



## Memorandum

To: Proposition 65 Clients and Friends of Our Firm  
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Date: September 15, 2020  
Re: Proposition 65 Safe Harbor Warning Regulations

**CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION**

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### Introduction

Between September, 2016 and August, 2018, California's Office of Environmental Health Hazard Assessment ("OEHHA") announced multiple revised safe harbor warning regulations. We summarized these in a memo to clients and friends in early 2018, and revised it at least once since then. From early 2018 to the present, the agency has issued a variety of revisions, some of little significance, and a few of potential importance to a few companies. So we are updating our previously distributed summary. We are also discussing herein some of the positions private party enforcers (sometimes known as "bounty hunters") have taken in connection with actual or potential litigation. And we are further discussing how some companies have successfully responded to these regulations and the positions taken by enforcers in connection with these regulations. The regulations, old and new, have a potentially enormous impact on almost every company that sells a product in California, manufactures or distributes a product sold in California, owns or manages space open to members of the public or employs persons in California.

The agency proposed additional revisions in January which did not take effect, and it has withdrawn many but not all of these. The few new proposed regulations that remain relate to warnings concerning the sale of alcoholic beverages, and we will briefly discuss these in this document. There is a great deal of substance in the new regulations. So we start with a Table of Contents, allowing clients to choose the subjects that matter most to them.

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### EXECUTIVE SUMMARY

In the pages that follow, we will be giving you quite a bit of detail concerning the current regulations and what they mean. But as we see it, here are the highlights of the revisions that every company doing business in California -- directly or indirectly -- needs to be aware of now.

- *The “safe harbor” language applicable to products manufactured before August 30, 2018 is usually not safe anymore.*
- *The new “safe harbor” warning regulations offer companies the option of providing specific identification of one or more chemicals, or a short warning.*
- *Every warning must be preceded by an icon with an exclamation point in a triangle (usually yellow) and the word “WARNING” bold and capitalized, while meeting other specific requirements.*
- *Companies who have agreed to give warnings as part of a settlement agreement may have to revise their warnings (but companies bound by a consent judgment signed by a judge will not).*
- *Online warnings that are displayed prior to the purchase are required for internet sales, in addition to on-product warnings.*
- *Catalogs used for “catalog sales” (which the regulations do not define) will require warnings, in addition to on-product warnings.*
- *There is now a way for importers, distributors and manufacturers to sometimes pass the warning obligations down to retailers or other down-stream companies.*
- *As a practical matter, for consumer goods and environmental exposures, the new regulations establish what may be the only permissible way to warn.*
- *In some instances, warnings must be provided in languages other than English.*

## **Safe-Harbor Warnings for Consumer Products**

### **The Required Content**

The warning requirements for consumer products generally require the inclusion of an icon/graphic, specific language and a website url:

For exposures to a single carcinogen, reproductive toxicant or a single chemical listed as both:

 **WARNING:** This product can expose you to [name of chemical], which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

 **WARNING:** This product can expose you to [name of chemical], which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

 **WARNING:** This product can expose you to [name of chemical], which is 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](http://www.P65Warnings.ca.gov).

For exposures to multiple (or potentially multiple) chemicals:

 **WARNING:** This product can expose you to chemicals including [name of one or more chemical or chemicals], which is [are] known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

 **WARNING:** This product can expose you to chemicals including [name of one or more chemical or chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

 **WARNING:** This product can expose you to chemicals including [name of one or more chemical or chemicals], which is [are] known to the State of California to cause cancer and [name of one or more chemical or chemicals] which is [are] known to the State of California to cause birth defects or other reproductive harm. . For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

 **WARNING:** This product can expose you to chemicals including [name of one or more chemical or chemicals], 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](http://www.P65Warnings.ca.gov).

Despite the bracketed language about “one or more chemical or chemicals,” when there are multiple chemicals and a single toxic end-point, the warning only has to list one of the chemicals. If there are two or more chemicals with different toxic end-points (i.e., cancer and birth defects), at least one chemical has to be identified for each toxic end-point.

