**California Prop 65 Clear and Reasonable Warning**

**Questions and Answers about August 30, 2018 Changes**

Below are some commonly asked questions directed to the State of California and the State’s answers. You may find this helpful in interpreting the new Clear and Reasonable Warning regulations going into effect on August 30, 2018.

**Q. When do the new regulations take effect?**

A. the new warning regulations take effect on August 30, 2018; however, businesses can use either the September, 2008 regulations or the new regulations between now and August 30, 2018. After August 30, 2018, the September, 2008 warning methods and content will no longer be operative.

**Q. Does a product available for retail purchase before August 30, 2018 require a new warning?**

A. A consumer product that is ***manufactured*** prior to August 30, 2018 and labeled with a warning that is compliant with the September, 2008 version of the regulations is deemed to be compliant with the new regulations. In other words, such a product does not require a new warning. The date the product is available for purchase does not determine whether the product should have a new warning.

**Q. Does a product covered by a court-approved warning require a new warning?**

A. A consumer product covered by a court-approved settlement can continue to use any warning methods and content contained in that settlement.

**Q. Can a product that is similar to one covered by a court-approved warning use the court-approved warning instead of the new warning in the regulation?**

A. The new regulations do not prohibit a business that is not a party to a settlement from using warning methods and content incorporated into the settlement. However, if the warning methods or content differ from those in the regulations, the business would not be able to claim safe harbor protection. The business could still defend an enforcement action by arguing such a warning is “clear and reasonable.”

**Q. Can a business replace the September, 2008 warnings and provide the new warnings immediately?**

A. Yes. During the two-year phase-in period from August 30, 2016 to August 30, 2018, a business can follow the safe harbor methods and content from either the September, 2008 regulations or the new regulations.

**Q. Who should provide a warning?**

A. OEHHA’s new regulations place primary responsibility for providing warnings on product manufacturers, producers, packagers, importers, suppliers or distributors. For consumer product exposures, businesses in the above categories must either provide a warning on the product, or provide notice and warning materials to “the authorized agent” for a retail seller and receive an acknowledgment that the notice and materials were received. The retail seller is responsible for placement and maintenance of the warning materials he/she receives from the product manufacturer, producer, packager, importer, supplier or distributor. Businesses should carefully review the new requirements (Section 25600.2)

**Q. What kind of testing does a business have to do in order to meet the safe harbor warning requirements?**

A. The warnings regulations do not address the question of *whether* a warning is required; rather, the regulation provides guidance on *how* to provide a warning once a business has made a determination that a warning is required. The warning regulations do not require a business to perform any testing.

**Q. Can retail sellers rely on new Section 25600.2(e) now?**

A. No. Section 25600.2(e) of the new regulations does not become operative until August 30, 2018. The phase-in period for the new regulations allows a business to provide *warnings* using the new safe harbor methods and content prior to the operative date of August 30, 2018. However, Section 25600.2(e) is not operative until August 30, 2018.

**Q. If a company is a manufacturer or producer of a consumer product, but does not sell it directly to retailers, how can it comply with the requirement to provide warnings to retail sellers?**

A. A consumer product manufacturer that does not sell directly to retailers has two options for compliance: (1) label the product with the required warning; or (2) provide a warning notice and the warning materials to the packer, importer, supplier or distributor via their authorized agent. Manufacturers and other sin the chain of commerce should take appropriate actions to ensure that the warning is passed along to the retailer and ultimately to the consumer. How that is done will vary from situation to situation. A manufacturer or producer may choose to enter into a contract with other businesses along the chain of commerce for their product to ensure that the warning is appropriately transmitted to the retailer and end consumer.

