

# Office of Environmental Health Hazard Assessment

---

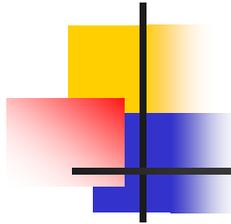
Proposition 65  
Regulatory Update Project  
Warnings for Food Exposures  
March 14, 2008



# Welcome and Introduction

---

**Carol Monahan-Cummings**  
Chief Counsel, OEHHA



# Overview

---

**Fran Kammerer**  
Staff Counsel, OEHHA



# Proposition 65 Statute

---

OEHHA's Authority (Health and Safety Code 25249.12)

“The Governor shall designate a lead agency and other agencies that may be required to implement this chapter, including this section. Each agency so designated may adopt and modify regulations, standards, and permits as **necessary to conform with and implement this chapter and to further its purposes.**”



# Current Regulation Status

---

- Where we are – §12601 (b)(1)
  - On product label
  - Identification at retail outlet in manner that provides a warning (shelf labeling, point of sale signs, menus)
  - System of signs, public advertising, toll-free information systems
  - To the extent practicable, materials to be provided by the manufacturer



# Current Regulation Status

---

- Where we are – continued
- Areas covered with more specificity by warnings regulation (22 CCR §12601):
  - Alcoholic beverages
  - Foods for immediate consumption (restaurant warnings)
  - Fresh fruits, nuts, and vegetables
  - Prescription drugs
  - Medical emergencies
  - Occupational exposures
  - Environmental exposures



# Summary of Suggestions/Comments on the Method of Delivery

---

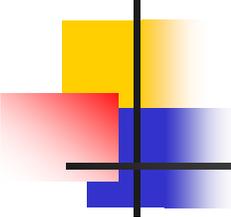
- Allow one sign in store, so retailer does not have to chase signs on shelves
- Warnings should be on products, not shelf signs
- Hard for national manufacturer to label products only for California
- Consider a sticker or flag on affected products that ties back to warning provided separately
- Use bar code scanners and in-store monitors to provide required warning



## Suggestions/Comments on Method of Delivery (continued)

---

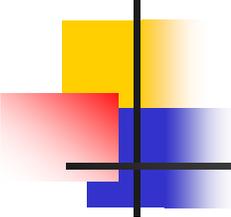
- Allow information to be submitted to OEHHA by product manufacturers for dissemination through website
- Use generic warning in store pointing to web, monitor, or brochure for details
- Provide a general “safe harbor” warning for retailers like restaurants have
- Warning should be provided before exposure (prior to purchase).
- Stores could segregate products that have warnings into a given area in the store that is placarded



## Suggestions/Comments on Method of Delivery (continued)

---

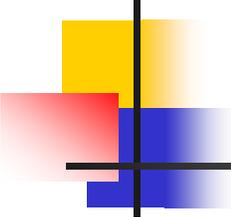
- Regulations should contain more specific guidance about the placement of warnings to insure that they are noticeable.
- Products purchased from multiple locations don't need to have a warning provided at every location (general message saturation)



## Suggestions/Comments on Method of Delivery (continued)

---

- Warnings should be designed to attract attention
- Use a symbol or icon (such as warning triangle) could significantly help attract attention to a warning
- Use Color print for warnings or colored symbols that contrast with their background
- Warnings should be printed in a print size larger than that immediately surrounding them.



