



Gavin Newsom, Governor
Jared Blumenfeld, Secretary for Environmental Protection
Lauren Zeise, Ph.D., Director

March 21, 2022

Michal Ilana Freedhoff, Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
US Environmental Protection Agency
1201 Constitution Avenue, N.W.
EPA East Building, MC 7101M, Room #3130A
Washington, DC 20460
Email: Freedhoff.Michal@epa.gov

Dear Assistant Administrator Freedhoff:

I am writing on behalf of California's Office of Environmental Health Hazard Assessment ("OEHHA") to request that the United States Environmental Protection Agency ("US EPA") provide input on whether the language described in this letter below could be approved, if requested by a registrant, for inclusion on labels for products containing glyphosate as an active ingredient and sold in California.

OEHHA is the lead agency that administers California's Safe Drinking Water and Toxics Enforcement Act of 1986, codified at California Health and Safety Code section 25249.5 et seq., and commonly known as Proposition 65. Proposition 65 is a right-to-know law that requires businesses to provide a clear and reasonable warning prior to exposing people in California to chemicals that have been listed as carcinogens or reproductive toxins. The warnings provide an important public health benefit by allowing individuals to make informed decisions about their exposures to listed chemicals.

Proposition 65 requires the listing "at a minimum" of chemicals that the International Agency for Research on Cancer (IARC) places in certain carcinogenicity classifications.¹ In 2015, IARC placed glyphosate in a classification that mandated California's listing of the chemical under Proposition 65.² Because glyphosate is now listed as a carcinogen under Proposition 65, Proposition 65 requires businesses to provide warnings if their products that contain glyphosate would result in exposures, unless those exposures fall below a certain level.³

¹ Cal. Health and Safety Code Section 25249.8 (incorporating by reference Cal. Labor Code Section 6382(b)(1)).

² Cal. Code of Regs. Title 27, Section 25904.

³ Cal. Code of Regs. Title 27, Section 25705(b)(1). In *National Association of Wheat Growers v. Becerra*, 468 F.Supp.3d 1247 (E.D. Cal. 2021), the district court enjoined the enforcement of the Proposition 65 warning

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In July 2021, OEHHA initiated the rulemaking process for proposed non-mandatory, “safe harbor” language that businesses could use in satisfying Proposition 65. In other words, while businesses are not required to use this language, doing so would satisfy Proposition 65’s requirement to provide a clear and reasonable warning. OEHHA received and reviewed public comments, and in light of those comments, OEHHA is now considering proposing the following safe harbor language tailored to glyphosate:

⚠ CALIFORNIA PROPOSITION 65 WARNING: Using this product can expose you to glyphosate. The International Agency for Research on Cancer classified glyphosate as probably carcinogenic to humans. US EPA has determined that glyphosate is not likely to be carcinogenic to humans; other authorities have made similar determinations. A wide variety of factors affect your potential risk, including the level and duration of exposure to the chemical. For more information, including ways to reduce your exposure, go to www.P65Warnings.ca.gov/glyphosate.

Under the proposal, businesses could also substitute the words “ATTENTION” or “NOTICE” for “CALIFORNIA PROPOSITION 65 WARNING.”⁴

OEHHA requests that US EPA clarify that registrants could apply for approval from US EPA under FIFRA to include the safe harbor language quoted above on their labels for products containing glyphosate as an active ingredient and sold in California. Inclusion of such language would be among the options for complying with Proposition 65. Proposition 65 is a public notice law, not a labelling law, and thus authorizes compliance through any of several means (e.g., shelf tag, electronic device during purchase).

OEHHA seeks clarification, in light of the above safe harbor language, of US EPA’s position as previously stated in its August 7, 2019, letter to registrants regarding products that contain glyphosate. That letter focused on the application of generic Proposition 65 safe harbor warning language to products containing glyphosate, rather than on glyphosate-tailored safe harbor warning language in OEHHA’s current rulemaking.

Thank you for your consideration of this request. I look forward hearing from you.

Sincerely,


Lauren Zeise (Mar 21, 2022 11:54 PDT)

Lauren Zeise, Ph.D., Director

cc: See next page.

requirement as to glyphosate, on First Amendment grounds. As discussed below, OEHHA has initiated a rulemaking proposing warning language that is tailored to glyphosate and would address the concerns the district court articulated. An appeal of the district court decision is now pending.

⁴ The full proposed regulatory text is available at

<https://oehha.ca.gov/media/downloads/cnr/glyphosateproposedregtext071921.pdf>

Michal Ilana Freedhoff, Assistant Administrator

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cc: Director Edward Messina
Office of Pesticide Programs
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Email: Messina.Edward@epa.gov

Jared Blumenfeld
Secretary for Environmental Protection
California Environmental Protection Agency

Linda Lye
Deputy Secretary for Law Enforcement and General Counsel
California Environmental Protection Agency