

WARNING REGULATIONS : ALLOCATING RESPONSIBILITY IN THE DISTRIBUTION CHAIN AND THIRD PARTY PLATFORMS

Prop 65 Clearinghouse Conference
September 21, 2020

CLEAR AND REASONABLE WARNINGS

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Conference
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CLEAR AND REASONABLE WARNINGS REGULATIONS: OVERVIEW

CAL. CODE OF REGS., TITLE 27, ARTICLE 6

- Article 6 describes how to provide a “clear and reasonable” Proposition 65 warning.
- Subarticle 1
 - includes definitions, mandatory provisions for all Proposition 65 warnings
 - includes Responsibility to Provide Warnings
- Subarticle 2
 - provides a “safe harbor” approach for warnings business can opt to use to provide warning
 - includes warning methods and content
 - provides specificity and clarity for warnings
 - includes warnings for consumer product, environmental, and specific exposures.

MANUFACTURER/RETAILER RESPONSIBILITIES

Title 27, California Code of Regulations, section 25600.2

- Manufacturers have primary responsibility to provide warning. Can meet responsibility to providing Proposition 65 warnings by:
 - providing a label on product OR
 - providing a notice to next party in chain of distribution (e.g., distributor/importer/retail seller) that is subject to the Act. The notice must
 - indicate that the consumer product may cause an exposure to a listed chemical, and must
 - include warning materials, and *internet warning language* for products that are sold on the Internet.
- Intermediate parties in chain of distribution (e.g. importer, distributor) *can do the same if “next in line” business is subject to the Act.*
- Retail sellers
 - confirm receipt of notice
 - act as “pass-through” for warning
- Parties can enter into written agreement with next business in chain of distribution to modify allocation of responsibility for providing the warning, so long as consumer receives a warning prior to exposure.




SUBARTICLE 2. SAFE HARBOR


METHODS AND CONTENT


- **Safe Harbor Methods and Content (Section 25601)**
 - Non-mandatory methods and content for providing warnings.
- **Consumer Product Exposure Warnings - Methods (Section 25602)**
 - Includes point of display warnings, electronic device or process (*not* stand-alone internet warning), labels, and internet purchase warnings.

Consumer Product Exposure Warnings – Content (Section 25603)

- Warning symbol  for most products, not including food/supplements
- “This product **can expose you** to...”
- Name of **one or more chemicals** in the warning.
 - Named chemicals are those for which warning is being provided
 - Business selects which chemical(s) to include in warning
 - Ex. Warning is required for chemicals A and B. Business can include the name of chemical **A or B, or both.**
- OEHHHA web site URL www.P65Warnings.ca.gov

PROPOSITION 65 SAFE HARBOR WARNING REGULATIONS

 **WARNING:** This product can expose you to chemicals including lead and cadmium, which 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.

 **WARNING:** Operating, servicing and maintaining a recreational marine vessel can expose you to chemicals including engine exhaust, carbon monoxide, phthalates, and lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, service your vessel in a well-ventilated area and wear gloves or wash your hands frequently when servicing this vessel. For more information go to www.P65warnings.ca.gov/marine.

SUBARTICLE 2. SAFE HARBOR METHODS AND CONTENT

Internet Warnings

- Safe harbor regulations require separate warning for internet purchases
- Internet warning is in addition to warning on or with the product
- Product manufacturer must provide warning content for retailer website
- Provide a warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, OR otherwise prominently displaying the warning to the purchaser prior to completing the internet purchase.
- A warning is not “prominently displayed” if the purchaser must search for it in the general content of the website.
- Business may use the short-form language or a picture of the warning on a product label

SUBARTICLE 2. SAFE HARBOR

METHODS AND CONTENT

ENVIRONMENTAL AND OCCUPATIONAL EXPOSURES

- Section 25604. Environmental Exposure Warnings – Methods of Transmission
- Section 25605. Environmental Exposure Warnings – Content
- Section 25606. Occupational Exposure Warnings