The new regulations also contain short form warnings for consumer products that can be used as an alternative to the longer ones. The short form warnings are these:

 **WARNING:** Cancer -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

 **WARNING:** Reproductive Harm -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

 **WARNING:** Cancer and Reproductive Harm-- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

The short form warnings must be in a type size “no smaller than the largest type size used for any other consumer information on the product” and no less than 6-point type. The rather vague definition of “consumer information” in the regulations is this:

“Consumer information” includes warnings, directions for use, ingredient lists, and nutritional information. “Consumer information” does not include the brand name, product name, company name, location of manufacture, or product advertising.

In all instances -- whether with the long warning or the short-form warning -- if product labels are printed without color, the exclamation point in the triangle can be printed in black and white.

### **Warning Location**

Consumer product warnings must be “prominently displayed . . . and must be displayed with such conspicuousness as compared with other words, statements, designs or devices . . . as to render the warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use.” Warnings can be provided in the

following ways:

- A product-specific warning on a sign or shelf-tag at each point of display of the product;
- A product-specific warning provided “via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase . . . without requiring the purchaser to seek out the warning;
- A label, defined as “a display of written, printed or graphic material that is printed on or affixed to a product or its immediate container or wrapper.;
- Labeling, defined as “ any written, printed, graphic, or electronically provided communication that accompanies a product, such as a package insert.

The regulations include texts and transmission methods that “must” be used if the company wants the protection of a “safe harbor warning.” Thus, for Internet purchases, the new regulations require that “a warning . . . must be provided by including either the warning or a clearly marked hyperlink using the word “WARNING” on the product display site, “or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase.” And the regulations provide that a warning is not “prominently displayed” if the purchaser has to search for it. For catalog sales, the warning must be provided in a manner that clearly associates the warning with the product. For either Internet sales warnings or catalog sales warnings, if the company uses one of the short-form warnings, it can use the same short-form warning on the web site or in the catalog.

#### **Non-Safe Harbor Warnings**

The new regulations, like the old ones, provide that other means of warning can also be “clear and reasonable” as required by Proposition 65. And a Court of Appeal has held that if a company uses a warning from the “safe harbor” regulations, that warning will be deemed

clear and reasonable in conformance with Proposition 65, meaning that a private party enforcer can't take the position in court that the warning is not clear and reasonable.

Since the new regulations came into effect in August, 2018, many private enforcers have proceeded against companies who warn by taking the position that any warning that does not precisely follow the regulations violates Proposition 65. (This includes, for example, products that are labeled with the warning but sold online without online warnings). We have received communication from the California Attorney General's Office citing the regulations for the position that the private party enforcers are wrong in this regard. But we have seen no court rulings making that determination. The most cost-effective measure for companies is to bring their warnings into compliance with the new regulations, so as to avoid being the target of an enforcement action brought by a private party enforcer.

### **Product-Specific Warning Regulations**

The earlier version of the regulations has product-specific warning provisions for food, alcoholic beverages and prescription drugs. The new regulations add product-specific warnings for dental care exposure, raw wood products, furniture, non-passenger diesel engines, vehicles, recreational vessels and amusement parks. Below, we summarize the requirements for food, beverages, (including the few upcoming revisions regarding food and beverages), furniture, vehicles, wood dust and many environmental exposures.

**Food and Dietary Supplements:** The content of the safe harbor warnings is nearly identical to the full general consumer product warnings, except there is no exclamation point in the triangle, and the warnings begin

“Consuming this product can expose you to . . . .“

So for example, the warning for a carcinogen would be:

**WARNING:** Consuming this product can expose you to chemicals including

[name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The warning is to be outlined in a box. The other warnings for food and dietary supplements appear at California Code of Regulations § 27607.2

**Alcoholic Beverages:** For alcoholic beverages, there is one content provision and there are four possible means of transmission. The content is this:

**WARNING:** Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy can cause birth defects. For more information go to [www.P65Warnings.ca.gov/alcohol](http://www.P65Warnings.ca.gov/alcohol).