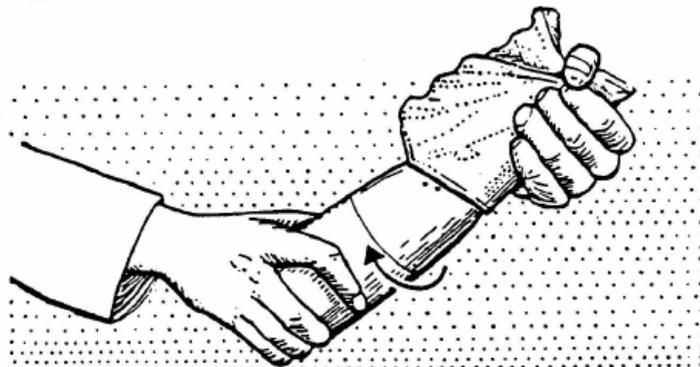
# Suggestions Concerning Content of Warnings

---

- Products that have warnings should explain how to reduce or eliminate exposure to the listed chemical
- Warnings should inform recipients of their exposure to specific listed chemical
- Food warnings need to provide a balanced message (benefits vs. risk)

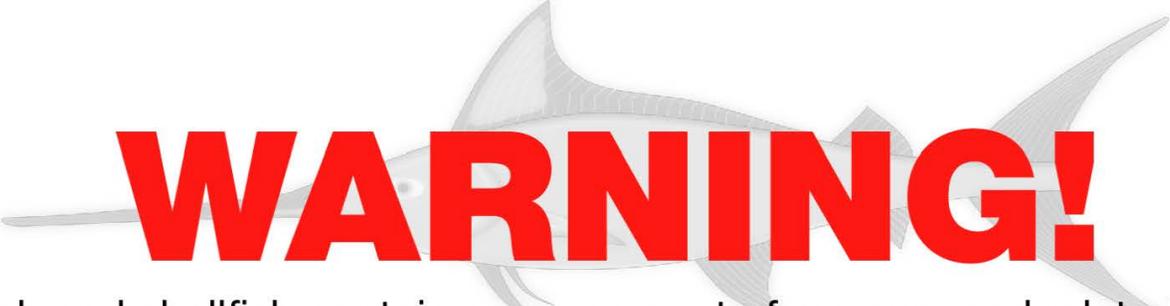
# Examples from Proposition 65 Warnings in Settlements

## — WINE CONSUMERS: —



Before pouring wine, wipe bottle tops clean with damp cloth to avoid residue from lead foil capsules. The purpose of this is to remove any residue from capsules only. Lead is a chemical known to the State of California to cause birth defects or other reproductive harm.\*

\*Warning Pursuant to California's Proposition 65



# WARNING!

Nearly all fish and shellfish contain some amount of mercury and related compounds, chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm. Certain fish contain higher levels than others.

**Pregnant and nursing women, women who may become pregnant, and young children should not eat the following fish:**

**SWORDFISH • SHARK • KING MACKEREL • TILEFISH**

**They should also limit their consumption of other fish, including tuna.**

**Fish and shellfish** are an important part of a healthy diet and a source of essential nutrients. However, the federal Food and Drug Administration (“FDA”) and U.S. Environmental Protection Agency (“EPA”) advise pregnant and nursing women, women who may become pregnant, and children to limit their weekly consumption of fish and to eat fish that are lower in mercury.

The California Department of Health Services recommends that these individuals:

- Eat a variety of different types of fish;
- Eat smaller fish rather than older, larger fish;
- Begin following these guidelines one year before becoming pregnant.

According to the FDA and EPA, fish or shellfish that tend to be lower in mercury include pollock, shrimp, and scallops. Mercury levels in tuna vary. Tuna steaks and canned albacore tuna have higher levels of mercury than canned light tuna.

For more information about the risks of mercury in fish and about the levels in various types of fish consult the following websites:

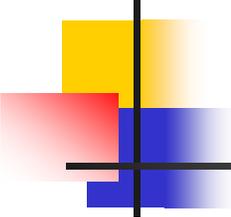
U.S. Food and Drug Administration (“FDA”)

[www.cfsan.fda.gov](http://www.cfsan.fda.gov)

U.S. Environmental Protection Agency

[www.epa.gov/ost/fish](http://www.epa.gov/ost/fish)

or call the FDA toll-free at **1-888-SAFEFOOD (1-888-723-3366)**.



