Office of Environmental Health Hazard Assessment
California Environmental Protection Agency

FINAL STATEMENT OF REASONS

Title 27, California Code of Regulations
Amendments to Article 6
Clear and Reasonable Warnings

Adoption of Sections 25607.34 and 25607.35
Residential Rental Property Exposure Warnings

SUMMARY

The Office of Environmental Health Hazard Assessment (OEHHA) published the Initial Statement of Reasons (ISOR) for this action on March 2, 2018. The 45-day comment period closed on April 16, 2018. OEHHA received three comment letters, from the California Apartment Association, the California Association of Realtors, and one individual (Andrew Cuthbert). No public hearing was requested for this regulatory proposal. After careful consideration of the comments received during the initial comment period from the public and recommendations from the Office of Administrative Law, OEHHA published a Notice of Modification of Text of Proposed Regulations on October 22, 2018. The 15-day comment period closed on November 7, 2018. OEHHA received three comment letters, from the California Apartment Association, the California Association of Realtors, and Environmental General Counsel, LLP.

UPDATE OF INITIAL STATEMENT OF REASONS

The proposed regulatory text was modified to further clarify the methods by which safe harbor warnings for exposures to listed chemicals on residential rental properties could be provided in hardcopy or electronic format. The revised methods include: (1) by a letter delivered and addressed to each known adult occupant and to “Tenants and Occupants” if the names of all adult occupants are not known [Section 25607.34(b)(1)]; (2) by an electronic message sent to each email address used to communicate information to the known adult occupants and other tenants [Section 25607.34(b)(2)]; (3) by the lease or rental agreement but only as to those adult occupants who sign or are named in the lease or rental agreement [Section 25607.34(b)(3)]; and (4) in any year following the initial year, warnings may be provided using one or more of the methods in subsections (b)(1) or (b)(2), or in the renewed lease or rental agreement but only as to those adult occupants who sign or are named in the renewed lease or rental agreement and only for the year in which the lease or rental agreement is renewed.

Lastly, Sections 25607.35(a)(4) and 25607.35(a)(6) were revised by adding the term "listed" for consistency as to reference to the chemicals on the Proposition 65 list.

PUBLIC COMMENTS

Below is a summary of the comments received on the proposed regulation during the initial 45-day comment period that closed on April 16, 2018, and OEHHA's responses to the comments.

Comments from the California Apartment Association (CAA)

1. Comment (CAA): CAA appreciates OEHHA's willingness to develop a safe harbor warning scheme that is appropriate and workable for the rental housing industry and believes that the proposed regulations come very close to achieving that goal.

Response: OEHHA acknowledges the comment. No change to the proposed regulation was made based on this comment.

2. Comment (CAA): Subsection 25607.34(b) does not clearly state to whom the adult occupant must be known or what constitutes knowledge. The term "known adult occupant" should be defined within the regulation.

Response: As used in the proposed regulation, "known" has its normal and customary meaning.[1] There is no need to define "known adult occupant" in the regulation. The term was included in the regulation to distinguish between those adults living in the unit that the operator "knows" are present, and those unknown adult occupants who are living in the unit. As provided in other parts of the regulations, a warning is not required to be given to every exposed individual.[2] Thus, the property owner is not required to determine the names of all adults who are living at the property in order to provide an adequate warning for purposes of Proposition 65.

The proposed regulatory text was revised subsequent to this comment to clarify that a warning may be provided by a letter delivered to the property and addressed to each known adult occupant and to "Tenants and Occupants" if their names are not known, or by an electronic message sent to each email address used to communicate information to the known adult tenants and occupants. Initial warnings (and subsequent warnings) may be provided in the lease or rental agreement (or renewed lease or rental agreement) to those adult occupants who sign or are named in the lease or rental agreement (or renewed lease or rental agreement) but only for the year in which it is signed or renewed. Other known occupants who have not signed or are not named in

[1] See for example: http://www.dictionary.com/browse/known?s=t; https://thelawdictionary.org/known.
[2] Title 27, Cal. Code of Regs., section 25600(d). All further references are to sections of Title 27 of the California Code of Regulations, unless otherwise indicated.

the lease or rental agreement may be provided a warning by letter or electronic message as described above.

