itself.

The Coalition therefore recommends that OEHHA require only a signal saying:

> **Proposition 65 Warning**

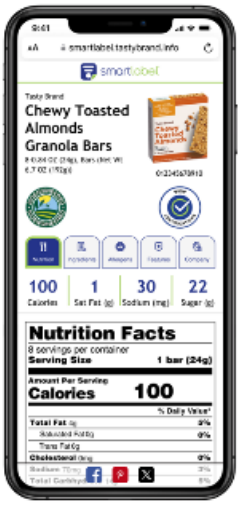
or:

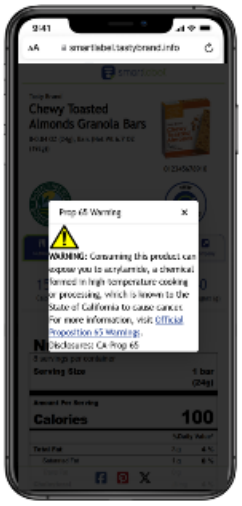
> **Prop 65 Warning**

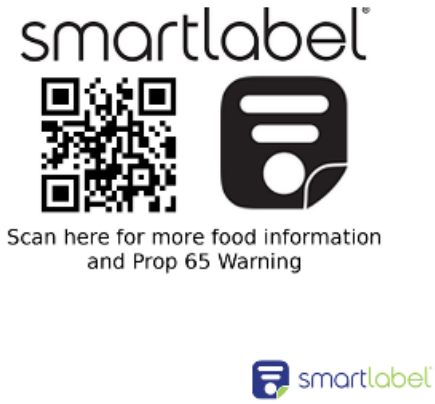
immediately adjacent to the QR code. The words "Scan for" and/or "California" or "CA" could precede these terms, but would not be required. In this way, the consumer would know that the QR code is associated with Proposition 65 warning information and how that information can be obtained, while the substantive content of the warning—including the chemical identification required by Section 25603—would remain on the linked webpage.

The Coalition agrees that the applicable Proposition 65 warning should be immediately and prominently available after the consumer scans the code. The consumer should not be required to

navigate through multiple pages, menus, or other content to locate the warning. That approach is consistent with the basic principle underlying OEHHA's existing electronic-warning regulations: the warning must be readily available to the purchaser rather than something the purchaser must independently search for. An example (for illustrative purposes only) of such disclosure is available below:







D. OEHHA Should Establish a Durability Safe Harbor.

Electronic warnings necessarily present different operational issues than printed warnings. Once printed on a package, a physical warning generally remains available for the life of the product. A QR-code warning depends on a functioning webpage, hosting provider, domain-name infrastructure, content-management system, and other technology. Even responsibly maintained websites can experience brief interruptions outside the business's control. And products can sometimes remain in consumers' homes long after their intended lives.

The proposed regulation ought to address those circumstances. Without clarification, a temporary outage could become the basis for an allegation that a business failed entirely to provide a warning, notwithstanding reasonable efforts to maintain the webpage and its availability before and after the interruption. Likewise, a consumer cannot reasonably expect that a webpage linked to be a QR code will still be operable years after the product has been sold. Uncertainty about temporary outages or the length of time a webpage must be maintained could materially discourage use of the QR-code safe harbor.

OEHHA should therefore provide a reasonable-maintenance standard for a specific period of time after a product is sold. A business that maintains the linked webpage through reasonable measures and preserves records of the warning content provided should not lose safe-harbor protection because of a temporary technical interruption beyond its reasonable control or the passage of an extended period of time. This is consistent with the provisions of the statute and

the regulations that warnings need only be "reasonable" and need not be provided to each exposed individual. Health & Safety Code §§ 25249.6, 25249.11(f); 27 Cal. Code Regs. § 25600(d).

* * *

The Coalition appreciates the opportunity to submit these comments and welcomes further discussion of these proposals with OEHHA and other stakeholders.

Respectfully Submitted,

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