**Q. If a company manufacturers component parts or ingredients that are sold in bulk to other manufacturers or formulators, how can it comply with the requirement to provide a warning, especially if the need for a warning depends on the concentration or the manner of use of the listed chemical in the final product?**

A. A company that manufacturers component parts or ingredients that include listed chemicals can comply with the obligation to warn persons who can be occupationally exposed to the bulk product by providing warnings consistent with Section 25606. The company would only have responsibility for a consumer warning if it has knowledge that the end use of the component part or ingredient can expose a consumer to a listed chemical. For example, if a manufacturer of a food ingredient knows that the ingredient is typically used in certain types of prepared foods and could thereby result in an exposure under the Act, then the ingredient manufacturer should provide the warning notice to the product manufacturer. The product manufacturer is then responsible for determining whether the product they are manufacturing causes an exposure to the chemical at a level that requires a warning. If so, the product manufacturer is responsible for passing the information along to its customers or the product retailer. In such a situation, the ingredient manufacturer may also choose to work with the product manufacturer to evaluate whether the product should have a warning and may enter into a contract with product manufacturers to ensure that the warning is transmitted to the retailer and ultimately the consumer.

**Q. What are the ways to provide safe harbor warnings for consumer product exposures?**

A. The safe harbor methods and content for providing a warning can be found in Sections 25602 and 25603. Section 25602(a) describes four safe harbor warning methods:

* A product-specific warning provided on a posted sign, shelf tag, or shelf sign, at each point of display of the consumer product.
* A product-specific warning provided via an electronic device that automatically provides the warning to the purchaser before purchase without requiring the purchaser to seek out the warning.
* A warning on the label that complies with the content requirements in Section 25603(a); namely, the warning symbol, the signal word, “**WARNING**:”, and the applicable warning message.
* An on-product “short-form” warning on the label that complies with the content requirements in Section 25603(b); namely, the warning symbol, the signal word, “**WRNING:**”, and the applicable truncated warning message. The warning must be in a type size no smaller than the largest type size used for other consumer information on the product and in no case in a type size smaller than 6-point type.

**Q. If a consumer product has exterior packaging, is a warning label required on both the packaging and on the product itself?**

A. No. A “label” is defined as a display of written, printed or graphic material that is affixed to a product or its immediate container or wrapper (Section 25600.1). The warning label should be placed in a manner to ensure that consumers receive the warning ***prior to exposure***. A warning must be visible on exterior packaging that is opaque if an exposure requiring a warning can occur upon opening the package. A business may also choose to provide a warning on both the exterior packaging and the product itself.

**Q. Can an owner’s manual be used for providing a safe harbor warning?**

A. No. A standalone warning in an owner’s manual is not a safe harbor warning method for consumer product exposures.

**Q. Can a business provide a general Proposition 65 warning at each public entrance to a store instead of providing warnings for specific consumer products?**

A. No. A standalone warning at public entrances purporting to cover all possible consumer product exposures would not meet the requirements for safe harbor warnings under the new regulations.

**Q. Must warnings be provided for internet purchases? Must a product sold over the internet have a warning in order to meet the safe harbor requirements?**

A. Yes, under the safe harbor provisions of the regulations, warnings are required for purchases made over the internet following the methods in Section 25602(b). Warnings must be provided to the consumer prior to completing the purchase, *and* a warning must be provided via any one of the four methods for consumer products in Section 25602, subsections (a)(1)-(4). For a website warning, if a label is used for a product warning, a business may opt to provide a hyperlink to the warning or a picture of the warning label used on the product. In addition, if an on-product (short-form) warning is provided on the product label, the website warning may use the same content.

**Q. Must warnings be provided for catalog purchases? Must a product sold through a catalog also have a warning in order to meet the safe harbor requirements?**

A. Yes, under the safe harbor provisions of the regulations, warnings meeting the requirements of Section 25602(c) are required to be provided for purchases made through catalogs prior to completing the purchase, *and* a warning must be provided via any one of the four methods for consumer products in Section 25602, subsections (a)(1)-(4). In addition, if an on-product (short form) warning is provided on the product label, the catalog warning may use the same content.

**Q. Instead of displaying the entire consumer product warning content on the product page of a catalog or webpage, can a business place the warning symbol next to the product and use it as a reference to a full consumer product warning provided elsewhere in the catalog or website and still claim safe harbor protection?**

A. No. A warning symbol provided near a product in a catalog or on a webpage separate from a consumer product warning which is located elsewhere in the catalog or website is unlikely to ensure that the warning is “clearly associated” with the item being purchased. This approach would not meet the safe harbor requirements in the regulations.