3. Comment (CAA): It is unclear in the regulation whether providing a warning in the lease is sufficient to warn not only those tenants who sign the lease but also any "known occupants". It is unclear in the regulation what the phrase "directly provide" means.

Response: For exposures to known adult occupants living at the property who do not sign or are not named in the lease or rental agreement, providing the warning only in the lease is insufficient to take advantage of the safe harbor provisions of the proposed regulations. As stated in the ISOR (p. 5):

> "The use of the *term 'adult occupant' is intended to ensure that adults who reside at the property, including those who did not sign a lease or rental agreement*, receive a clear and reasonable warning prior to being exposed to a listed chemical at the property." (Emphasis added.)

Thus, in order to take advantage of the safe harbor, the property owner would need to provide the warning in the lease and annually thereafter for those occupants who sign it, and provide the warning to all the adult occupants of the property that the owner knows are living there, such as through a letter addressed to "Tenants and Occupants" of the rental unit. If both steps are not taken, the safe harbor will not apply and the owner may need to show that they provided a "clear and reasonable" warning if they receive a Notice of Violation.

The term "directly" was used in the first version of the proposed regulation to ensure that the warning is not simply posted or generally made available and is instead provided in a manner that the exposed individual is likely to receive it. The term "directly" was, however, omitted in the revised text of the regulations since it appeared to cause confusion.

The proposed regulatory text was also modified to clarify that a warning provided in the initial lease or rental agreement (as well as any subsequent renewals) would suffice only for those adult occupants who sign or are named in the lease or rental agreement and for renewals only for the year in which it is renewed. In addition, the proposed regulatory text was also modified to include options for providing warnings to tenants or occupants who are known by the operator to be living at the property, but whose name is unknown to the operator (those who are not named in or did not sign the lease or rental agreement) by a letter delivered and addressed to "Tenants and Occupants", or through an email addressed to the "tenants and occupants".

4. Comment (CAA): The commenter asks how their members can provide the new warning to existing tenants, in advance of the effective date of August 30, 2018, rather than waiting for lease renewal to do so.

The commenter also states that it is unclear whether multiple copies of the warning must be provided in order to "directly" warn "each" occupant. It is uncertain whether a single document, addressed to "all occupants" in a particular unit would suffice, or whether separate mailings or multiple documents in one envelope are required. In the situation where tenancy is on a month-to-month basis and the owner may not provide an updated lease, would mailing a single warning document addressed to "all occupants" be sufficient? Commenter proposes that the phrase "provided to each known adult occupant" be defined in the regulation as a warning provided in the lease or rental agreement; in a renewal lease or rental agreement, or amendment; a single hard copy mailed or delivered to the unit addressed to "all occupants"; or an electronic form that is sent to an email address provided by a tenant of record.

Response 4: The first portion of the comment asking how to provide warnings before August 30, 2018 is now moot, as the new Article 6 Clear and Reasonable Warnings regulations are now effective and the older regulations have been repealed. A business wishing to provide warnings before new Sections 25607.34 and 25607.35 become effective has the option of providing warnings using the safe harbor warning methods and content in this proposed regulation or more general warnings corresponding to the category of exposure occurring at the property, i.e., consumer product exposure warnings,[3] environmental exposure warnings,[4] occupational exposure warnings,[5] and specific exposure warnings ("tailored warnings").[6] [7] In the alternative, a business can always provide its own non-safe harbor warnings that otherwise comply with the Act.[8] A business wishing to provide a warning for an existing tenant on or after the effective date of new Sections 25607.34 and 25607.35 can do so using one of the methods in Section 25607.34(b).

As discussed in the response to Comment 2, the term "known" occupant has its normal and customary meaning. The term "directly" was used to ensure that the warning is not simply posted or generally made available and is instead provided in a manner that the exposed individual is likely to receive it. The term was omitted from the latest revised text of the regulations to avoid confusion.