The following are the authorized means of transmission:

- An 8 ½ by 11 inch sign in no smaller than 22-point type, at eye level so it is readable and conspicuous to customers as they enter the area or areas where alcoholic beverages are sold.
- A notice or sign at least 5 by 5 inches with font at least 20 point and text enclosed in a box, placed at each retail point of sale or display so as to assure that it is readable and conspicuous.
- For beverages served by “food or beverage persons” or at a counter, on a menu or list identifying food or beverages sold at the facility.
- For package deliveries, the warning on or in the shipping container or delivery package, with type no less than 8 point font, and readable and conspicuous to the recipient prior to consumption. The latest revision proposed by the agency will, when adopted, require that for alcoholic beverage deliveries, the warning be provided to the purchaser or delivery recipient prior to or during the purchase of the product. And for alcoholic beverages sold by catalog or on the internet, the new regulations require a warning provided to purchaser or recipient prior to or contemporaneously with the delivery of the product, readable and conspicuous to the recipient prior to

consumption. It must appear in a type size no smaller than the largest type size on the

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- product for other consumer information, with a minimum size of 8 points. As an alternative, it can be sent by e-mail or text as part of the electronically delivered receipt or purchase confirmation.

### **Food and Non-Alcoholic Beverage Exposure Warnings for Restaurants**

Here is the safe harbor language:

**WARNING:** Certain foods and beverages sold or served here can expose you to chemicals including acrylamide in many fried or baked foods, and mercury in fish, 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/restaurant](http://www.P65Warnings.ca.gov/restaurant).

In other words, even though acrylamide in cooked meats and mercury in seafood are, according to many food scientists, naturally occurring (and under other Proposition 65 regulations, unwarned exposures to naturally occurring chemicals are deemed not to violate the statute), a restaurant wanting to claim safe harbor status for its warning must include both of these chemicals.

The three authorized means of transmission are similar to some of the options available for alcoholic beverages:

- An 8 ½ by 11 inch sign in no smaller than 28-point type, placed so that it is readable and conspicuous to customers as they enter each public entrance to the restaurant or facility where food or beverages may be consumed.
- A notice or sign at least 5 by 5 inches with font at least 20 point and text enclosed in a box, placed at each point of sale so as to assure that it is readable and conspicuous.
- A warning on any menu or list describing food or non-alcoholic beverage offerings, in a type size no smaller than the largest type size used for the names of general menu items.

## **Furniture**

This regulation has two components, one for “warnings,” and one for “notices.”

The warning must be “affixed to the furniture product in the same manner as other consumer information or warning materials . . . “ and provide as follows:

 **WARNING:** This product can expose you to chemicals including [name of one or more chemicals known to cause cancer, name of one or more chemicals known to cause reproductive toxicity, or name of one or more chemicals known to cause both cancer and birth defects or other reproductive harm], which is [are] known to the State of California to cause cancer or birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/furniture](http://www.P65Warnings.ca.gov/furniture).

In addition, there must be a “notice,” either placed at each public entrance or point of display, or “printed or stamped” on each receipt. Signs must be no smaller than 8 ½ by 11 inches with at least 28-point type, and receipt notices must be no smaller than 12-point type. Either must state the following:

**NOTICE:** Some furniture products can expose you to chemicals known to the State of California to cause cancer or birth defects or other reproductive harm. Please check on-product label for warning information.

## **Motor Vehicles**

There are a variety of new warning regulations for vehicles, vehicle exhaust, and chemicals related to vehicles. The warning provisions applicable to the retail sale of motor vehicles are these:

Passenger vehicles and Off-road vehicles: For some years, manufacturers of new vehicles have generally included Proposition 65 warnings in their vehicle manuals. Under the new regulations, vehicles and vessels seem to be the only products for which the use of manuals is sanctioned. But the warning must appear in both the manual, and on a non-permanent label or hangtag affixed to the vehicle. In the manual, the warning must be in no

smaller than 12-point type enclosed in a box printed or affixed to the inside or outside of the front or back cover or on the first page of text. In addition, the warning must be provided on a non-permanent label attached to the front window on the driver's side, or if there is no

driver's side window, on a hang tag hung from the rear view mirror, or, if there is also not a rear view mirror, "in another prominent location." The following warning is required in both places:

 **WARNING:** Operating, servicing and maintaining a passenger vehicle or off-road vehicle 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, do not idle the engine except as necessary, service your vehicle in a well-ventilated area and wear gloves or wash your hands frequently when servicing your vehicle. For more information go to [www/65Warnings/ca/gov/passenger-vehicle](http://www/65Warnings/ca/gov/passenger-vehicle).