# Examples from Proposition 65 Settlements - continued

---

## WARNING:

Chemicals known to the State of California to cause cancer, or birth defects or other reproductive harm may be present in foods or beverages sold or served here. Cooked potatoes that have been browned, such as French fries, baked potatoes, and potato chips, contain acrylamide, a chemical known to the State of California to cause cancer.

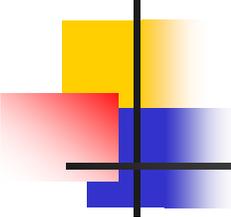
This chemical is not added to our foods, but is naturally created when certain foods are browned. It is created in fried and baked potatoes made at all restaurants, by other companies, and even when you bake or fry potatoes at home.

Many other foods, such as coffee, toasted cereals, and breads, including hamburger and sandwich buns and biscuits, contain acrylamide in varying amounts, generally in lower concentrations than potato chips and fries.

Your personal cancer risk is affected by a wide variety of factors. The U.S. FDA encourages people to continue to eat a wide variety of whole grain cereals, breads, and fruits and vegetables.

The FDA has not advised people to stop eating baked or fried potatoes. For more information see [www.fda.gov](http://www.fda.gov).

(optional paragraph) Some other chemicals that may be present in foods or beverages served here and known to the State of California to cause cancer and birth defects or other reproductive harm are, like acrylamide, by-products of cooking. (identification of chemical is optional)



# Examples from Proposition 65 Settlements - continued

---

## WARNING:

Chemicals known to cause cancer, or birth defects or other reproductive harm may be present in foods or beverages sold or served here.

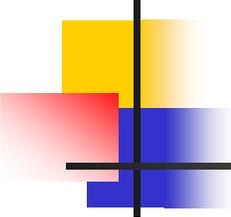
Cooked potatoes that have been browned, such as french fries, baked potatoes, and potato chips, contain acrylamide, a chemical known to the State of California to cause cancer.

This chemical is not added to our foods, but is naturally created when certain foods are browned. It is created in fried and baked potatoes made at all restaurants, by other companies, and even when you bake or fry potatoes at home.

Many other foods, such as coffee, toasted cereals, and breads, including hamburger and sandwich buns and biscuits, contain acrylamide in varying amounts, generally in lower concentrations than potato chips and fries.

Your personal cancer risk is affected by a wide variety of factors. The U.S. FDA encourages people to continue to eat a wide variety of whole grain cereals, breads, and fruits and vegetables.

The FDA has not advised people to stop eating baked or fried potatoes. For more information see [www.fda.gov](http://www.fda.gov).



# Examples of existing warning methods

---

- Sign-brochure combination
  - Sign contains following language:  
Chemicals known to the State of California to cause cancer or birth defects or other reproductive harm may be present in foods or beverages sold here. For more specific information, see the brochure [located at the cashier][next to this sign]
- Combination with nutrition information

# Examples of existing warning methods

## WARNING:

This Facility Contains Chemicals Known To The State of California To Cause Cancer, And Birth Defects Or Other Reproductive Harm.

---

A Brochure With More Information On Specific Exposures Is Available At The Registration Desk.



Provided by the  
California Hotel & Lodging Association

# Examples of existing warning methods

## Sources of Chemical Exposure

California's Proposition 65 has identified hundreds of chemicals known to the State of California to cause cancer, and/or birth defects or other reproductive harm. The law requires that businesses warn you prior to knowingly and intentionally exposing you to any of these chemicals when the exposure is over a certain level. While many exposures are associated with industrial activities and chemicals, everyday items and even the air we breathe routinely contain many of these chemicals. This brochure provides information regarding exposures to these chemicals that occur in this establishment. In many instances, we do not have information specific to this establishment. Instead we have relied upon experts in this field to tell us where and to which chemicals exposures might occur. For other exposures to listed chemicals, enough is known to identify specific areas of exposure.