A warning is not required to be given to each exposed individual.[9] OEHHA believes it is reasonable to assume that if a notice is provided by mail, email or otherwise delivered,

[3] Sections 25602 and 25603.
[4] Sections 25604 and 25605.
[5] Section 25606.
[6] Section 25607.1, et seq.
[7] See Section 25600.1 for definitions of "consumer product exposure", "environmental exposure" and "occupational exposure".
[8] Section 25600(f).
[9] Section 25600(d).

to the known tenants and occupants of a rental property, the residents of that rental property will likely have an opportunity to read and understand the warning.[10] A single letter addressed to all occupants named in the lease (by name) and generally to "Other Tenants and Occupants" would satisfy the requirements of this subsection. The proposed regulatory text was revised to clarify how to provide warnings to adult occupants of the property. If the initial or annual warning is mailed it should be addressed to the name of each known adult occupant; if the names of all the adult occupants are not known, the letter should also be addressed to "Tenants and Occupants". Alternatively, the warning may be provided in an email addressed to "Occupants and Tenants" and sent to each email address used to communicate information to the known adult tenants and occupants. Initial warnings (and subsequent warnings for renewal lease or rental terms) may be provided in the lease or rental agreement or renewed lease or rental agreement as applicable, to those adult occupants who sign or are named in the lease or rental agreement or renewed lease or rental agreement but only for the year in which it is signed or renewed. Other known occupants who have not signed or are not named in the lease or rental agreement may be provided the required warning by letter or email as described above.

5. Comment (CAA): The commenter proposes an amendment to Section 25607.34(b) describing alternative acceptable warning methods for when and how to provide a warning to each known adult occupant.

Response: As discussed in the response to Comment 2, the term "known" occupant has its normal and customary meaning. The term was included in the regulation to limit the notice requirement to those adults living in the unit that the owner "knows" are present, whether or not the person signed the lease. Although a warning is not required to be given to each exposed individual[11], to the extent that the owner knows of the adult occupants of a unit, a warning should be provided to those occupants. Also discussed in the response to Comment 2 are the revisions to the proposed regulatory text clarifying the alternative methods for providing a safe harbor warning for exposures to listed chemicals on residential rental properties.

6. Comment (CAA): The commenter asks that the term "directly" be deleted from subsection 25607.34(b)(2) because it suggests that personal service of the warning is required and the term stands out because it is not used in subsection (b)(1).

Response: Nothing in the proposed regulation requires personal service of the warning. The purpose of including the term "directly" was to ensure a safe-harbor

[10] See, Final Statement of Reasons, Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6 Regulations for Clear and Reasonable Warnings, at 125 (2016).
[11] Section 25600(d).

warning is not simply posted somewhere on the premises, and is instead provided in a manner that the exposed individual is more likely to see and read it. The term was omitted from the latest revised text of the regulations. The revisions to the proposed regulatory text clarify the alternative methods by which a safe harbor warning for residential rental property exposures can be given.

7. Comment (CAA): The commenter states that in Section 25607.34(c), the inclusion of any "required notices" that "are provided…in any language other than English" is overbroad and unworkable. Instead, the commenter asks that the subsection be revised to "required notices from the landlord to the tenant *is required by State law*" or alternatively be revised to parallel the requirement in Section 25604 (environmental exposure warnings) that the warning be provided in a language other than English "if a language other than English is ordinarily used by the person to communicate with applicants and tenants…"

Response: The regulation when taken in context is clear on its face. It could be confusing to add the suggested phrase "*by State law*", since some tenant notices may be required by entities other than the state, such as counties, cities or other entities. The intent of the provision is to ensure that the warning is communicated in a manner consistent with other communications from the landlord to the tenant so that the warning is likely to be seen and understood prior to exposure. OEHHA declines to limit the subject communications to only those required under "State law" as it is too narrow. The alternative suggested "if a language other than English is ordinarily used by the person to communicate with applicants and tenants", is overbroad in this context and might be less clear than the language chosen. No change to the proposed regulation was made based on this comment.