Non-passenger vehicle diesel engine exhaust: For exposure to non-passenger vehicle diesel engine exhaust, the regulations require a warning in the manual, similarly placed to the warning for passenger on and off-road vehicles, and on a label permanently attached to the product in an easily visible location or on-a screen display if this is used to provide the operator with other warnings and instructions. The content prescribed is as follows:

 **WARNING:** Breathing diesel engine exhaust exposes you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

- Always start and operate the engine in a well-ventilated area.
- If in an enclosed area, vent the exhaust to the outside.
- Do not modify or tamper with the exhaust system.
- Do not idle the engine except as necessary.

For more information go to [www.P65warnings.ca.gov/diesel](http://www.P65warnings.ca.gov/diesel).

## Rental Vehicles

Rental motor vehicles are also subject to the regulations provide that the content can be the

same as that for “motor vehicle,” or the following after the symbol and the bold capitalized

**“WARNING:”**

Operating a motor vehicle 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, do not idle the engine except as necessary, and assure adequate ventilation inside the car. For more information go to

[www.P65Warnings.ca.gov/passenger-vehicle](http://www.P65Warnings.ca.gov/passenger-vehicle).

This is to be printed in no smaller than the largest type size used for other consumer information, and no smaller than 6 point type. The warning must either match the purchased vehicle warning regulation, or “must be prominently displayed and provided to the renter prior to the renter’s use of the vehicle” using one of the following methods:

1. Printed in the rental agreement or on the rental ticket jacket;
2. On a hang tag on the rear view mirror.
3. On a sign no smaller than 22-point type size, that is posted at the counter or similar area of the rental facility.
4. Provided in an electronic rental contract.
5. Provided in a confirmation email that is sent to the renter's email address.
6. Provided through a clearly marked hyperlink using the word “WARNING” on the

online reservation page, or by otherwise prominently displaying the warning to the renter prior to completing the online reservation.

**Wood Dust**

The Proposition 65 cancer list includes “wood dust.” In the past six years, wood dust has been the subject of Proposition 65 Notices of Violation approximately ninety times. The safe harbor warnings provide the following with respect to consumer wood dust exposure caused by drilling, sawing, sanding, or machining raw wood products: First, “raw wood products” are defined by the regulations as

. . .logs, sawn lumber, plywood and composite wood panels, engineered

structural wood products, and similar wood products that are for the most part uncoated and have not been processed into other useful products and have the strong likelihood to be sawed, sanded, or drilled so as to generate wood dust.

Second, there are warning transmission requirements applicable under two separate circumstances: If the product is “sold in bulk form,” [not defined by the regulations] the

warning may be in text no smaller than 12 point type and printed on an invoice or receipt for the raw wood products. In other instances, the warning is to be on a notice or sign no smaller than 8 ½ by 11 inches, printed with no smaller than 20 point type, and either at the point of sale or display and presented in a manner likely to be seen by the purchaser. Finally, in all instances, the safe harbor warning for wood dust from raw wood products should be as follows:

 **WARNING:** Drilling, sawing, sanding or machining wood products can expose you to wood dust, a substance known to the State of California to cause cancer. Avoid inhaling wood dust or use a dust mask or other safeguards for personal protection. For more information go to [www.P65Warnings.ca.gov/wood](http://www.P65Warnings.ca.gov/wood)

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//Warnings in Manuals

The current regulations provide that a product warning can appear on the “label or labeling.” The regulations define “labeling” very broadly as “any label or other written, printed or graphic matter affixed to or accompanying a product or its container or wrapper.” Based on this, it has been completely appropriate, and lawful, to place the warning in the manual or use and care guide.

The agency initially proposed, and received public comment on a draft regulation that defined labeling, but eliminated labeling as a means for providing warnings. However, the new regulations now state the following:

(c) 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.

So inasmuch as inclusion in or on a manual could be deemed “labeling,” it may be that placing the warning in or on a manual will meet the regulatory requirements if it is done in such a way that it conforms with the requirements of subpart (c) above.

**New Rules Affecting Retailers  
and other Downstream  
Companies**

Generally speaking, Proposition 65 and the regulations are designed to place the burden of the provision of warnings as far up the distribution chain as possible, casting heavier burdens on manufacturers and distributors than on retail sellers. However, the new regulations as most recently revised, contain a number of changes that potentially place much heavier burdens on retailers, and potentially provide a way for manufacturers and distributors to shift the obligation of warning from themselves to retailers or other companies.

