



Proposition 65 Clear and Reasonable Warnings As of August 30, 2018

Just over thirty years ago, California's *Safe Drinking Water and Toxic Enforcement Act of 1986*, commonly referred to as *Proposition 65 (Prop 65)*, went into effect. The statute's intent is to help Californians make informed decisions about protecting themselves from chemicals known to cause cancer, birth defects, or other reproductive harm. Accordingly, unless the expected level of exposure would pose no significant cancer risk, it has required all commercial entities to ensure that California consumers receive *clear and reasonable* warnings prior to being exposed to a growing list of chemicals. ([July 7, 2017 Proposition 65 List](#))

This warning is often in the form of a label on the product or its packaging. Until now *clear and reasonable* has been satisfied by generic warning language (*so-called "safe harbor" warnings*) which was only required to state that a chemical that causes cancer or reproductive harm is present.

In August of 2016, California's *Office of Environmental Health Hazard Assessment (OEHHA)* adopted amended regulations regarding *clear and reasonable* warnings. These new regulations, which significantly alter the *safe harbor* rules for providing *Prop 65* warnings, take effect on August 30, 2018. Entities selling merchandise in California would do well to be aware of any / all chemicals contained in its product[s]¹ and of the new regulatory requirements.

Key Changes to the Prop 65 Warnings


The new warnings will have to indicate

» *That the product "can expose" users to a chemical(s) known to the State of California to cause [either cancer or birth defects or other reproductive harm].*

AND, NOT ONLY INCLUDE:

» *The name of at least one listed chemical that prompted the warning, BUT*

» *A link to the state's Prop 65 internet site, which includes additional information on the health effects of listed chemicals and ways to reduce or eliminate exposure to them; AND*

» *A triangular yellow and black warning symbol (can be white and black only if the label for the product does not use the color yellow).  **

The specific language in the safe-harbor warnings depends on the types of listed chemicals, the number of listed chemicals, and the method of transmission.

The new regulations provide specific and individualized safe-harbor warnings, depending on whether the products contain:

» *only carcinogens,*

» *only reproductive toxicants,*

» *both listed carcinogens and listed reproductive toxicants, or*

» *a listed chemical that is both a carcinogen **and** reproductive toxicant.*

¹ And to stay abreast of the list and any additions to it; the list is continuously changing and at this point lists over 800 chemicals. Every time a new chemical is added to the state's list, there is a one-year grace period to start providing warnings for the newly listed chemical.



For example, the new safe-harbor warning for exposure to a chemical that is listed as both a carcinogen and a reproductive toxicant must now state:



WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Moreover, the new warning regulations also:

» *Feature warnings that are tailored to certain Products [such as **Consumer Products** §25602-25603ⁱ or **Furniture** §25607.12-.13ⁱⁱ] and Areas [e.g., **Amusement Park** § 25607.22 -.23 or **Enclosed Parking Facility** §25607.20-.21] for certain kinds of exposures, products, and places. For example, aside from the warning on the law label or manufacturer's label, home furnishings retailers must either post the Prop 65 warning at each public entrance on an 8 ½ x 11" sign in 28-point font or stamped on each receipt in 12-point font.*

» *Clarify the roles and responsibilities of manufacturers and retailers in providing warnings (§ 25600.2. Responsibility to Provide Consumer Product Exposure Warnings – See endnote i):*

» *Impose Primary Responsibility For Providing Warnings On Product Manufacturers, Producers, Packagers, Importers, Suppliers Or Distributors. They must either affix warnings on the products or on product labels or provide notice and warning materials to “the authorized agent” for a retailer. Detailed terms regulate how manufacturers may ask retailers to warn. Unless they label their products, manufacturers, producers, and packagers must document that they have notified retailers of the need to provide warnings and provided all necessary warning materials.*

» *Make Retailers responsible for the placement and maintenance of warning materials received from suppliers; for warnings on any private label products and for warnings on any products for which they are they importer of record.*

*Retailers will only be responsible for providing warnings if they have been notified but failed to provide the warnings, or if they are selling “house brands,” or in other limited circumstances. Retailers **MUST** be able to provide the name and contact info for upstream companies upon request to OEHHA, the public enforcers or any private enforcer who serves a 60-day notice letter **IF** the requestor provides a description of the product with specificity in accordance with the regulation (i.e., they must ask for info on a specific item not just all “shirts” or “handbags” in the store).*

» *Provide for Other languages: Safe harbor warnings must be provided in English, and if a product sign, label, or shelf tag used to provide a warning also contains consumer information in a language other than English, the Proposition 65 warning must also be provided in that language.*

» *Provide for website warnings for products purchased over the Internet.*

The new regulations now address Internet warnings. To comply with the safe-harbor provisions for Internet purchases, the new regulations require companies to include the safe-harbor warnings on the product display page, in a hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. It should be noted that warnings requiring the purchaser to search for the warning in the general content of the website are not considered prominently displayed.