Subarticle 2. Safe Harbor

Methods and Content

Specific Exposure Warnings ("Tailored Warnings")

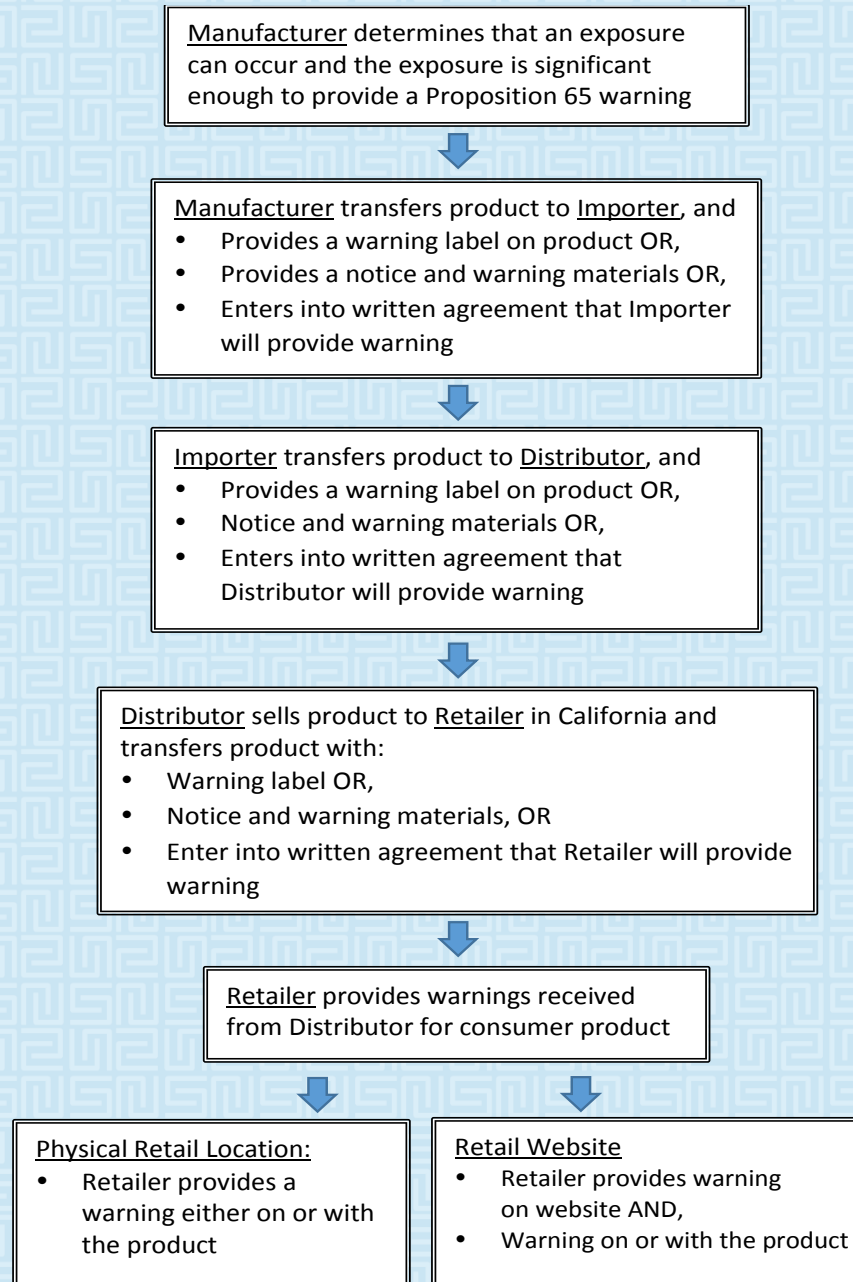
- Regulations provide "tailored warnings" for certain products and locations such as furniture, alcohol, motor vehicles, service stations, enclosed parking structures and hotels.
- OEHHA will continue to amend or adopt additional provisions in the regulations as needed.

