

Potential Amendments to Article 6 Clear and Reasonable Warnings

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Pre-Regulatory Workshop
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Note:

- This is a pre-regulatory proposal.
- The potential regulation may change substantially prior to the eventual initiation of a formal regulatory proceeding.
- If OEHHA decides to formally propose changes, additional opportunities for public input will be provided during the formal regulatory process.
- This regulation does not establish when a warning is required.



Agenda

- Introduction
- Clarifying questions
- Overview of Proposed Changes
- Discussion
 - I. Informational Tools
 - II. Content
 - III. Methods
 - IV. Tailored Warnings
- Next Steps
- Closing Remarks



What Proposition 65 Requires

“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

Purpose of this Pre-Regulatory Proposal

- Provide more useful information to the public.
- Offer businesses greater flexibility and certainty.
- Take advantage of the tremendous growth and innovation in technology since 1986.



Overview of the Regulation



Table of Contents

- Definitions, general provisions, existing settlements, opportunity to cure
- Website to provide public information
- Consumer Product Warnings
- Food Warnings
- Prescription Drug and Dental Care Warnings
- Alcoholic Beverage Warnings
- Restaurant Warnings
- Occupational and Environmental Exposure Warnings
- Tailored Warnings (Parking Garages, Hotels, Apartments and Amusement Parks).



§ 25601

Clear and Reasonable Warnings

- Mandatory – not optional “safe harbor.”
- New opportunities to request tailored warnings.
- More guidance and support for businesses.
- *Does not* apply to a business’s decision whether or not to apply a warning.



Section 25602

Definitions

- Clarifications and modifications
- Food as a “consumer product”
- New term: “retail seller”
- Minor clarifying changes to “Environmental Exposure,” “Label/Labeling,” “Sign,” and “Occupational Exposure” definitions.



Section 25603

Court Approved Settlements

- Designed to preserve existing settlements.
- Settlements must have been approved by a court prior to January 1, 2015.
- Applies only to the persons or entities directly affected by a mandatory provision of the settlement – not to industry as a whole.



Section 25604

Lead Agency Website

- “Interactive web-based portal.”
- Site developed and maintained by OEHHA.
- Companies report information to OEHHA.
- Consumers receive information about chemicals, exposures, ways to minimize exposures, and other key information.



Section 25605 - Chemicals, Substances or Mixtures That Must Be Disclosed

- Acrylamide
- Arsenic
- Benzene
- Cadmium
- Chlorinated Tris
- 1,4-Dioxane
- Formaldehyde
- Lead
- Mercury
- Phthalates
- Tobacco smoke
- Toluene



Section 25606 - Consumer Product and Food Warnings

- Clarifies responsibilities of product manufacturer or distributor, as compared to retail sellers.
- Responds to concerns from retailers about lack of information, as well as concerns from manufacturers and distributors about the potential for warnings to be obscured.



Section 25607

Opportunity to Cure

- Limited to retail sellers.
- With fewer than 25 employees.
- Only applies to relatively minor violations, such as:
 - Absence of sign/warning materials
 - Interruption of electronic device
 - Inadvertent obstruction of label/sign



Section 25607.1-2 – Warnings for Consumer Products Other Than Food

- Traditional and electronic methods allowed
- Content must include:
 - The international health hazard symbol 
 - The word **“WARNING”**
 - Optional on-product text: “Cancer Hazard” or “Reproductive Hazard”
 - “Will expose you to [chemical name]” (if required to be identified)
 - The URL: www.P65Warnings.ca.gov

Section 25607.3-4

Food Exposure Warnings

- OEHHA recognizes the need for nuance.
- No GHS health hazard symbol required.
- Includes URL.
- Names of certain chemicals.
- Certain supplemental information may be provided.
- Tailored warnings may be adopted.



Section 25607.5 - Prescription Drugs and Prescription Medical Devices

- Slightly expands existing rule, which provides that a warning label approved under federal law is sufficient.
- Cancer/reproductive harm warnings already provided pursuant to federal law would be sufficient.
- Emergency consent requirements are retained.



