

# 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

# “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](http://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.

# 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”.

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



**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](http://www.P65Warnings.ca.gov/product)**

# 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.

# 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.

# For more information

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