8. Comment (CAA): The examples of warnings in the ISOR will help CAA to provide compliance guidance and materials for its members. Additional examples would be helpful. Some CAA members with newer properties are concerned about having to provide warnings for carcinogens and reproductive toxicants. The ISOR has sample warnings for exposures to carcinogens, however there are no examples that have reproductive toxicity as an endpoint. CAA requests that OEHHA add sample warnings for additional exposure sources/endpoints that are appropriate for rental properties.

Response: In addition to examples of warnings for listed carcinogens, and exposures to both listed carcinogens and reproductive toxicants, the ISOR includes an example of a warning for exposures to listed reproductive toxicants:

> "⚠ **WARNING**: Fireplaces or unvented gas space heaters on this property can expose you to carbon monoxide, which is known to the State of California to cause birth defects or other reproductive harm. Talk to your landlord or the building manager about how and when you could be exposed to this chemical in

> your building. For additional information go to www.P65Warnings.ca.gov/apartments" (ISOR, p.6).

It is important to note that the examples provided in the ISOR are not intended to be a comprehensive list of potential exposure scenarios at residential rental properties. As OEHHA noted in the ISOR (p.6):

> "The exposure sources and chemicals in these examples are provided only for purposes of illustration and are not intended to be applicable to all rental properties. Exposure scenarios will vary among rental properties, and OEHHA believes that in many cases no warning may be required at all as most exposures are likely too low or of short duration."

OEHHA declines to include additional examples of exposure sources as requested by the commenter since each property owner should evaluate what, if any, exposures may occur at their property that may require a warning. Simply posting the examples given in the ISOR may not correctly address likely exposures at a specific property and would not comply with the regulation. No change to the proposed regulation was made based on this comment.

California Association of Realtors (CAR)

9. Comment (CAR): The proposed requirements impose an onerous standard on small property owners. Residential rental properties consisting of fewer than 15 units do not employ onsite professional managers and are generally located in low income urban communities many of which are owned by seniors or "mom and pop" operators. The commenter states that small property owners would now be required to post warnings on garage doors of single family homes or in parts of single-family homes designated for smoking to comply with Proposition 65. The commenter requests an exemption for residential rental properties with 15 units or less.

Response: The warning requirement under Proposition 65 does not apply to businesses with fewer than ten employees.[12] "Mom and pop" businesses are generally small operations with few, if any, additional employees. Where the responsible business has ten or more employees, the business would need to consider whether to provide a warning, and if so whether to provide the proposed safe harbor warning. A business may determine that no warning is required at all if there are no significant exposures to listed chemicals at a given property. The business may also decide to provide a different warning, as long as it can show it is "clear and reasonable".[13] The number of units managed or operated by a business is not relevant under Proposition 65, but rather the number of individuals the business employs. Generally, single family

[12] Health and Safety Code section 25249.11(b).
[13] Health and Safety Code section 25249.6 and Title 27. Cal Code of Regs., section 25600(f).

homes with garages are not considered “enclosed parking facilities”. In a single-family home, occupants who choose to smoke would be responsible for their own exposures to tobacco or marijuana smoke, as opposed to the business that owns the property. The property owner should determine what, if any, exposures to listed chemicals may occur at a particular property and provide warning(s) for those exposures. This regulation does not determine when a warning is required for a given exposure. It simply provides guidance for businesses that have already determined a warning is needed. No change to the proposed regulation was made based on this comment.

Andrew Cuthbert

10. Comment (Andrew Cuthbert): Do the proposed safe harbor residential rental property warning regulations only apply to a landlord who has ten or more employees?