Grace Period

The new regulations become operative on August 30, 2018, and will apply to products manufactured after that date. Until that date, companies are free to comply with the safe-harbor warning provisions of either the existing or new regulations.

As explained by California's OEHHA on its website with information on the Warning Symbol:

*With some exceptions, the warning symbol is a required element of safe harbor warning content. [*Per the above pictogram] The symbol consists of a black exclamation point in a yellow equilateral triangle with a bold, black outline. The symbol must be placed to the left of the text of the warning in a size no smaller than the height of the word "WARNING". If the sign, label, or shelf tag for the product is not printed using the color yellow, the symbol may be provided in black and white. Businesses may download the symbols provided below for use in Proposition 65 warnings. A business wishing to provide a safe harbor warning must meet all applicable requirements of the Article 6 Clear and Reasonable Warnings (link is external) regulations.*

Below you will find links to download several sizes of the warning symbols required to be included on most safe harbor warnings for exposures to listed chemicals under the new regulations effective in August 2018. The formats we provide in the download ZIP file are PNG (Raster) and SVG (Vector). These symbols are provided by OEHHA for the purpose of assisting businesses transitioning to the new safe harbor warning provisions of the regulations. While a business may choose to use a different size, color or symbol format, the business may wish to consult with legal counsel regarding the applicability of the safe harbor regulations, and specifically the warning symbol requirements of the new regulations for specific exposures.

[All Sizes of Warning Symbols \(Download ZIP\)](#)

The OEHHA page also includes availability to download individualized Warning Symbols, go to [Please select a Color and Size. Click to Download.](#) [*once there, scroll down to middle of page*]

Additional Links of Interest:

- [Title 27 California Code of Regulations - Article 6, Clear and Reasonable Warnings](#)
- [Side by Side Comparison of old and new regulations](#)
- [CLEAR AND REASONABLE WARNINGS QUESTIONS AND ANSWERS FOR BUSINESSES](#)

ⁱ § 25600.2. Responsibility to Provide Consumer Product Exposure Warnings.

(a) Section 25249.11 of the Act requires the lead agency to minimize the burden on retail sellers of consumer products, to the extent practicable, when it adopts regulations concerning clear and reasonable warnings except where the retail seller itself is responsible for introducing a listed chemical into the product.



(b) The manufacturer, producer, packager, importer, supplier, or distributor of a product may comply with this article either by affixing a label to the product bearing a warning that satisfies Section 25249.6 of the Act, or by providing a written notice directly to the authorized agent for a retail seller who is subject to Section 25249.6 of the Act, which:

- (1) States that the product may result in an exposure to one or more listed chemicals;
- (2) Includes the exact name or description of the product or specific identifying information for the product such as a Universal Product Code or other identifying designation;
- (3) Includes all necessary warning materials such as labels, labeling, shelf signs or tags, and warning language for products sold on the Internet, that satisfies Section 25249.6 of the Act;
- (4) Has been sent to the retail seller, and the manufacturer, producer, packager, importer, supplier, or distributor has obtained confirmation electronically or in writing of receipt of the notice.

(c) If the manufacturer, producer, packager, importer, supplier, or distributor of a product is complying with this section by providing a written notice directly to the authorized agent:

- (1) The notice must be renewed, and receipt of the renewed notice confirmed electronically or in writing by the retail seller's authorized agent within six months during the first year after the effective date of this section, then annually thereafter during the period in which the product is sold in California by the retail seller.
- (2) An additional notice is required within 90 days when a different or additional chemical name or endpoint (cancer or reproductive toxicity) is included in the warning.

(d) The retail seller is responsible for the placement and maintenance of warning materials, including warnings for products sold over the Internet, that the retail seller receives pursuant to subsections (b) and (c).

(e) The retail seller is responsible for providing the warning required by Section 25249.6 of the Act for a consumer product exposure only when one or more of the following circumstances exist:

- (1) The retail seller is selling the product under a brand or trademark that is owned or licensed by the retail seller or an affiliated entity;
- (2) The retail seller has knowingly introduced a listed chemical into the product, or knowingly caused a listed chemical to be created in the product;
- (3) The retail seller has covered, obscured or altered a warning label that has been affixed to the product pursuant to subsection (b);
- (4) The retail seller has received a notice and warning materials for the exposure pursuant to subsections (b) and (c) and the retail seller has sold the product without conspicuously posting or displaying the warning; or
- (5) The retail seller has actual knowledge of the potential consumer product exposure requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the product who:
 - (A) Is a "person in the course of doing business" under Section 25249.11(b) of the Act, and
 - (B) Has designated an agent for service of process in California, or has a place of business in California.