The regulations implementing Proposition 65 offer warnings for various circumstances. Some of those warnings you may see in this lodging establishment include the following:

**General — Warning:** This Facility Contains Chemicals Known To The State of California To Cause Cancer, And Birth Defects Or Other Reproductive Harm.

**Food and Beverage — Warning:** Chemicals Known To The State of California To Cause Cancer, Or Birth Defects Or Other Reproductive Harm May Be Present In Foods Or Beverages Sold Or Served Here.

**Alcohol — Warning:** Drinking Distilled Spirits, Beer, Coolers, Wine, And Other Alcoholic Beverages May Increase Cancer Risk, And, During Pregnancy, Can Cause Birth Defects.

**Health Information —** Pregnant women, nursing mothers, women trying to become pregnant, those with small children, and others wanting more information about food products can obtain additional information at the U.S. Food and Drug Administration website at: <http://www.cfsan.fda.gov/>. For more information on Fish and Seafood, you can also call the FDA at 1-888-SAFEFOOD (1-888-723-3366).



414 29th Street, Sacramento, CA 95816-0405  
Phone: (916) 444-5780 • Fax: (916) 444-5848  
[www.calodging.com](http://www.calodging.com)



**JMBM** | Jeffer Margels  
Butler & Marzano LLP

The law firm of Jeffer, Margels, Butler & Marzano LLP assisted in preparing this brochure. For more information about JMBM go to [www.jmbm.com](http://www.jmbm.com) or call (310) 203-8080 or (415) 396-8080.

©2004, 2006 by California Hotel & Lodging Association.  
All Rights Reserved.



## Proposition 65 Warning

California's Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986) requires businesses with 10 or more employees to provide warnings prior to exposing individuals to chemicals known to the State to cause cancer, and/or birth defects or other reproductive harm.

These types of chemicals are found within this establishment. This brochure provides you with information on what chemicals are present and what your exposures to them might be.

### Warning

*This Facility Contains Chemicals Known To The State of California To Cause Cancer And/or Birth Defects Or Other Reproductive Harm.*

# Examples of existing warning methods

## Second Hand Tobacco Smoke and Tobacco Products.

Tobacco products and tobacco smoke and its by-products contain many chemicals that are known to cause cancer, and birth defects or other reproductive harm. Smoking is permitted in certain guest rooms and/or certain common areas of this establishment.

## Furnishings, Hardware, and Electrical Components.

Room furnishings and building materials contain formaldehyde. Furniture, foams, brass keys (if in use), electrical power cords, carpeting, carpet padding, wall coverings, wood surfaces, and vinyl, contain a number of Proposition 65-listed chemicals, including lead and formaldehyde, known to the State of California to cause cancer, and/or birth defects or other reproductive harm. Certain molds, if present, contain Proposition 65-listed chemicals, including sterigmatocystin, known to the State of California to cause cancer. Their presence in these materials can lead to exposures.

Gaming chips (if in use) contain lead and lead compounds, chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

## Combustion Sources.

Combustion sources such as gas stoves, fireplaces, and stereo cans contain or produce a large number of Proposition 65-listed chemicals, including acetaldehyde, benzene and carbon monoxide, known to the State of California to cause cancer, and/or birth defects or other reproductive harm and are found in the air of this establishment. Any time organic matter is burned, Proposition 65-listed chemicals are released into the air.

## Swimming Pools and Hot Tubs.

The use and maintenance of a variety of recreational activities and facilities such as swimming pools and hot tubs where chlorine and bromine are used in the disinfecting process can cause exposures to chlorine and bromine which are chemicals known to cause cancer.

