

New Proposition 65 Warnings

What is Proposition 65?

In 1986, California voters approved Proposition 65, an initiative to address their growing concerns about exposure to toxic chemicals. That initiative is officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986. The law requires California to publish a list of chemicals known to cause cancer or reproductive toxicity, and for businesses with 10 or more employees to provide warnings when they knowingly and intentionally cause significant exposures to listed chemicals.

This list currently includes more than 850 chemicals. Proposition 65 does not ban or restrict the sale of chemicals on the list. The warnings are intended to help Californians make informed decisions about their exposures to these chemicals from the products they use and the places they go.

The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program.

What are the most significant changes to the Proposition 65 warnings for consumer products?

Since the original warning requirements took effect in 1988, most Proposition 65 warnings simply state that a chemical is present that causes cancer or reproductive harm, but they do not identify the chemical or provide specific information about how a person may be exposed or ways to reduce or eliminate exposure to it.

New OEHHA regulations, adopted in August 2016 and that will take full effect in August 2018, change the safe harbor warnings which are deemed to comply with the law in several important ways.



For example, the new warnings for consumer products will say the product “can expose you to” a Proposition 65 chemical rather than saying the product “contains” the chemical. They will also include:

- The name of at least one listed chemical that prompted the warning
- The Internet address for OEHHA's new Proposition 65 warnings website, www.P65Warnings.ca.gov, which includes additional information on the health effects of listed chemicals and ways to reduce or eliminate exposure to them
- A triangular yellow warning symbol on most warnings 

What are other highlights of the new warnings system?

The new warning regulation also:

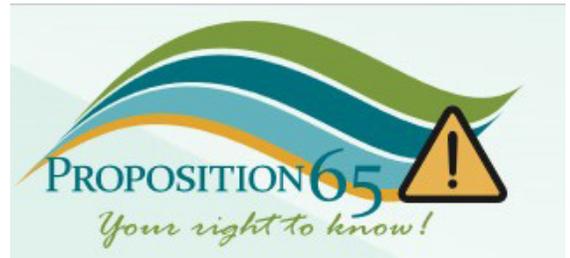
- Adds new “tailored” warnings that provide more specific information for certain kinds of exposures, products, and places
- Provides for website warnings for products purchased over the Internet
- Provides for warnings in languages other than English in some cases
- Clarifies the roles and responsibilities of manufacturers and retailers in providing warnings

How do the new warnings compare to the current warnings?

A typical current Proposition 65 warning states, “WARNING: This product contains a chemical known to the State of California to cause cancer.” A sample new warning would look like this: “  WARNING: This product can expose you to chemicals including arsenic, which is known to the State of California to cause cancer. For more information, go to www.P65Warnings.ca.gov.”

Why are Proposition 65 warnings changing?

In 2013, Gov. Edmund G. Brown Jr. proposed reforms to strengthen Proposition 65. The Governor called for changes to “require more useful information to the public on what they are being exposed to and how they can protect themselves.” He added, “This is an effort to improve the law so it can do what it was intended to do - protect Californians from harmful chemicals.”



In 2015, UC Davis researchers interviewed more than 1,500 randomly selected Californians and asked them to compare the new specific warnings to the current generic warnings. The results were dramatic - 77 percent said the new warnings would be more helpful than the current system.

What are the goals of the new warnings?

The new warning system has several main goals. These include:

- Making warnings more meaningful and useful for the public
- Reducing “over-warning” in which businesses provide unnecessary warnings
- Giving businesses clearer guidelines on how and where to provide warnings

When will the changes take effect?

In August 2016, the Office of Administrative Law approved the new regulations for improved Proposition 65 warnings. Businesses can currently choose whether to provide the old warning or the new warning as part of the regulation’s two-year phase-in period. Beginning August 30, 2018, the old warning system will expire and businesses that want “safe harbor protection” that deems them in compliance with Proposition 65 will use the new warning system.

What is the purpose of the new Proposition 65 warnings website?

In 2016, OEHHA launched a new website, www.P65Warnings.ca.gov, to provide the public with more information on chemicals, products, and locations associated with Proposition 65 warnings. The website is part of the state’s effort to provide Californians with more useful information on chemicals they are being exposed to and ways to protect themselves.

People who read Proposition 65 warnings and want to learn more can go to the website to find additional information about chemicals and best practices for reducing or eliminating exposures. The website contains fact sheets about Proposition 65 chemicals and specific types of exposure, such as from furniture products or enclosed parking facilities. It also answers frequently asked questions about Proposition 65 and includes a glossary of Proposition 65 terms.



Will businesses be required to provide the new warnings?