Response: Yes, Proposition 65 exempts small businesses with fewer than 10 employees from the warning requirements of the Act.[14] The proposed safe harbor warning regulations do not determine when a warning is required or require use of the safe harbor warning. They simply provide guidance for businesses that have already determined they need to provide a warning for exposures to listed chemicals. As OEHHA stated in the ISOR (p. 4):

“Although OEHHA believes that exposure to listed chemicals at a level that requires a warning is likely to be relatively rare at residential rental properties, the proposed regulations would provide a uniform and consistent method of providing warnings when a business has determined that a warning should be provided. The safe harbor warnings will provide tenants with information on both a source of exposure and the name of one or more chemicals to which they may be exposed. Further, by providing more guidance to affected businesses on how to provide warnings for exposures to listed chemicals, OEHHA is furthering the purposes of the Act.”

Summary and response to comments on the October 22, 2018 modified regulatory text

California Apartment Association (CAA)

11. Comment (CAA): The first sentence in Section 25607.34, subsection (b) defines the population that must be warned regarding exposures at residential rental properties as “known adult occupants.” CAA interprets this term to mean a person at least 18 years in age who is occupying the premises and whose presence is known to the person or entity that is required to provide a Proposition 65 warning. However, the term is not defined in the regulation. There is text in the proposed regulation that suggests

[14] Health and Safety Code section 25249.11(b).

that warnings are required for persons other than "known adult occupants." In addition, the regulation does not state to whom the adult occupant must be known or what constitutes knowledge. The presence of individuals whose status is unclear is a common occurrence at residential rental properties. It is unclear what level of knowledge, or suspicion – of an employee, agent or client of the business with the duty to warn – would transform the person into a "known" occupant.

Response: As noted in response to a similar comment from CAA to the initially proposed text, the term "known" has its normal and customary meaning.[15] There is therefore no need to define "known adult occupant" in the regulation. The term was included in the regulation to distinguish between those adults living in the unit that the operator "knows" are present, and those adult occupants who are living in the unit unbeknownst to the operator. As provided in other parts of the regulations, a warning is not required to be given to every exposed individual.[16] Thus, the property owner is not required to determine all adults by name who are living at the property in order to provide an adequate warning for purposes of Proposition 65.

12. Comment (CAA): The modification to the warning methodology in Section 25607.34, subsection (b)(1) allows a landlord to avoid the issue of "known adult occupants" entirely by providing the annual warning by delivering a letter addressed to "Tenants and Occupants." CAA interprets this section as allowing a landlord to satisfy the warning requirement by delivering a single letter to the unit that is addressed to all tenants (by name), all occupants named in the lease (by name) and "Tenants and Occupants" (in case there are other known adult occupants whose names are unknown.) The new provision could, however, be reasonably interpreted to instead mean two letters consisting of one letter that is addressed to all tenants (by name) and all occupants named in the lease (by name) and a second letter addressed to "Tenants and Occupants"; or multiple letters consisting of separate letters addressed to each tenant or occupant whose name is known, and an additional letter addressed to "Tenants and Occupants." CAA requests that this provision be clarified so that it is not the inspiration for a new round of punctuation-based litigation.

Response: CAA's interpretation of subsection (b)(1) is correct. A single letter addressed to all occupants named in the lease (by name) and generally to "Other Tenants and Occupants" would satisfy the requirements of this subsection. Therefore, separate mailings or multiple letters in one envelope would not be required.

13. Comment (CAA): The warning letter described in Section 25607.34, subsection (b)(1) must be "delivered to the property." CAA interprets this to allow any reasonable

[15] See for example: http://www.dictionary.com/browse/known?s=t; https://thelawdictionary.org/known.
[16] Section 25600(d).

method of delivery (i.e., sliding it under or posting it on the tenant's door, first class mail to the unit, etc.) rather than a specific type of service. If the intent of this section is to require a specific method of delivery, such as first-class mail, CAA requests that the section be amended to specifically state the acceptable method(s) of delivery.

Response: The regulations do not require a specific delivery method. However, the business may choose to deliver the warning in a manner that would provide proof of delivery in the event of an enforcement action for failure to provide a warning.