A retailer with ten or more employees is to be held responsible for failure to give product warnings only under the following circumstances:

- The retailer owns or licenses the brand or trademark for the product;
- The retailer has knowingly introduced the chemical into the product, or caused it “to be created in the product;”
- The retailer has covered, obscured or altered a warning label;
- The retailer has received a notice and warning materials from someone upstream (e.g., manufacturer, distributor, etc.) and has failed to provide warning.
- In addition, a retailer is responsible if it has “actual knowledge” of the potential consumer exposure and there is no upstream source having ten or more employees and an agent for service or place of business in California. A retailer has “actual knowledge” if it receives a sixty day notice and is selling the product five business days later.

- Manufacturers and distributors can enter into a written agreement with retailers as to who provides the warning, which will supersede the regulations, but only if the consumer receives a warning, so this is fairly meaningless.
- The obligation to provide online warnings where the product includes a warning appears to fall on online sellers, as discussed in greater detail below.

As discussed above concerning product warnings, generally speaking, when a product is sold on line, the new regulations require online warnings. Since it is mostly retailers who sell on line, this warning requirement by necessity falls on retailers. And yet, while in most instances only a retailer can provide an online warning, other new provisions, discussed below, seem to insulate retailers from liability in many instances; this begs a question: if a retailer does not provide an online warning, can the manufacturer or distributor be held responsible? We think not, so long as the manufacturer or distributor satisfies the warning requirement in the manner discussed below.

Under the newest regulations, the downstream shifting of the warning requirement has changed significantly in § 25600.2(b):

b) The manufacturer, producer, packager, importer, supplier, or distributor of a product may comply with this article either by providing a warning on the product label or labeling that satisfies Section 25249.6 of the Act, or by providing a written notice directly to the authorized agent for the business to which they are selling or transferring the product or to the authorized agent for a retail seller, so long as the business to which they are providing the notice is subject to Section 25249.6 of the Act. The written notice shall:

- (1) State that the product may result in an exposure to one or more listed chemicals;
- (2) Include the exact name or description of the product or specific identifying information for the product such as a Universal Product Code or other identifying designation;
- (3) Include all necessary warning materials such as labels, labeling, shelf signs or tags, and warning language for products sold on the internet, that satisfies Section 25249.6 of the Act; and
- (4) Be renewed annually during the period in which the product is sold in California by a retail seller.

(c) If the manufacturer, producer, packager, importer, supplier, or distributor of a product is complying with this section by providing a written notice to a business who is subject to Section 25249.6 of the Act, either by providing the written notice to the authorized agent for the business to which they are selling or transferring the product or to the authorized agent for the retail seller:

(1) Confirmation of receipt of the notice and any renewed notices must be received electronically or in writing from the authorized agent to which the manufacturer, producer, packager, importer, supplier, or distributor of the product sent the notice.

(2) Where a business has not designated an authorized agent, the manufacturer, producer, packager, importer, supplier, or distributor may serve the notice on the legal agent for service of process for the business.

(3) An additional notice is required within 90 days when a different or additional chemical name or endpoint (cancer or reproductive toxicity) is included in the warning.

If the manufacturer or distributor does not label the product, and instead provides notice to the seller, the notice has to be renewed, and confirmation received annually. An additional notice must be provided to the downstream entity within 90 days if the warning must be changed to include a different chemical or disease endpoint (e.g., cancer or reproductive toxicity).

### **Safe Harbor Environmental Exposure Warnings**

Californians are used to seeing Proposition 65 warning signs at the doorway of every building, warning them about potential exposures to chemicals. Under the new regulations, however, the building warning requirement becomes much tougher. Signage can be used, but the signs must be posted at all public entrances to the affected area in no smaller than 72-point type. The warning sign must clearly identify one or more sources of exposure, containing the following content:

For listed carcinogens:

 **WARNING:** Entering this area can expose you to chemicals known to the State of California to cause cancer, including [name of one or more chemicals] from [name one or more sources of exposure]. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

For a single carcinogen

- ⚠ **WARNING:** Entering this area can expose you to [name of chemical] from [name one or more sources of exposure]. [Name of chemical] is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

For listed reproductive toxicants:

- ⚠ **WARNING:** Entering this area can expose you to chemicals known to the State of California to cause birth defects or other reproductive harm, including [name of one or more chemicals] from [name one or more sources of exposure]. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

For a single reproductive toxicant:

- ⚠ **WARNING:** Entering this area can expose you to [name of chemical] from [name one or more sources of exposure]. [Name of chemical] is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

For exposures to both cancer and reproductive toxicity:

- ⚠ **WARNING:** Entering this area can expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm, including [name of one or more listed carcinogens and name of one or more listed reproductive toxicants] from [name one or more sources of exposure]. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

And finally, for exposure to a single chemical that is both:

- ⚠ **WARNING:** Entering this area can expose you to [named chemical] from [name one or more sources of exposure]. [Name of chemical is 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](http://www.P65Warnings.ca.gov).

