

TO: WMA Members

FROM: Jessica Ferris, WMA Director of Codes and Standards

## Changes to California's Proposition 65 Warning Requirements Are you in Compliance?



### California Proposition 65 Background:

Changes to the warning or safe harbor requirements of Proposition 65, also known as **The Safe Drinking Water and Toxic Enforcement Act of 1986**, took effect August 30, 2018. Proposition 65 is a California statute that addresses toxic chemical exposures to the environment, at the workplace, in food, and in consumer products. These are Chemicals known to cause cancer, birth defects, or other reproductive harm. From a consumer protection perspective, Prop 65 is known as a “right to know” statute, which means that consumers have a right to know before purchasing or using a product that a particular product may contain harmful chemicals. The law requires businesses to provide warnings, in the form of labels or signs, for exposures to chemicals that cause cancer or reproductive harm. A [list of harmful chemicals](#) is maintained by the state and is updated annually. Currently, it lists about 900 chemicals.

### Changes to the Prop 65 Statute

The Prop 65 statute is administered by California's Office of Environmental Health Hazard Assessment (OEHHA) and in August of 2016 the OEHHA adopted amended regulations for the provision of “clear and reasonable warnings” to the Safe Harbor Warning requirements of the statute found in Title 27, California Code of Regulations, Article 6, Section 25600, et seq:

#### **27 CCR §25601(c):**

***Clear and Reasonable Warning** - Consumer product exposure warnings must be prominently displayed on a label, labeling, or sign, and must be displayed with such conspicuousness as compared with other words, statements, designs or devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use.*

These significant changes to the law address how a “clear and reasonable warning” must be provided. The changes also brought new warning obligations for online retailers, who must now disclose to consumers that a product may expose them to a Prop 65-listed substance before they have purchased it. The changes apply to products manufactured on or after the August 30<sup>th</sup> implementation date.

The applicable section of the statute that encompasses these new regulatory warning requirements is at Section 25249.6 - *Required Warning Before Exposure to Chemicals Known to Cause Cancer or Reproductive Toxicity:*

*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, except as provided in Section 25249.10.*

If you're doing business in the state of California and you knowingly expose individuals to cancer causing or reproductive toxicity causing chemicals, you need to provide a “clear and reasonable warning” to these individuals.... unless the exposure is not a risk.

### Safe Harbor Levels

Which brings us to the safe harbor levels of chemicals. In addition to the harmful chemical list, the state maintains [a list of safe harbor levels](#) for many of their listed chemicals. There are two categories: The “No Significant Risk Level (NSRL)” is for chemicals known to cause cancer; and the “Maximum Allowable Dose Level (MADL)” is for chemicals known to cause reproductive toxicity. Exposure levels that are below the safe harbor levels are exempt from the requirements of Proposition 65. But one thing that's important to be aware of is that these levels do not define, or address risks of exposure given other variables, such as the overall chemical content of the product and how the product is used. Another issue to be cognizant of is that the scientific analysis required to determine the safe harbor levels in any given product can be costly and time-consuming.

Ultimately, the safest approach to compliance is through defensive labeling. If you know that a listed chemical exists in your product, but you don't know the safe level of exposure or the level of exposure posed by the product's use, it's best to provide the clear and reasonable warning as required by the state of California.

### **How to Provide a Clear and Reasonable Warning**

As specified in Title 27, California Code of Regulations, Article 6, Sections 25602 and 25603, there is a two-pronged approach you need to address to achieve compliance to the new warning requirements: You need to be aware of the method required – how and where the warning will be made; and the content required - what does the warning need to say, what elements need to be included, and what options are there.

#### **Section 25602 – Methods of Transmission**

If the content of a warning is within the safe harbor provisions (see content requirements below), one of the following methods of transmission can be used:

1. Product-Specific Warning provided on a posted sign, shelf tag or shelf sign at each point of display of the product;
2. Product-Specific Warning provided via any electronic device that is automatic prior to or during purchase without requiring purchaser to seek it out;
3. Product Label
4. On-product truncated warning
5. Internet/Catalogue Purchases which have additional requirements; please note: if you sell products over the internet or in a catalog, warnings must be provided on line or in the catalog prior to at the time of consumer purchase, in addition to providing a warning per items 1-4 above.

#### **Section 25603 - Content**

1. At least one chemical identified – if you know that there is more than one listed chemical in the product, you have the option of listing more or all the chemicals but only one is required.
2. Warning Symbol (triangle must be at least as large as text)
3. **“WARNING”** All caps and bold 
4. Language:
  - a. Carcinogens – “This product can expose you to chemicals including [name of chemical[s]] which is [are] known to the state of California to cause cancer.”
  - b. Reproductive Toxicants – “This product can expose you to chemicals including [name of chemical[s]] which is [are] known to the state of California to cause birth defects or other reproductive harm.”
5. If the consumer information on a sign, label or shelf tag is in another language, warning must be in the other language as well.
6. On-product warnings can be truncated or shortened to include the following:
  - a. Warning symbol
  - b. **“WARNING”** All caps and bold
  - c. Language:
    - i. For carcinogens: “Cancer – [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov).”
    - ii. For reproductive toxicants: “Reproductive Harm – [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov).”
    - iii. For carcinogens and reproductive toxicants: “Cancer and Reproductive Harm – [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov).”

It is recommended that you visit the [OEHHA website](http://oehha.ca.gov) for additional information regarding these new regulatory requirements. In particular, there are Question and Answer documents for businesses regarding these new warning requirements that are very useful to have and refer back to – [Q & A document that addresses general requirements](#) and [Q & A document that focuses on internet and catalog warnings](#).

For more information go to [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov).

Questions about Proposal 65, email [Jessica Ferris](mailto:Jessica.Ferris@wma.ca.gov), WMA Director of Codes and Standards

#### **References:**

California's Office of Environmental Health Hazard Assessment (OEHHA). Retrieved from [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)

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