(f) For purposes of subsection (e)(5), "actual knowledge" means specific knowledge of the consumer product exposure received by the retail seller from any reliable source. If the source of this knowledge is a notice served pursuant to Section 25249.7 (d)(1) of the Act, the retail seller shall not be deemed to have actual knowledge of any consumer product exposure that is alleged in the notice until five business days after the retail seller receives a notice that provides a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Article 9, section 25903(b)(2)(D).

(g) The retail seller of a product that may cause a consumer product exposure shall promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product to the following persons on written request, to the extent that this information is reasonably available to the retail seller:

- (1) The lead agency;



(2) The Attorney General, any district attorney, or any city attorney or city prosecutor with authority to bring an action under the Act; or

(3) Any person who has served notice under Section 25249.7(d)(1) of the Act alleging that the consumer product causes an exposure that requires a warning under the Act.

(h) A person or entity making a written request pursuant to subsection (g) must provide a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Article 9, section 25903(b)(2)(D).

(i) Provided that the consumer receives a warning that meets the requirements of Section 25249.6 of the Act prior to exposure, the manufacturer, producer, packager, importer, supplier, or distributor of a product that may cause a consumer product exposure may enter into a written agreement with the retail seller of the product to allocate legal responsibility among themselves for providing a warning for the product, which shall bind the parties to that agreement and which shall supersede the requirements of subsections (b), (c), (d), and (e).

§ 25603. Consumer Product Exposure Warnings – Content.

(a) Unless otherwise specified in Section 25607.1 et seq., a warning meets the requirements of this subarticle if it is provided using one or more of the methods required in Section 25602 and includes all the following elements:

(1) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

(2) The word “WARNING” in all capital letters and bold print, and:

(A) For exposures to listed carcinogens, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.”

(B) For exposures to listed reproductive toxicants, the words, “ This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

(C) For exposures to both listed carcinogens and reproductive toxicants, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer, and [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

(D) For exposures to a chemical that is listed as both a carcinogen and a reproductive toxicant, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

(E) Where a warning is being provided for an exposure to a single chemical the words “chemicals including” may be deleted from the warning content set out in subsections (A), (B), (C) and (D).

(b) An on-product warning may be provided using all the following elements:

(1) The symbol required in subsection (a)(1).

(2) The word “WARNING” in all capital letters, in bold print.

(A) For consumer products that cause exposures to a listed carcinogen, the words, “Cancer - www.P65Warnings.ca.gov.”

(B) For consumer products that cause exposures to a listed reproductive toxicant, the words “Reproductive Harm - www.P65Warnings.ca.gov.”



(C) For consumer products that cause exposures to both a listed carcinogen and a reproductive toxicant, the words, “Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”

(c) A person providing an on-product warning pursuant to subsection (b) is not required to include within the text of the warning the name or names of a listed chemical.

ii § 25607.12 Furniture Product Exposure Warnings – Methods of Transmission

(a) A warning for consumer product exposures from furniture meets the requirements of this subarticle if it complies with the content requirements in Section 25607.13 and is provided using the following process:

(1) A warning is affixed to the furniture product in the same manner as other consumer information or warning materials that are provided on the product and

(A) A notice or sign no smaller than 8 ½ by 11 inches is displayed either at each public entrance or point of display, and printed in no smaller than 28-point type, or

(B) A notice is printed or stamped in no smaller than 12-point type on each receipt.

§ 25607.13 Furniture Product Exposure Warnings - Content

(a) A warning for consumer product exposures from furniture meets the requirements of this subarticle if it is provided using the combination of methods required in Section 25607.12 and it includes all the following elements:

(1) An on-product warning label provided pursuant to Section 25607.12(a)(1), must contain all the following elements:

(A) The symbol described in Section 25603(a)(1).

(B) The word “WARNING” in all capital letters and bold print.

(C) The words, “This product can expose you to chemicals including [name of one or more chemicals known to cause cancer, name of one or more chemicals known to cause reproductive toxicity, or name of one or more chemicals known to cause both cancer and birth defects or other reproductive harm], which is [are] known to the State of California to cause cancer or birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/furniture.”

(2) A notice displayed pursuant to Section 25607.12(a)(1)(A) or stamped on a receipt pursuant to Section 25607.12(a)(1)(B) must contain all the following elements:

(A) The word “NOTICE” in all capital letters and bold print.

(B) The words, “Some furniture products can expose you to chemicals known to the State of California to cause cancer or birth defects or other reproductive harm. Please check on-product label for warning information.”