No. The regulation states that a business is not required to use the new safe harbor warning system to comply with the law. However, using the safe harbor warnings is an effective way for businesses to protect themselves against Proposition 65 enforcement actions. Businesses that use the safe harbor warnings are deemed compliant with the law's requirement for clear and reasonable warnings.

Businesses have the option to provide different warnings if they believe they comply with the law. Additionally, small businesses with fewer than 10 employees are exempt from Proposition 65's warning requirements.

Will products manufactured before August 2018 need to use the new warnings?

No. Products manufactured before August 30, 2018 will not need new warnings if they meet the requirements that were in effect at the time of their production.

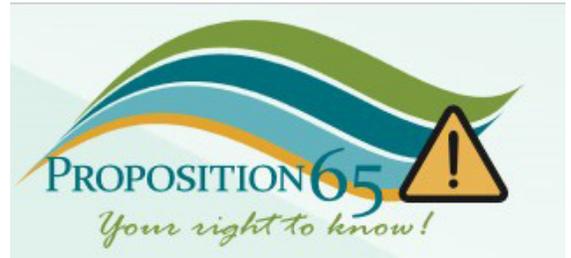
Will special warnings approved by courts in previous legal settlements remain in effect?

Yes. The regulation states that OEHHA recognizes court-ordered settlements and judgments that impose specific Proposition 65 warnings.

What circumstances will require warnings in languages other than English?

When a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English. Facilities that provide signage in non-English languages would also have to provide any required warnings in those languages, in addition to English.

For Internet purchases, warnings can be provided by including a clearly marked hyperlink using the word WARNING on the product display page.



Which exposures, products and places have specific tailored warnings?

In addition to the warnings for chemical exposures from consumer products, the new regulation provides specific warnings for exposures from:

- Alcoholic beverages, food and non-alcoholic beverages, prescription drugs, dental care, wood dust, furniture products, diesel engines, vehicles, and recreational vessels
- Enclosed parking facilities, amusement parks, petroleum products, service stations and vehicle repair facilities, and designated smoking areas

Can businesses request additional tailored warnings?

Yes. The regulation allows businesses to request new tailored warnings pursuant to Government Code sections 11340.6 and 11340.7 (Petition for Rulemaking). OEHHA will consider these requests and can amend the regulation to add tailored warnings as appropriate.

What are the warning responsibilities for manufacturers and retailers?

The new system clarifies that manufacturers have the primary responsibility for providing Proposition 65 warnings. Manufacturers can choose whether to put warning labels on their products or to provide notices to their distributors, importers or retail outlets that a product may cause an exposure to a listed chemical that requires a warning provide warning signs or other warning materials. Manufacturers can also enter written agreements with retailers to modify this allocation of responsibility as long as the consumer receives a clear and reasonable warning before her or she is exposed to a Proposition 65 chemical.

Retailers must confirm that they received the notice and must use the warning signs or other materials provided by the manufacturer.



Are there other regulations to assist businesses with warning requirements?

Yes. In addition to other forms of compliance assistance, OEHHA has regulations that set procedures for requesting advice from the agency including Interpretive Guidelines and Safe Use Determinations.

In some cases, OEHHA may issue an interpretive guideline that clarifies warning requirements with regard to specific facts. Current Interpretive Guidelines apply to consumption of sulfur dioxide in dried fruits, chlorothalonil in tomato products, consumption of methanol from pectin that occurs naturally in fruits and vegetables, and hand-to-mouth transfer of lead through exposure to consumer products and fishing tackle. For more information on Interpretive Guidelines, see <https://oehha.ca.gov/proposition-65/interpretive-guidelines-proposition-65>.

There is also a procedure for requesting a Safe Use Determination. A Safe Use Determination is a written statement issued by OEHHA that interprets whether specific sets of exposures require warnings. For example, in recent years, OEHHA has issued several Safe Use Determinations related to exposures from diisononyl phthalate (DINP) in vinyl flooring and outdoor furniture products. For more information on the Safe Use Determination Process, see <https://oehha.ca.gov/proposition-65/proposition-65-safe-use-determination-sud-process>.

Where can I find more information on Proposition 65 warning requirements?

Proposition 65 and its regulations are posted at:
<https://oehha.ca.gov/proposition-65/law/proposition-65-law-and-regulations>.

For a side-by-side comparison of the current and new warning regulations, see: <https://oehha.ca.gov/media/downloads/crn/side-sidearticle6.pdf>.

You can also contact the Proposition 65 Implementation Program office:
(916) 445-6900 or email P65.Questions@oehha.ca.gov.

Document Source: www.p65warnings.ca.gov/new-proposition-65-warnings