



Proposition 65 – Article 6

An Overview of Amendment § 25601 in Title 27





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by Paula Laux, UL Senior Regulatory Specialist

On August 30, 2016 California's code of Regulations governing Proposition 65 changed with the adoption of amendments to Article 6 (§ 25601 et seq.) in Title 27 of California Code of Regulations. Businesses falling under the regulation must give "clear and reasonable warnings" to individuals before "knowingly and intentionally exposing them to chemicals listed as known to cause cancer or reproductive toxicity."

Reference:

<http://oehha.ca.gov/media/downloads/crn/art6regtextclean090116.pdf>

Businesses must be fully complied with the amended version by August 30, 2018, but during the two year transition period, may comply with either the old or the new Article 6 provisions.

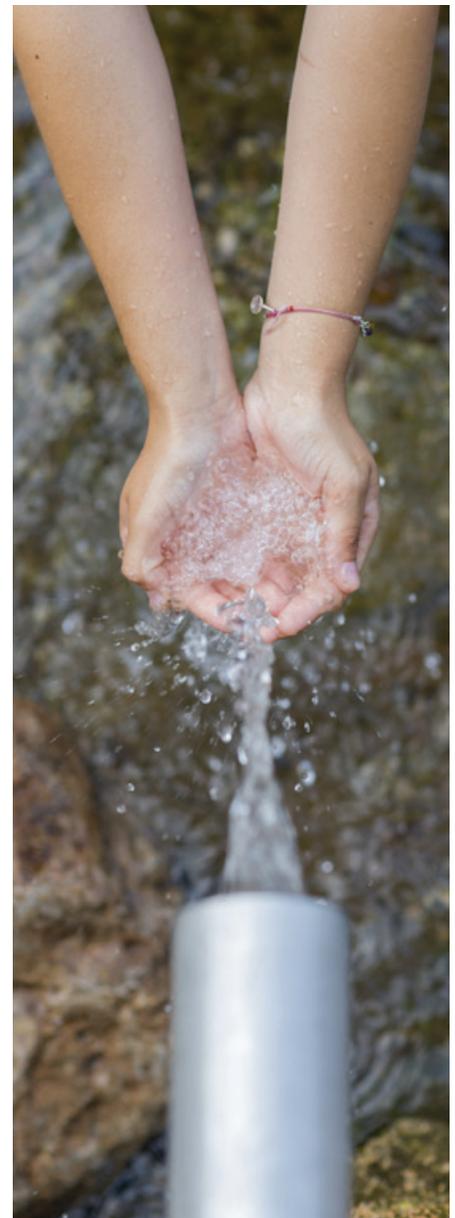
About California Proposition 65

This California right-to-know-law referred to as California Proposition 65 and officially called the Safe Drinking Water and Toxic Enforcement Act of 1986, has always required businesses to warn the public if they "knowingly and intentionally cause an exposure to a listed chemical." Additionally, the regulation required clear communication if a chemical is known to the State of California to cause cancer, birth defects or other reproductive harm. The amended version of Article 6 changes the language to warn Californians that products expose them to carcinogens rather than just stating that the products contain the listed material. OEHHA is hopeful that this change may reduce over-warnings by encouraging manufacturers to take the appropriate risk-based approach to applying warnings.

Regulatory Requirement Highlights

Depending on the regulated product, the requirements vary, but below are highlights of some of the regulatory requirements with emphasis being place on the differences from the old regulation.

1. Changes to warning phrases from "WARNING: This product contains chemical(s)



known to the State of California to cause cancer and/or to cause birth defects or other reproductive harm” to “This product can expose you to chemicals including [name of one or more chemical], which is [are] known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.” Note inclusion of the required website for more information. Also note that § 25603 provides specific verbiage for each combination of products with multiple or single ingredients that cause just cancer, reproductive harm, or both cancer and reproductive harm.

2. Inclusion of the word WARNING as a bolded signal word.
3. Inclusion of a symbol that is a black exclamation point in a yellow equilateral triangle with a bolded black outline. The symbol may be printed in black and white, but must be to the left of warning text. The size of the symbol may be no smaller than the height of the word, “WARNING”
4. Inclusion of the chemical name within the warning to the extent that an exposure to that chemical or chemicals is at a level that requires a warning. If the warning is for both cancer and reproductive toxicity, the warning must include the name of the chemical for each endpoint unless the same chemical is known to cause both cancer and reproductive effects. Note there may be exception to when the chemical name may not be required on the label.
5. § 25607 provides specific verbiage and requirements for specific product, chemical and area warnings. For those types of products, chemicals or areas, the warning language must comply specifically as outlined. Types of products covered include: food, alcoholic beverages, food and non-alcoholic beverages in restaurants, prescription drugs, and petroleum products. Exposures that are specifically regulated included emergency medical or dental care, raw wood, furniture product, diesel engine (except passenger vehicle), vehicle (passenger during generation, service and maintenance,) recreational vessels, enclosed parking garages, amusement parks, service stations, and designated smoking areas.



Follow One of the Listed Communication Methods

Compliance with Article 6 can be achieved for consumer products by meeting the content requirements of §25603 summarized above and following one of the below-listed communication methods.

“Consumer product” means any article, or component part thereof, including food, that is produced, distributed or sold for the personal use, consumption or enjoyment of a consumer.

1. Point of sale warnings. (Can be in the form of shelf tags, shelf signs or posted signs.)
2. Via any electronic device, but only if the warning is provided automatically to the



purchaser prior to or during the purchase of the product so that the purchaser is not required to seek out the warnings.

3. Using labels compliant with §25603(a).
4. Using on-product labels compliant with §25603(b). Note the warning must be not smaller than the largest type found on the label or no smaller than six points. Also, for consumer products, if there is on-product labeling, there is no requirement to include the name or names of the listed chemical within the text of the warning.
5. For internet purchases, the warning needs to comply with §25603(a) or with a clearly marked hyperlink using the word “Warning” that must be prominently displayed before the purchaser completes his or her purchase of the product. There are type size requirements. If an on-product warning is provide, the warning on the website may use the same content as the on-product warning.
6. For catalog purchases, the warning must be provided in the catalog in a manner that clearly associates the warning with the item being purchased. There are type size requirements. If any labels, labeling or sign that provides consumer information about a product is provided in a language or languages other than or in addition to English, then those same languages must be included in the catalog warnings.
7. The responsibility of retailers in deciding when warnings are necessary is limited only to when the retailer seller itself is responsible for introducing a listed chemical. The burden of including the warning is largely placed on the manufacturer, producer, packager, importer, supplier, or distributor; however, the retail seller is responsible for the placement and maintenance of warning materials. This responsibility extends to warnings for products sold over the Internet.

Article 6 warnings about a listed chemical causing occupational exposure is met by providing a fully compliant HCS 2012 (29 CFR, 1910.1200) and the California Hazard communication Standard (Title 8, California Code of Regulations §5194.) For Pesticides, compliance with Article 6 can be achieved by meeting the requirements of the Pesticides and Worker Safety regulation (Title 3, California code of Regulations §6700). Occupational exposure is defined to mean any exposure to any employee at his or her place of employment. So if a product exposes an employee to a listed chemical and for instance the OSHA HCS label includes compliant warnings about the listed carcinogen, reproductive toxin, or birth defects, then there is safe harbor. On the other hand, for occupational exposure to chemicals that are not covered by these above-listed regulations, such as when exposure can occur below the HCS 2012 threshold, warnings may be provided consistent with sections 25601, 25602, 25603, 25604, 25605, and 25607, et seq. of Article 6.

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