RESPONSIBILITY TO PROVIDE WARNINGS EXAMPLE


- Foreign manufacturer of vinyl gloves knows that the chemical Diisononyl Phthalate (DINP) is used in the manufacture of the gloves. Manufacturer knows that consumers may be exposed to a significant amount of DINP through use of the product.
- Manufacturer knows that the product will be exported to the United States, and will likely be distributed and sold in California.
- Manufacturer confirms that DINP is included on the Proposition 65 list as a carcinogen.
- Manufacturer plans to transfer the gloves to Importer, who in turn will transfer the gloves to Distributor. Distributor will then sell the gloves to Retailer, who will sell the gloves in “brick and mortar” physical retail locations in California, as well as through a retail website.

Who is responsible for providing the Proposition 65 warning?

Responsibility to Provide Warnings Example, cont.



EXAMPLE OF SAFE HARBOR WARNING LABEL

 **WARNING:** This product can expose you to chemicals including Diisononyl Phthalate (DINP), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

PROPOSITION 65 WARNINGS WEBSITE

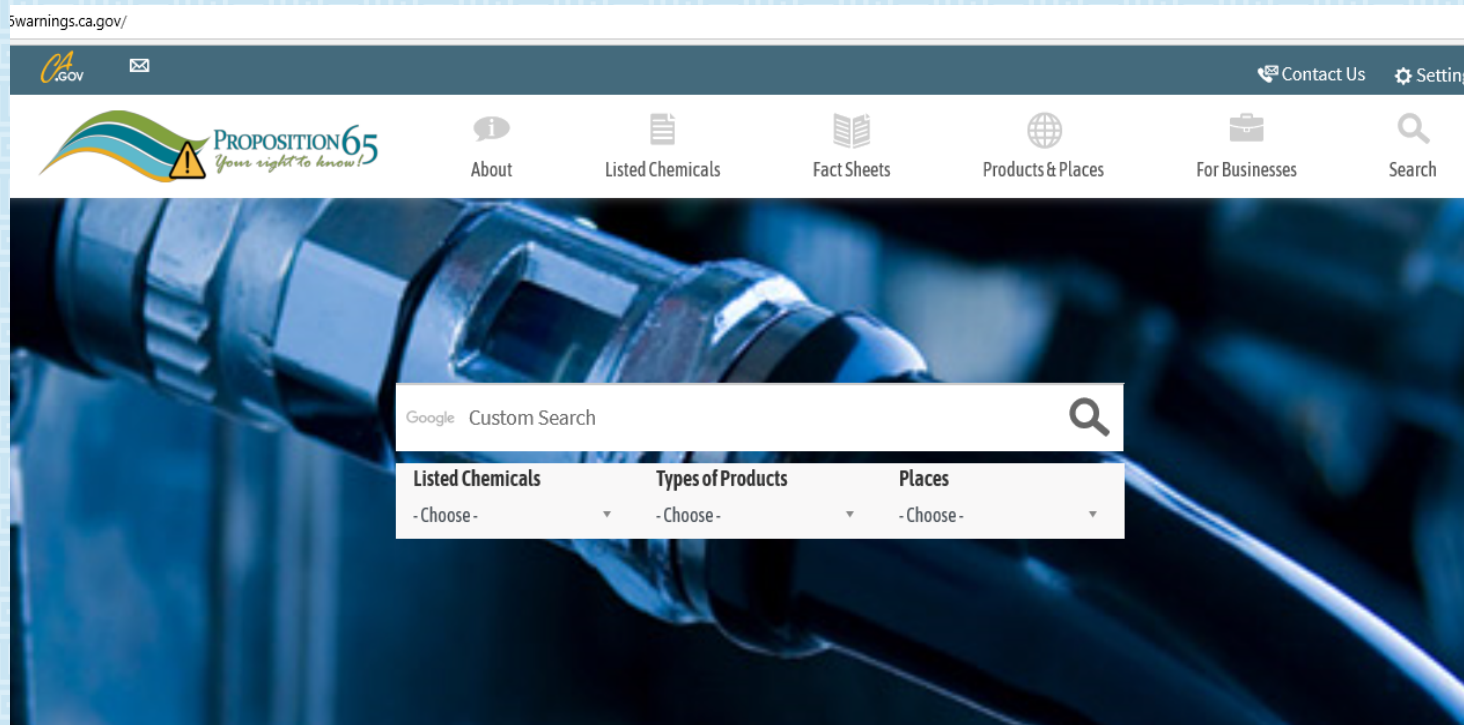


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PROPOSITION 65 WARNINGS WEBSITE

<https://www.p65warnings.ca.gov/>



Welcome to the Proposition 65 Warnings Website

The California Office of Environmental Health Hazard Assessment is establishing this website to provide the public with information on [chemicals](#), [products and locations](#) often associated with Proposition 65 warnings. These warnings inform Californians about their exposures to chemicals that cause [cancer](#), birth defects or other [reproductive harm](#).

Visiting this website regularly will help you learn about these chemicals and how you can reduce your [exposure](#) to them. We will be adding new information frequently.

[Sign-up for email updates.](#)

What is Proposition 65?

Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause [cancer](#), birth defects or other

PROPOSITION 65 WARNINGS WEBSITE



- Warnings Website provides:
 - Fact sheets on various chemicals, products and places
 - Current and proposed safe harbor warnings
 - Downloadable warning text and symbol
 - Translations in multiple languages
- Plans for future:
 - Continue to add more content

WARNINGS WEBSITE PRODUCTS AND PLACES