## Foods and Beverages.

Chemicals known to the State of California to cause cancer or birth defects or other reproductive harm may be present in foods or beverages sold or served here. Foods and beverages are sold or provided at this establishment in bars, lounges, eating areas, atria bars, and via guest room services. Drinking alcoholic beverages of any kind may increase cancer risks, and, during pregnancy, can cause birth defects. Foods such as french fries and potato chips cooked in oil at high temperatures can produce Proposition 65-listed chemicals such as acrylamide, which is known to the State to cause cancer. Broiling, grilling, and barbecuing fish and meats can produce Proposition 65-listed chemicals such as benzo-a-pyrene, which is known to the State to cause cancer. Nearly all fish and seafood contain some amount of mercury and related compounds, chemicals known to the State of California to cause cancer, and birth defects or reproductive harm. Certain fish contain higher levels than others. Pregnant and nursing women, women who may become pregnant and young children should not eat swordfish, shark, king mackerel or tilefish. They also should limit their consumption of other fish, including tuna. Ground beef products contain polychlorinated biphenyls and polychlorinated dibenzo-p-dioxins, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. Cooked chicken products contain PhIP(2-Amino-1-methyl-6-phenylimidazo[4,5-b]pyridine), a chemical known to the State of California to cause cancer. Additionally, leaded crystal in which beverages are served contains lead, which is known to the State to cause cancer and/or birth defects or other reproductive harm.

Additionally, glassware, bottles (including soda bottles) and ceramic ware with colored artwork or designs on the exterior contain lead, lead compounds, and cadmium, which are known to the State of California to cause cancer and birth defects or other reproductive harm.

## Certain Products Used In Cleaning and Related Activities.

Certain products used for special cleaning purposes for graffiti removal and spot and stain lifters contain chlorinated solvents including perchloroethylene and tris(1,1,1-trifluoroethyl) ether which are Proposition 65-listed chemicals known to cause cancer or birth defects or other reproductive harm.

Certain cleaning solvents contain dichloromethane (methylene chloride) and trichloroethylene, and bleach contains chloroform, chemicals known to the State of California to cause cancer.

## Engine Related Exposures.

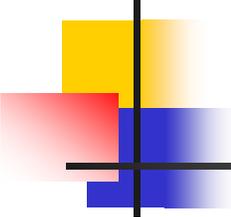
The operation and fueling of engines, including automobiles, buses, vans, maintenance vehicles, recreational vehicles, and other small internal combustion engines are associated with this establishment's operations. Motor vehicle fuels and engine exhaust contain many Proposition 65-listed chemicals, including benzene, carbon monoxide and, for diesel engines, diesel exhaust, which are known to the State to cause cancer, and/or birth defects or other reproductive harm. In parking structures and garages, exhaust fumes can concentrate, increasing your exposure to these chemicals.

## Pest Control and Landscaping.

Pest control and landscaping products used at this facility to control insects and weeds contain resmethrin, myclobutanol, trifluralin and arsenic trioxide which are known to cause cancer and/or birth defects or other reproductive harm.

Certain roofing materials, if present, contain Proposition 65-listed chemicals, including asbestos and lead, known to the State of California to cause cancer. Certain pavement work, if present, contains Proposition 65-listed chemicals, including 5-methylchrysene, benzo[a]anthracene, chrysene, formaldehyde, and toluene diisocyanate, known to the State of California to cause cancer.

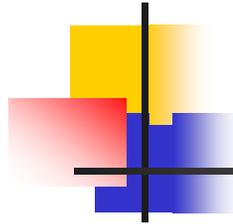
Paints contain benzene, formaldehyde, and crystalline silica (airborne particles of respirable size), chemicals known to the State of California to cause cancer, and also ethylbenzene and toluene, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.



# Procedural Suggestions

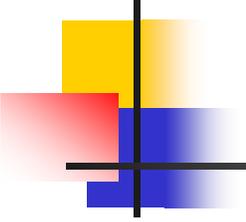
---

- Formation of a task force with members from different interest groups to work with OEHHA on the process of creating or amending this food exposure regulation.
- Have a process to determine if there was a good faith effort to abide by the regulations.



# Open Discussion

---



# Wrap-Up

---

- Next Steps
- Comments due by March 28, 2008
- Provide comments to:
  - Fran Kammerer
  - Carol J. Monahan-Cummings