14. Comment (CAA): Section 25607.34, subsection (b)(2) suggests that a warning must be provided to someone other than "known adult occupants." The section's reference to "known adult occupants and to other tenants and occupants" is inconsistent with the scope of warning recipients established in (b). It is unclear who the "other occupants" are. The first sentence in section (b) defines the persons on residential rental property to whom warnings must be provided as "each known adult occupant." CAA's understanding is that this is intended to encompass (1) tenants, i.e., those who have signed the lease; (2) other known adult occupants - who could be named in, but not sign the lease, such as dependent adults; and (3) other known adult occupants – for example long term guests, live-in caregivers, etc. All of these people are covered by the term "known adult occupants." While the term "tenant" is unnecessary for that reason, it is clear who the tenants are. The additional "and occupants," however, suggests that a warning is required to be provided to some type of "occupant" who is not a known adult occupant. The only occupants this could mean are (1) children, and (2) occupants whose existence is not known to the owner. This is problematic for two reasons. First, a warning is not required to be given to these people to meet the safe harbor as defined earlier in subsection (b). Second, it is unclear how the owner would identify them and have their email addresses. This could be resolved by using the term "known adult occupant" throughout the regulation as the person to whom a warning regarding residential rental property exposure must be provided. It is also unclear in the email warning section whether, if the tenants of a unit have designated a single email address for communications from the landlord, the landlord may satisfy the duty to warn tenants and other known adult occupants by sending the warning to that single address.

Response: Subsection (b) provides several safe harbor methods a business can choose from, alone or in combination with other methods, to provide a warning for an exposure to known adult occupants, including known adult occupants whose *names* are not known, at a residential rental property. If a landlord chooses the option of providing a warning by email, subsection (b)(2) requires that the email be sent to each email address the landlord uses to communicate information to the known adult occupants and the tenants and occupants of the unit. Subsection (b)(2) would not, however, require a landlord to obtain email addresses for all occupants of a property. Subsection (b)(2) is consistent with subsection (b), as subsection (b)(2) does not expand the

warning requirement beyond "known adult occupants". The phrase "and to other tenants" in subsection (b)(2) refers specifically to the email address that can be used to provide a warning to the known adult occupants under subsection (b). Similarly, the additional phrase "and occupants" in subsection (b)(2) refers to the email addresses that may be used to provide a safe harbor warning to the known adult occupants, but does not create an obligation to provide a warning to children or to adults whose existence is not known to the owner. As subsection (b) applies only to known adult occupants, additional warnings are not required for minor children or unknown occupants.

Subsections (b) and (b)(2) are consistent with the Act, which does not require warnings to be provided separately to each exposed individual.[17] As OEHHA noted in the FSOR for the more general Article 6 Clear and Reasonable Warnings regulations, the Act does not require a warning to be given to each exposed individual,[18] and OEHHA believes it is reasonable to assume that if a notice is provided by mail, email or otherwise delivered to the known tenants and occupants of a rental property, the residents of that rental property will likely have an opportunity to read and understand the warning prior to exposure.[19] Further, the Act requires a warning only for a knowing and intentional exposures to listed chemicals.[20] If there are unknown persons on the premises, the regulation does not impose an affirmative duty on the landlord to identify and provide individual warnings to an unknown person. No changes were made based on this comment.

15. Comment (CAA): Section 25607.34, subsection (b)(4) is duplicative and confusing. In the absence of this subsection, a landlord must provide the warnings at leasing and

[17] Health and Safety Code section 25249.11(f) provides: "(f) 'Warning' within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 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 known to the state to cause cancer or reproductive toxicity into the consumer product in question."

[18] Section 25600(d).

[19] See, Final Statement of Reasons, Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6 Regulations for Clear and Reasonable Warnings, at 125 (2016).