The screenshot shows the Proposition 65 website. At the top is a dark blue header with the 'CA.GOV' logo and a search icon. Below this is a white navigation bar featuring the Proposition 65 logo (a stylized wave with a yellow triangle and the text 'PROPOSITION 65 Your right to know!') and five menu items: 'About', 'Listed Chemicals', 'Fact Sheets', 'Products & Places', and 'For Businesses'. The 'Products & Places' menu item is highlighted. Below the navigation bar is a breadcrumb trail: 'Home > Products & Places'. The main heading 'Products & Places' is displayed in a large, bold font. Under this heading, there are two columns of links, each preceded by a circular icon. The 'Products' column includes: Alcoholic Beverages (glass and bottle icon), Diesel Engine Exhaust (diesel engine icon), Food (fork and knife icon), Furniture Products (couch icon), Passenger and Off-Highway Motor Vehicles (car icon), Petroleum Products (oil drop icon), Recreational Vessels (jet ski icon), and Wood Dust (wood chips icon). The 'Places' column includes: Amusement Parks (Ferris wheel icon), Apartments and Other Residential Rental Properties (apartment building icon), Dental Offices (tooth and chair icon), Designated Smoking Areas (cigarette with flame icon), Enclosed Parking Facilities (parking car icon), Hotels (hotel building icon), Restaurants (fork and knife icon), Service Stations (gas pump icon), and Vehicle-Repair Facilities (car lift icon). At the bottom of the page, a footer line reads: 'If you have any questions, comments, or concerns about the content of this page, [please click here.](#)'

CA.GOV

PROPOSITION 65
Your right to know!

About Listed Chemicals Fact Sheets Products & Places For Businesses

Home > Products & Places

Products & Places

Products

- [Alcoholic Beverages](#)
- [Diesel Engine Exhaust](#)
- [Food](#)
- [Furniture Products](#)
- [Passenger and Off-Highway Motor Vehicles](#)
- [Petroleum Products](#)
- [Recreational Vessels](#)
- [Wood Dust](#)

Places

- [Amusement Parks](#)
- [Apartments and Other Residential Rental Properties](#)
- [Dental Offices](#)
- [Designated Smoking Areas](#)
- [Enclosed Parking Facilities](#)
- [Hotels](#)
- [Restaurants](#)
- [Service Stations](#)
- [Vehicle-Repair Facilities](#)

If you have any questions, comments, or concerns about the content of this page, [please click here.](#)

WARNINGS WEBSITE FACT SHEET



Proposition 65 Warnings www.P65Warnings.ca.gov
Office of Environmental Health Hazard Assessment



Foods

Why am I being warned about potential exposure to chemicals in certain foods?



