

TITLE 27, CALIFORNIA CODE OF REGULATIONS
PROPOSED AMENDMENTS TO ARTICLE 6
CLEAR AND REASONABLE WARNINGS REGULATIONS
SECTION 25600.2
RESPONSIBILITY TO PROVIDE CONSUMER PRODUCT EXPOSURE WARNINGS
MODIFICATION OF TEXT OF PROPOSED REGULATION
October 4, 2019

NOTE: Changes to the proposed regulatory text are identified herein as follows. Additions to the proposed regulatory text as modified in November 2018 are indicated by underline, thus: added language. Deletions from the proposed regulatory text as modified in November 2018 are indicated by strikeout, thus: ~~deleted language~~. Additions to the proposed regulatory text as modified in October 2019 are indicated by double underline, thus: added language. Deletions from the proposed regulatory text as modified in October 2019 are indicated by double strikeout, thus: ~~~~deleted language~~~~.

§ 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 providing a warning on the product label or labeling that satisfies Section 25249.6 of the Act, or by providing a written notice directly to the authorized agent for the business to which they are selling or transferring the product or to the authorized agent for a retail seller, so long as the business to which they are providing the notice ~~who~~ is subject to Section 25249.6 of the Act, ~~which~~ The written notice shall:

- (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; and
 - (4) ~~Has been sent to the authorized agent for the business to which they are selling or transferring the product who is subject to Section 25249.6 of the Act or to the authorized agent for the retail seller, and the manufacturer, producer, packager, importer, supplier, or distributor has obtained confirmation electronically or in writing of receipt of the notice. Be renewed annually during the period in which the product is sold in California by a retail seller.~~
- (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 a business who is subject to Section 25249.6 of the Act, either by providing the written notice to the authorized agent for the business to which they are selling or transferring the product who is subject to Section 25249.6 of the Act or to the authorized agent for the retail seller:
- (1) Confirmation of receipt of the notice and any renewed notices must be received electronically or in writing, and must be renewed, and receipt of the renewed notice confirmed electronically or in writing by the ~~from the authorized agent to which the manufacturer, producer, packager, importer, supplier, or distributor of the product sent the notice. authorized agent for the business to which they are selling or transferring the product who is subject to Section 25249.6 of the Act or the authorized agent for the retail seller's authorized agent no later than February 28, 2019, then annually thereafter during the period in which the product is sold in California by the retail seller.~~
 - (2) Where a business has not designated an authorized agent, the manufacturer, producer, packager, importer, supplier, or distributor may serve the notice on the legal agent for service of process for the business.

- (23) 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):
- (1) “Actual knowledge” means specific knowledge of the consumer product exposure with sufficient specificity for the retail seller to readily receive information from any reliable source that allows it to identify the specific product or products that, and that is cause the consumer product exposure. Such knowledge must be received by the retail seller, its authorized agent or a person

whose knowledge can be imputed to the retail seller from any reliable source.

(2) ~~Where the source of a retail seller's knowledge~~ 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 the notice. that provides a description of the product with The notice must provide sufficient specificity for the retail seller to readily identify the product or products subject to the notice. 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 business to which they are~~ selling or transferring 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).

Note: Authority cited: Section 25249.12, Health and Safety Code.
Reference: Sections 25249.6, 25249.7 and 25249.11(f), Health and Safety Code.