[20] Health and Safety Code section 25249.6 provides, "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, except as provided in Section 25249.10."

annually thereafter (subsection b) and the initial and annual warning may be provided by letter, email or in the lease (subparts (1-3)). For example, at the inception of the tenancy, the landlord could provide the warning in the lease to the single tenant who signs the lease. No additional warning method is necessary because there are no "other occupants" in a vacant unit. A year later, at lease renewal, in addition to the original tenant, there is (1) an agreed-to long term guest, (2) a live-in caregiver for the disabled tenant and (3) the boyfriend of the caregiver who stays over occasionally. The new lease agreement may name the live-in caregiver, but probably not the long-term guest, or the boyfriend. Under (b)(1-3) the landlord would be in compliance if the warning were provided in the lease (warning the tenant and the caregiver) and by letter (warning the guest and the boyfriend). In the alternative, the warning could be provided to everyone by delivering a single letter addressed to everyone named in the lease and "Tenants and Occupants." Similarly, if the landlord is not "renewing" the lease, but it is allowing the tenancy, by operation of law, to convert to a month-to-month tenancy due to ongoing payment of rent, the landlord must still provide the warning 12 months after the original move-in warning was provided. This could be done by delivering a letter as described above. Every 12 months thereafter, the landlord would have the same options for providing the warning. Section (4) muddies the waters. CAA recommends that this section simply be stricken from the regulation.

Response: OEHHA disagrees that the language is duplicative and confusing. The methods generally track the methods for providing the initial warning but are repeated to provide clarity as to the options for providing a warning in a renewed lease or rental agreement after the initial term. No changes to the regulatory text were made based on this comment.

16. Comment (CAA): In Section 25607.34, subsection (c), the inclusion of any "required notices" that "are provided … in any language other than English" as a trigger for translation results in an overbroad and unworkable translation requirement. CAA requests that this provision be revised to require a warning to be provided in a language other than English only when other documents are required to be provided in a language other than English by state law which generally require the contract or information to be provided by the drafting party in Tagalog, Chinese, Spanish, or Vietnamese if the lease was negotiated in that language. The translation requirement should not be triggered by notices prepared by other entities for distribution by landlords. Instead, it should apply when an owner is required by state law to provide a translation of lease documents or when a foreign language is "ordinarily used by the person to communicate with the public." "Ordinarily" in this context would have its usual meaning, and not sweep in the occasional document that includes text in a foreign language.

Response: Subsection (c) was unchanged in the modified regulatory text. This comment is therefore not directed to the modified text. The commenter made similar comments during the initial 45-day comment period, and OEHHA responded to those comments in Comment and Response #7. No changes were made based on this comment.

17. Comment (CAA): Section 25607.34, subsection (d) provides that in addition to the warnings discussed above, which may be provided in the lease or by letter, residential rental properties must also provide the warnings for "enclosed parking facilities" and "designated smoking areas" under Sections 25607.20, 21, 28 and 29. Those sections require the warnings to be provided using signs. Application of those signage requirements to all residential rental property leads to some absurd results. Providing a safe harbor that allows designated smoking area and enclosed parking garage warnings to be provided by the means listed in this proposed regulation – in certain limited situations would avoid these results. For example, this provision could allow the warnings to be provided using the methods in Section 25607.34 if the enclosed parking facility or designated smoking area serves only a single household. The warning text regarding these areas could be included in the lease, or in a letter or email.

Response: This subsection was unchanged in the modified regulatory text; as such, this comment is not directed to the modified text. No changes were made based on this comment.

18. Comment (CAA): The examples of warning text for exposure to listed chemicals at rental properties will be helpful. CAA requests that OEHHA add any sample warnings for any additional exposure sources/endpoints that are appropriate.

Response: This comment is not directed towards the modification of text. OEHHA responded to a similar comment from CAA in Comment and Response 8 above. No changes were made based on this comment.

California Association of Realtors (CAR)

19. Comment (CAR): The commenter renewed his comments made during the initial comment period that the proposed requirements impose an onerous standard on small property owners. The commenter requests an exemption for residential rental properties with 15 units or less.

Response: This comment is not directed towards the modification of text. OEHHA responded to a similar comment from CAR in Comment and Response 9 above. No change to the proposed regulation was made based on this comment.