- Certain foods contain chemicals that are on the [Proposition 65](#) list because they can cause cancer and/or birth defects or other reproductive harm.
- Proposition 65 requires businesses to determine if they must provide a warning about exposures to [listed chemicals](#).

Some foods contain chemicals on the Proposition 65 list.

Food is essential to life and good health. However, many foods contain substances, such as saturated fats, salt and sugar, that should be consumed in moderation. Similarly, some foods contain Proposition 65 chemicals. This does not mean that these foods should never be eaten. But interested consumers can decide what and how often to eat certain foods if they wish to reduce their exposure to these chemicals.

The Proposition 65 listed chemicals commonly found in such foods are:

- **Acrylamide** is formed mostly on the surface of plant-based foods when they are browned during frying, roasting, grilling, or baking. In general, the browner the surface, the higher the level of acrylamide.
 - ▶ Acrylamide levels can vary among different kinds of foods and even among different brands of the same kind of food. Many foods have low levels of acrylamide that do not pose a significant cancer risk and do not require a warning. A warning for acrylamide on a food product suggests that regular consumption of the food over time can pose a greater cancer risk than consumption of foods with lower acrylamide levels.
- **Arsenic (Inorganic)** is a naturally occurring chemical element in the Earth's crust.
 - ▶ Some plant crops, such as [rice](#), can absorb arsenic. When grown in soil with elevated arsenic levels, the amount of arsenic in rice can be elevated.
 - ▶ Some herbal medicines from India and China may contain arsenic.
 - ▶ Some edible seaweed (especially hijiki, a short, black noodle-like seaweed) can absorb arsenic from water.
- **Bisphenol A (BPA)** This chemical is used in some coatings for cans, jar lids, and bottle caps. It is also used in some polycarbonate plastic bottles and other food-contact items. However, the use of BPA in these items is decreasing.
 - ▶ BPA can leach into food or beverages from BPA-based linings in metal food and drink cans, jar lids, and bottle caps.
- **Cadmium** is a metal found in certain fish, shellfish, and organ meats. Some leafy vegetables, like spinach grown in cadmium-rich soils, take up cadmium.

May 2018



Proposition 65 Warnings
Office of Environmental Health Hazard Assessment
www.P65Warnings.ca.gov



Cannabis (Marijuana) Smoke

Why am I being warned about exposure to cannabis smoke?



- Cannabis (marijuana) smoke is on the [Proposition 65](#) list because it can cause cancer. Exposure to cannabis smoke may increase the risk of cancer.
- Cannabis smoke is also on the Proposition 65 list because if a pregnant woman smokes cannabis, this can affect the development of the child. For example, this may affect the child's birthweight, memory, and attention.
- Proposition 65 requires businesses to determine if they must provide a warning about significant exposure to [listed chemicals](#).

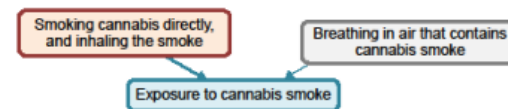
Cannabis smoke is formed when the dried leaves, flowers, stems, and resins of cannabis plants are burned.