§ 25607.6-7

Dental Care Warnings

- Exposure to nitrous oxide or mercury included in the warning message (where those chemicals are used).
- Emergency dental care is still covered by the “informed consent” exception.
- No GHS health hazard symbol required.



§ 25607.8-9

Alcoholic Beverage Warnings

- Updates to warning content incorporate Federal standard, web content.
- Simpler methods for providing warning.
- No GHS health hazard symbol.
- More convenient size of warning.



Section 25607.10-11

Restaurant Warnings

- Combines posted warning with pamphlet requirement.
- Pamphlets provide restaurants with more flexibility and space to explain exposures.
- GHS symbol not required.



Section 25607.12-13

Occupational Exposure Warnings

- Harmonizes with existing federal and state laws and rules governing workers, by providing substantially similar rules and requirements.
- Applies to the extent it is not preempted by federal law.



Section 25607.14 - Warnings for Specific Occupational Exposures

- This is a placeholder.
- Certain types of exposures may warrant “tailored warnings.”



Section 25607.15-16

Environmental Exposure Warnings

- Incorporates new technology such as e-mail and automated calls, in addition to posted warnings.
- Requires warnings to be provided in language(s) predominantly used in the area.
- Important opportunity for more tailored warnings.



Section 25607.17 - Warnings for Specific Environmental Exposures (I)

- Parking Facilities:
 - Incorporate specific language about “gasoline vapors, carbon monoxide and exhaust.”
 - Size and location specified.
- Apartments and Hotels:
 - Building management requirement.
 - Other signage – i.e., for food or parking garages.



Section 25607.17 - Warnings for Specific Environmental Exposures (II)

- Amusement Parks:
 - Mandatory pamphlet permits consolidation of warnings.
 - Language requirement particularly important.
- Other Environmental Exposures: Let us know during the “Tailored Warnings” portion of our discussion.



Questions

- Are there any **general clarifying questions**, or questions about our process?
- Please hold **specific questions** about proposed changes until the appropriate discussion session.



Written Comments - Reminder

- Must be received by OEHHA **by 5:00 p.m. on May 14, 2014.**
- To the extent possible, include specific regulatory language or examples of warning methods/content.



Items to Discuss

Informational Tools

- Website, chemicals to be disclosed in warnings, additional technology.

Warning Methods

- Methods of transmission: Integrating technology, reaching the public.

Warning Content

- Warning language, pictogram, and “will expose” language.

Tailored Warnings

- Warnings for food and consumer products.
- Parking facilities, hotels, apartments, theme parks, etc.

Informational Tools: QUESTIONS & FEEDBACK

- QR Codes? 
- Are there less-expensive alternatives?
- Are there other technologies that can and should be incorporated into the warning?
- Should we add any additional chemicals to the mandatory disclosure list?

Warning Methods: New Technologies

- Internet
- Electronic devices or other forms of automatic warnings
- E-mailed notices (environmental)

Warning Methods: Language Requirements

- Proposal requires warnings in alternate languages in certain circumstances.
- Nearly 43% of Californians speak a language at home other than English.
- 10% of all households in California are linguistically isolated.

- Source: Office of Environmental Health Hazard Assessment, *California Communities Environmental Health Screening Tool, Version 1.1* (September 2013)



Warning Methods: QUESTIONS & FEEDBACK

- **Costs**
- Are these methods workable?
- What additional methods should we consider?

BREAK



Warning Content: Questions/Feedback



- The international health hazard symbol.
- Optional on-product: “Cancer Hazard,” “Reproductive Hazard.”
- “Will expose you to [chemical name]” where such chemical name is required to be identified.
- The URL: www.P65Warnings.ca.gov.

TAILORED WARNINGS: QUESTIONS & FEEDBACK

- Are these warnings workable for these types of businesses?
- What other specific warnings or scenarios should be added to the regulations?
- Have we missed other communication methods?



General Comments or Questions?



NEXT STEPS

- Close of comment period: May 14, 2014
- Consider Comments/Make Changes
- Start Formal Regulatory Process (Summer 2014)
- Complete Regulatory Process (Summer 2015)



CLOSING REMARKS

Thank You!