As an alternative to signage, the warning can be provided in a notice mailed, sent electronically, or otherwise delivered to each occupant in the affected area. The notice must include a map clearly identifying the affected area, must clearly identify one or more sources of exposure, and must be provided every three months.

As another alternative, the company can publish the warning in a quarter-page or larger advertisement in the main or local news section of a newspaper with the largest circulation in the area, at least once every three months. The publication must also be made in any electronic version of the newspaper.

### **Enclosed Parking Facilities**

For parking garages, a warning is deemed compliant if it is on a 20 by 20 inch sign with at least 72 point type posted at each public entrance and reading as follows:

- **WARNING:** Breathing the air in this parking garage can expose you to chemicals including carbon monoxide and gasoline or diesel engine exhaust, which are known to the State of California to cause cancer and birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information go to [www.P65Warnings.ca.gov/parking](http://www.P65Warnings.ca.gov/parking).

### **Service Station and Vehicle Repair Facilities**

For service stations, a safe harbor warning must be in at least 22 point type, enclosed in a box and posted on each gas pump. For vehicle repair facilities, it must be at least 32 point type, enclosed in a box and posted at each public entrance. The content is as follows:

- **WARNING:** Crude oil, gasoline, diesel fuel, and other petroleum products can expose you to chemicals including toluene and benzene, which are known to the State of California to cause cancer and birth defects or other reproductive harm. These exposures can occur in and around oil fields, refineries, chemical plants, transport and storage operations, such as pipelines, marine terminals, tank trucks and other facilities and equipment. For more information go to: [www.P65Warnings.ca.gov/petroleum](http://www.P65Warnings.ca.gov/petroleum).

### **Designated Smoking Area Exposure Warnings:**

There is a safe harbor warning regulation for smoking areas. The warning sign must be posted both at the entrance to, and in the area in which the exposure occurs. The warning must appear in 22-point type, enclosed in a box, on an 8 ½ by 11 inch sign, consisting of the yellow, triangle symbol, the word “**WARNING**” in bold print and capital letters, and the words:

Breathing the air in this smoking area can expose you to chemicals including tobacco smoke and nicotine, which are known to the State of California to cause cancer and birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information go to [www.P65Warnings.ca.gov/smoking-areas](http://www.P65Warnings.ca.gov/smoking-areas).

### **Hotel Exposure Warnings:**

For purposes of the regulation, “Hotel” means

. . . any type of transient lodging establishment, including but not limited to, hotels, motels, bed and breakfast inns, resorts, spas, ski resorts, guest ranches, agricultural “homestays”, tourist homes, condominiums, timeshares, vacation home rentals, and extended stay establishments in which members of the public can obtain transient lodging accommodations.

Hotel warnings need to be on a sign at the hotel’s registration desk in no smaller than 22 point type, in a place “where it will be likely to be seen read, and understood” prior to registration / check-in, or else provided in electronic or hard-copy form to guests prior to or during registration / check-in. The safe harbor warning includes the triangle symbol, the all caps and bold print word “**WARNING,**” and one of the following texts:

 **WARNING:** [Name of one or more exposure source(s)] in this establishment can expose you to [name of chemical] which is known to the State of California to cause cancer. For additional information go to [www.P65Warnings.ca.gov/hotels](http://www.P65Warnings.ca.gov/hotels).

or,

 **WARNING:** [Name of one or more exposure source(s)] in this establishment can expose you to chemicals including [name of one or more chemicals] which is [are] known to the State of California to cause birth defects or other reproductive harm. For additional information go to [www.P65Warnings.ca.gov/hotels](http://www.P65Warnings.ca.gov/hotels).