**CANNABIS
SMOKE**

- Cannabis smoke contains several thousand different chemicals, some of which are on the Proposition 65 list. These include:
 - ▶ Chemicals that cause cancer, such as [arsenic](#), [benzene](#), benzo[a]pyrene, [cadmium](#), [hexavalent chromium](#), [formaldehyde](#), [lead](#), and nickel.
 - ▶ Chemicals that can affect the baby when the mother is exposed to them during pregnancy, such as 1,3-butadiene, [cadmium](#), [carbon monoxide](#), [delta-9-tetrahydrocannabinol \(THC\)](#), hydrogen cyanide, [lead](#), [mercury](#), methanol, and toluene.
- Many of these chemicals are also in [tobacco smoke](#), which is on the Proposition 65 list as causing cancer, birth defects, and other reproductive harm.

How does exposure to cannabis smoke occur?



- If you are pregnant or breastfeeding, and you smoke cannabis, your baby is exposed to many of the harmful chemicals in cannabis smoke.

Updated July 2020



WARNINGS WEBSITE FOR BUSINESSES

warnings.ca.gov/businesses

CA GOV

Contact Us Settings

PROPOSITION 65
Your right to know!

About Listed Chemicals Fact Sheets Products & Places For Businesses Search

Home | For Businesses

For Businesses

Proposition 65 requires the State of California to maintain and update a [list of chemicals](#) that can cause [cancer](#), birth defects or other [reproductive harm](#). Businesses with 10 or more employees that expose individuals to listed chemicals through their products or operations generally must provide warnings. This section of the website provides information to assist businesses with Proposition 65 compliance.

[Frequently Asked Questions for Businesses](#)

Learn more about Proposition 65 including the requirements, [safe harbor levels](#) and exemptions

[Q&A on New Warning Regulations](#)

This document was developed to assist businesses in locating and understanding relevant provisions in the Article 6 Clear and Reasonable Warnings regulations

[Sample Warnings and Translations For Businesses](#)

The translations on this page are provided as examples of Proposition 65 safe harbor warnings in languages other than English

[Warning Symbol](#)

Find links to download several sizes of the warning symbols required to be included on most safe harbor warnings for exposures to listed chemicals

[New Proposition 65 Warnings](#)

New OEHHA regulations became operative in August 2018 and changed the safe harbor warnings that are deemed to comply with the law in several important ways

[Q&A on Internet and Catalog Warnings](#)

This document specifically addresses Proposition 65 safe harbor consumer product [exposure](#) warnings provided on the internet and in catalogs

[Proposition 65 Warning Regulations and Recent Amendments](#)

Read about the Proposition 65 warning regulations and recent amendments, including a side by side comparison


WARNINGS WEBSITE

WARNING SYMBOL

arnings.ca.gov/warning-symbol

CA.GOV

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 **PROPOSITION 65**
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About Listed Chemicals Fact Sheets Products & Places For Businesses Search

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Warning Symbol

With some exceptions, the warning symbol is a required element of safe harbor warning content. The symbol consists of a black exclamation point in a yellow equilateral triangle with a bold, black outline. The symbol must be placed to the left of the text of the warning in a size no smaller than the height of the word **“WARNING”**. If the sign, label, or shelf tag for the product is not printed using the color yellow, the symbol may be provided in black and white. Businesses may download the symbols provided below for use in Proposition 65 warnings. A business wishing to provide a safe harbor warning must meet all applicable requirements of the [Article 6 Clear and Reasonable Warnings](#) regulations.

Below you will find links to download several sizes of the warning symbols required to be included on most safe harbor warnings for exposures to listed chemicals under the new regulations effective in August 2018. The formats we provide in the download ZIP file are PNG (Raster) and SVG (Vector). These symbols are provided by OEHHA for the purpose of assisting businesses transitioning to the new safe harbor warning provisions of the regulations. While a business may choose to use a different size, color or symbol format, the business may wish to consult with legal counsel regarding the applicability of the safe harbor regulations, and specifically the warning symbol requirements of the new regulations for specific exposures.

[All Sizes of Warning Symbols \(Download ZIP\)](#)

Please select a Color and Size. Click to Download.



Select Color:

Select Size:

Questions?

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More information

www.P65warnings.ca.gov

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