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Proposition 65: OEHHA Floats “Omnibus 2026” Amendments—QR Code and Naturally Occurring Exemption Take Center Stage

The California Office of Environmental Health Hazard Assessment (“OEHHA”) is in the early stages of what it is calling the “Omnibus 2026” package of amendments to the Proposition 65 regulations—a set of eight proposed changes covering among other things, tailored warnings for machinery parts, alignment of the short-form warning, the naturally occurring exemption for chemicals in food, internet purchase warnings, retailer responsibility, and the potential addition of quick response (“QR”) codes as a warning method. The full draft regulatory text is available here: [Topics of Proposed Regulatory Changes in Omnibus 2026](#).

KEY DATES

OEHHA held its pre-regulatory workshop on the draft language on **July 30, 2026**. The written public comment period is open through **September 8, 2026**. No formal rulemaking hearing has been noticed yet, as OEHHA has stated that a formal rulemaking will be published sometime in the future, at which point a separate notice, public comment period, and response-to-comments process will begin. In the meantime, the next

industry-wide forum on Proposition 65 developments is the Proposition 65 Clearinghouse’s Annual Conference on **August 31, 2026**, in San Francisco, a conference at which OEHHA is a supporting sponsor and typically participates in panel discussions.

WHAT STAKEHOLDERS ARE WATCHING

Although OEHHA placed eight topics on the table, stakeholder attention at the workshop was overwhelmingly focused on two issues:

- **Naturally occurring exemption (Topic 4).** As background, the current regulation (Section 25501 of Title 27 of the California Code of Regulations) provides an exemption from Proposition 65’s warning obligation for a listed chemical in food to the extent the chemical is “naturally occurring”—meaning it is a natural constituent of the food or is present solely because it was absorbed or accumulated from the surrounding environment (for example, lead or cadmium taken up from soil), and did not result from any “human activity.” The

regulation carves sowing, planting, irrigation, and mechanical soil preparation out of “human activity,” but treats processes such as adding chemicals to irrigation water as human activity. The exemption applies only to the extent the chemical is introduced into the food product by way of naturally occurring elements and could not have been avoided through good agricultural or manufacturing practices. OEHHHA’s proposed amendment is narrow on its face: it would clarify that “human activity” can occur even where a chemical’s Chemical Abstracts Service number does not change during extraction or concentration—a change the agency characterized as “very minimal.” But OEHHHA expressly invited broader proposals, and the workshop discussion tracked the fault lines that have surrounded this exemption for decades. Food and agriculture commenters urged OEHHHA to strike or substantially rework the language, warning that as drafted it could sweep in the “entirety of California agriculture” given that human activity touches nearly every step from farm to fork. On the other end of the spectrum, Plaintiffs’ attorneys and public health advocates took the opposite view, urging that the exemption not be permitted to “swallow the rule” for chemicals like lead, mercury, and cadmium that are demonstrably harmful regardless of origin.

- **QR codes (Topic 7).** OEHHHA’s draft would introduce QR codes as an optional warning method, and the agency itself described the proposal as “just a starting point for discussion,” flagging open questions about smartphone access, in-store connectivity, whether the landing page should sit on OEHHHA’s or the manufacturer’s website, and what accompanying text should appear next to the code. The draft text would require the QR code to appear on a posted sign, shelf tag, shelf sign, or label/labeling, and would mandate a specific accompanying statement: “Proposition

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

Industry commenters largely welcomed the flexibility, particularly for small-format products and online sales. On the other hand, public health, environmental justice, and plaintiffs’ bar commenters pushed back hard, arguing that QR codes create access barriers tied to age, race, income, and language, and could obscure the actual warning.

TAKEAWAY FOR RETAILERS AND MANUFACTURERS

It remains an open question which direction OEHHHA will ultimately go on either the QR code proposal or the naturally occurring amendment, and OEHHHA has emphasized that the draft text is not in its final form and that it is not wedded to the current proposal. But adoption in any iteration would drive meaningful changes across warning content, transmission methods, and allocation of compliance responsibility between manufacturers, distributors, and retailers. Retailers, distributors, and manufacturers that sell products into California should consider submitting written comments before the September 8, 2026, deadline and continue to monitor OEHHHA’s notices for the formal notice of proposed rulemaking, which will trigger the statutory comment and hearing process.

For more information or assistance, please contact Cheryl S. Chang, Brittany Wei, or another member of Blank Rome’s Product Liability or California Proposition 65 teams.

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