or

 **WARNING:** [Name of one or more exposure source(s)] in this establishment can expose you to [name of chemical] which is known to the State of California to cause birth defects or other reproductive harm. For additional information go to [www.P65Warnings.ca.gov/hotels](http://www.P65Warnings.ca.gov/hotels).

or

 **WARNING:** [Name of one or more exposure source(s)] in this establishment can expose you to chemicals including [name of one or more chemicals] which is [are] known to the State of California to cause cancer and [name of one or more chemicals] which is [are] known to the State of California to cause birth defects or other reproductive harm. For additional information go to [www.P65Warnings.ca.gov/hotels](http://www.P65Warnings.ca.gov/hotels).

or, finally,

 **WARNING:** [Name of one or more exposure sources(s)] in this establishment can expose you to [name of one or more chemicals] which is [are] known to the State of

California to cause cancer and birth defects or other reproductive harm. For additional information go to [www.P65Warnings.ca.gov/hotels](http://www.P65Warnings.ca.gov/hotels).

### **Residential Rental Property Exposure Warnings**

According to the regulations, “residential property” includes an apartment, house, duplex, triplex, condominium or other dwelling that a landlord rents to a tenant to live in, including common areas, but does not include a hotel. As usual, the required warning content includes the triangle symbol and the bold capitalized **WARNING** word, as follows:

 **WARNING:** [Name of one or more exposure source(s)] on this property can expose you to chemicals including [name of one or more chemicals] which is [are] known to the State of California to cause cancer. Talk to your landlord or the building owner about how and when you could be exposed to these chemicals in your building. For additional information go to [www.P65Warnings.ca.gov/apartments](http://www.P65Warnings.ca.gov/apartments).

or

 **WARNING:** [Name of one or more exposure source(s)] on this property can expose you to [name of chemical] which is known to the State of California to cause cancer. Talk to your landlord or the building owner about how and when you could be exposed to this chemical in your building. For additional information go to [www.P65Warnings.ca.gov/apartments](http://www.P65Warnings.ca.gov/apartments).

or

 **WARNING:** [Name of one or more exposure source(s)] on this property can expose you to chemicals including [name of one or more chemicals] which is [are] known to the State of California to cause birth defects or other reproductive harm. Talk to your landlord or the building owner about how and when you could be exposed to these chemicals in your building. For additional information go to [www.P65Warnings.ca.gov/apartments](http://www.P65Warnings.ca.gov/apartments).

or

 **WARNING:** [Name of one or more exposure source(s)] on this property can expose you to [name of chemical] which is known to the State of California to cause birth defects or other reproductive harm. Talk to your landlord or the building owner about how and when you could be exposed to this chemical in your building. For additional information go to [www.P65Warnings.ca.gov/apartments](http://www.P65Warnings.ca.gov/apartments).

or

 **WARNING:** [Name of one or more exposure source(s)] on this property can expose you to chemicals including [name of one or more chemicals] which is [are] known to the State of California to cause cancer and [name of one or more chemicals] which is [are] known to the State of California to cause birth defects or other reproductive harm. Talk to your landlord or the building owner about how and when you could be exposed to these chemicals in your building. For additional information go to [www.P65Warnings.ca.gov/apartments](http://www.P65Warnings.ca.gov/apartments).

or finally,

 **WARNING:** [Name of one or more exposure sources(s)] on this property can expose you to [name of one or more chemicals] which is [are] known to the State of California to cause cancer and birth defects or other reproductive harm. Talk to your landlord or the building owner about how and when you could be exposed to this chemical in your building. For additional information go to [www.P65Warnings.ca.gov/apartments](http://www.P65Warnings.ca.gov/apartments).

The methods of transmission range from letters addressed to each known adult occupant / tenant, electronic messages sent via e-mail to known adult occupants / tenants and inclusion in the lease or rental agreement. Where the method of transmission used is inclusion in the lease, the warning must be provided to known occupants who do not sign the lease in another manner.

### **Non-English Language Warnings**

Proposition 65 contains no explicit requirement that warnings be provided in multiple languages, and until recently, neither did the regulations. In California, forty percent of people speak languages at home other than English, so not surprisingly, the new regulations reflect this. The exact requirements vary for different kinds of exposures, but generally speaking, if the company causing an exposure is providing information to persons who will be exposed in languages other than English (e.g., product manuals or labels in Spanish, Mandarin or other languages) the warning must be provided in both English and the other language used.