**Q. If a business does not have the ability to print in color, can the business print the warning symbol in black and white?**

A. Yes, if a business does not use the color yellow for other information printed on the label or sign, the business may print the warning symbol in black and white.

**Q. What is the minimum type size for consumer product exposure warnings?**

A. For a consumer product exposure safe harbor warning provided on a label pursuant to Section 25602(a)(3), there is no specific type size requirement. Section 25601(c), however, requires that safe harbor consumer product exposure warnings on a label be prominently 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 read and understood by an ordinary individual under customary conditions of purchase or use.

A “short-form” warning may be provided on a product in accordance with Section 25602(a)(4). This section requires that the entire warning be in a type size no smaller than the largest type size used for other “consumer information” on the product, and in any case the warning must not be in a type size smaller than 6-point type. “Consumer information” is defined in Section 25600.1(c), and includes warnings, directions for use, ingredient lists, and nutritional information, but does not include the brand name, product name, company name, location of manufacture, or product advertising.

**Q. Section 25601(b) requires a safe harbor warning to identify “one or more” of the chemicals for which the warning is being provided. What if a business determines that there are five listed chemicals requiring a Proposition 65 warning? Do all five chemicals need to be named in the warning?**

A. If a business chooses to follow the safe harbor methods and content in Section 25601(b), the business must include the name of one or more chemicals for which it is providing a warning. Additionally, where a business is providing a warning for both cancer and reproductive toxicity, the warning must include the name of one or more chemicals for each endpoint.

**Q. Is it acceptable to use chemical acronyms in a warning?**

A. The full chemical name as it appears on the Proposition 65 list needs to be included in the first mention of the listed chemical in the warning. If the abbreviation is included as part of the full chemical name in a warning, the abbreviation alone can be used for subsequent references in the chemical name.

**Q. When can a business use the on-product or short-form label?**

A. Section 25603, subsections (a) and (b) provide options for safe harbor warning content for consumer products. Subsection (a) is the standard warning content, while subsection (b) allows a business to use truncated, “short-form” warning content on a product label. A business may use either the standard or the short-form warning content on a label for a consumer product exposure. The short-form warning cannot be used on a sign.

**Q. Can a short-form warning be placed on the packaging or does it have to be on the product itself?**

A. The short-form warning can be affixed to or printed on a product or its immediate container or wrapper.

**Q. Can a short-form warning label be used on any size product?**

A. OEHHA’s intent in adding the short-form, truncated warning to the safe harbor methods and content was to provide an alternative that could be used on small products or where space was limited. There is no express prohibition, however, on using the short-form warning on larger products. The warning content on the short-form warning must be in a type size no smaller than the largest type size used for other consumer information on the product label and in no case smaller than 6-point type.

**Q. If the space on a product label is too small and the short-form warning cannot be placed in one line, can the short-form warning be placed in two/three lines?**

A. Yes, there is no requirement that the short-form warning content fit on one line, though the warning must be legible.

**Q. If a business provides a short-form warning on the consumer product, can the same warning be provided on a website?**

A. Yes, a consumer product warning provided on a website pursuant to Section 25602(b) can use the same short-form warning content that the business is providing on the product. The business may also use a picture of the label on the product for the website warning.

**Q. When are warnings required to be provided in languages other than English?**

A. Safe harbor consumer product warnings (Section 25602) and environmental warnings (Section 25604) require warning content to be provided in other languages under certain circumstances. Specifically, if a consumer product label or packaging contains consumer information in a language other than English, the warning must be provided in that language in addition to English. For purposes of clarity, “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional information; it does not include the brand name, product name, company name, location of manufacture, or product advertising (Section 25600.1(c)).

**Q. Can a business place the Proposition 65 warning on a Safety Data Sheet (SDS)?**

A. Safety Data Sheets (SDS) are outside the scope of this regulation, as OEHHA cannot prescribe the content of forms under the authority of a federal or other state agency. While SDS may be used to provide occupational exposure warnings, they are not a safe harbor warning method for other exposure types such as consumer product or environmental exposures covered by Article 6.