Environmental General Counsel LLP

20. Comment (Environmental General Counsel LLP): Subsection (b)(1) provides that the warning may be in the form of a "letter delivered to the property." However, the option of sending a letter is not possible for the initial warning "at the time of renting, leasing, or hiring out the property," because the tenants and occupants would not yet be living at the property before or "at the time of" signing a lease. As presently drafted, subsection (b)(1) is only an option for the annual notifications that follow the initial warning, but would not be an option for the initial warning. The commenter suggests subsection (b)(1) be revised to include the phrase, "or otherwise provided to new Tenants at the time of renting, leasing, or hiring out the property".

Response: A landlord wishing to provide a safe harbor warning for a residential rental property can choose any method of delivery for the warning from the methods described in subsection (b). The commenter correctly notes that a landlord may provide a warning "in a letter delivered to the property" consistent with subsection (b)(1). Subsection (b)(1) does not require a specific delivery method such as a postal carrier. Nor does the regulation require the occupants of the property to be physically present to accept delivery of a letter at the property when the warning is delivered to the rental property. As an example, when the lease is signed by the tenant(s), a landlord could hand deliver a warning to the property addressed to each known adult occupant and to "Tenants and Occupants" if the names of other adult occupants are unknown. As noted in responses to comments made during the regulatory process for the new Article 6 regulations,

> "With regard to the question of occupants, OEHHA believes it is reasonable to assume, if a notice is provided by mail, electronically, or otherwise delivered to an occupant of a single-family house or apartment, that all residents of that house or apartment have an opportunity to read and understand the warning. OEHHA is considering an informal request for the development of a "tailored warning" pursuant to Section 25607, *et seq.* for exposures to listed chemicals in hotels and apartments, that will more specifically address the issues raised in this comment."[21]

In the event subsection (b)(1) is not a practical or preferred method for a particular landlord to provide an initial warning to a tenant or occupant, the landlord still has the option of providing a warning using the method in subsection (b)(2). In the alternative, the landlord can choose any other method for communicating the warning that is "clear and reasonable" under the Act.

[21] Final Statement of Reasons, Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6 Regulations for Clear and Reasonable Warnings, at 125 (2016)

No change to the proposed regulation was made based on this comment.

AMENDED FISCAL IMPACT

The text in the "Fiscal Impact" section provided in the Initial Statement of Reasons for this rulemaking is amended as follows:

"Government Code section 11346.5(a)(6) requires an agency to provide an estimate of costs or savings to any state agency of the regulation. OEHHA has determined that there will be no costs or savings to any state agency because Proposition 65 by its term[22] does not apply to state agencies."

EFFECT ON SMALL BUSINESSES

The text in the "Effect on Small Businesses" section provided in the Initial Statement of Reasons for this rulemaking is replaced with the following:

"**EFFECT ON SMALL BUSINESSES**

OEHHA has determined that the proposed regulations do not affect small businesses, because the business of residential rental properties is not included among the types of businesses identified as small businesses in Government Code section 11342.610."

ALTERNATIVES DETERMINATION

In accordance with Government Code section 11346.9(a)(7), OEHHA has considered available alternatives to determine whether any alternative would be more effective in carrying out the purpose for which the regulations were proposed. OEHHA has also considered whether an alternative existed that would be as effective as, and less burdensome to affected private persons than, the proposed action. OEHHA has determined that no alternative considered would be more cost-effective, or as effective in implementing the statutory policy or other provision of law. The alternative to the addition of Sections 25607.34 and 24506.35 would be to not adopt regulations specific for residential rental property exposure warnings. This is not a reasonable alternative because landlord associations requested specific guidance about how to comply with the warning requirement as it relates to exposures that may occur at their properties. Without the proposed regulation, businesses, landlords in particular, could provide unnecessary warnings or warnings that may be contrary to the purposes of Health and Safety Code section 25249.5, et seq. This regulation furthers the "right-to-know" purposes of the statute and provides more specificity regarding the content of safe harbor warnings for exposures that can occur at residential rental properties, and the corresponding two-part method for providing those warnings.

LOCAL MANDATE DETERMINATION

[22] Health and Safety Code section 25249.11(b).

OEHHA has determined this regulatory action will not impose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. Local agencies and school districts are exempt from Proposition 65. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from this regulatory action.