Proposition 65
Safe Harbor Warnings

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Regulatory Hearing
March 25, 2015
Proposition 65

“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

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“Clear and Reasonable” Warnings

- P65 statute does not define what is a “clear and reasonable” warning.
- Current regulation was promulgated in 1988.
- Pre-regulatory workshops in July 2013 and April 2014
- Comment period on pre-regulatory draft from March to June 2014.
- Summer-Autumn 2014 meetings with stakeholders to further refine regulatory draft.
Timeline

- Posted January 12, 2015 on OEHHA website (oehha.ca.gov).
- Public hearing on March 25, 2015 in Sacramento
- Comment period closes on April 8, 2015
- Deadline for adoption of final regulation: January 2016
Proposed Warning Regulations

- Retains “safe harbor” concept for warnings to provide flexibility for businesses.
- OEHHA can work with business groups and businesses to develop tailored warnings for specific kinds of products.
  - Alcoholic beverages, dental care, furniture, diesel engines, automobiles.

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Proposed Warning Regulations

- Use of phrase: “This product can expose you to…” rather than “This product contains….”
  - More consistent with P65 statute, which requires warnings only for exposures, not the mere presence of a listed chemical.
  - More informative.
  - May reduce “over-warnings”.

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Warning: This product contains a chemical known to the State of California to cause cancer.

⚠️ Warning
This product can expose you to formaldehyde, a chemical known to the State of California to cause cancer. For more information go to: www.P65Warnings.ca.gov/product

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Proposed warning regulation

- Name 12 specified chemicals (such as lead) in warnings.
  - Addresses immediate and obvious question: “What chemical am I being warned about?”
  - Selection of chemicals based on:
    - Prevalence/potential for exposure
    - Recent Proposition 65 enforcement activity
    - Chemical name recognizable to public
    - Public information on toxicity, exposure, doses of concern, ways to reduce exposure
12 chemicals proposed for inclusion in warnings

- Acrylamide
- Arsenic
- Benzene
- Cadmium
- Carbon monoxide
- Chlorinated Tris
- Formaldehyde
- Hexavalent chromium
- Lead
- Mercury
- Methylene chloride
- Phthalate(s)
Proposed Warning Regulation

- Product manufacturers have primary responsibility for warning (e.g. label).
- Manufacturers may provide written notification to retailers of need to warn and commit to providing warning signs or materials. Retailers must acknowledge receipt of notice.
- When foreign languages are used, warnings must also be in those languages.

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Proposed warning regulation

- Include OEHHA web site URL in warning.
- Effective two years after adoption.
- Compliant OSHA or Cal/OSHA warnings suffice for Proposition 65.
- Court-approved warnings remain valid.
- Ability to petition OEHHA for a tailored warning based on a court-approved warning.

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For more information

- OEHHA website: [www.oehha.ca.gov/prop65](http://www.oehha.ca.gov/prop65)
- Proposition 65 listserv
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