

**Proposed Amendments to Section 25600.2
(Title 27, California Code of Regulations):
Responsibility to Provide
Consumer Product Exposure Warnings**

Public Hearing on Rulemaking
Office of Environmental Health Hazard Assessment
Oakland, California
January 3, 2019



OEHHHA

SCIENCE FOR A HEALTHY CALIFORNIA

Background

- Regulations in Title 27, Cal. Code of Regs., section 25600 et seq. describe how a business can provide a “clear and reasonable warning” as required by Health and Safe Code section 25249.6 et seq. (“Proposition 65” or “the Act”)
- These regulations became fully operative on August 30, 2018.
- Section 25600.2 describes the relative responsibilities of the parties in the chain of commerce to provide Proposition 65 warnings for consumer product exposures.
- OEHHA has determined clarification is needed because in some situations, the original manufacturer, distributor, importer, or others in the chain of commerce may not know where or by whom the product will ultimately be sold to a consumer.
- The proposed modifications would clarify how intermediate parties can comply with the Act.
- The modifications would also clarify the level of specificity required for a retailer to have “actual knowledge” of an exposure, and clarify the persons whose specific knowledge of a consumer product exposure can be imputed to the retail seller.

Section 25600.2. Responsibility to Provide Consumer Product Exposure Warnings

Subsection (b)

- Amendments to subsection (b) would clarify responsibility of intermediate parties in the chain of commerce.
- Subsection (b) would provide that a given business in the chain of commerce may comply with the Act by providing the notice and warning materials directly to the designated agent for the business to whom it is transferring or selling the product, or providing the notice and warning materials to the retail seller.



Proposed Amendments to Section 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 who is subject to Section 25249.6 of the Act, which:

- (1) States that the product may result in an exposure to one or more listed chemicals;
- (2) Includes 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) Includes 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) Has been sent to **the authorized agent for the business to which they are selling or transferring the product who is subject to Section 25249.6 of the Act or to** the authorized agent for the retail seller, and the manufacturer, producer, packager, importer, supplier, or distributor has obtained confirmation electronically or in writing of receipt of the notice.



Section 25600.2. Responsibility to Provide Consumer Product Exposure Warnings

Subsection (c)

- Modifications to Subsections (c) and (c)(1) would provide intermediate parties in the chain of commerce the option of renewing the notice in subsection (b) with confirmation from **either** the authorized agent of the business to which they are selling or transferring the product, **or** the authorized agent for the retail seller.
- Subsection (c)(1) would clarify that confirmation of receipt must be received electronically or in writing, and must be renewed with receipt of the notice confirmed electronically or in writing by the parties receiving the notice in subsection (b).
- Subsection (c)(2) would clarify that where a business has not designated an authorized agent to receive Proposition 65 notices, the notice may be served on the business's legal agent for service of process.



Proposed Amendments to Section 25600.2(c)

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

(1) **Confirmation of receipt of** the notice must be **received electronically or in writing, and must be** renewed, and receipt of the renewed notice confirmed electronically or in writing by the **authorized agent for the business to which they are selling or transferring the product who is subject to Section 25249.6 of the Act or the authorized agent for the** retail seller's authorized agent no later than February 28, 2019, then annually thereafter during the period in which the product is sold in California by the retail seller.

(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.

(23) 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.



Section 25600.2. Responsibility to Provide Consumer Product Exposure Warnings

Subsection (f)

- Section 25600.2(f) would clarify the level of specificity required for “actual knowledge”, and would provide clarification as to the persons whose specific knowledge of a consumer product exposure can be imputed to the retail seller.
 - Consistent with notices of violation of the Act, the basis for “actual knowledge” of the retail seller must be of “sufficient specificity for the retail seller to readily identify the product that requires a warning”.



Section 25600.2. Responsibility to Provide Consumer Product Exposure Warnings

Subsection (f), cont.

- The proposed amendments would also clarify that specific knowledge of the consumer product exposure must be received either by an “authorized agent” for the organization, or an employee in a position of sufficient responsibility that his or her knowledge can be imputed or attributed to the retail seller.



Proposed Amendments to Section 25600.2(f)

(f) For purposes of subsection (e)(5), “actual knowledge” means specific knowledge of the consumer product exposure **with sufficient specificity for the retail seller to readily identify the product that requires a warning, and that is** received by **the authorized agent or a person whose knowledge can be imputed to** the retail seller from any reliable source. If the source of this knowledge is a notice served pursuant to Section 25249.7(d)(1) of the Act, the retail seller shall not be deemed to have actual knowledge of any consumer product exposure that is alleged in the notice until five business days after the retail seller receives a notice that provides a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Article 9, section 25903(b)(2)(D).



Questions?

Mario Fernandez, Senior Staff Counsel

Mario.Fernandez@Oehha.ca.gov

(916) 323-2635

Carol Monahan Cummings, Chief Counsel

Carol.Monahan-cummings@Oehha.ca.gov

(916) 322-0493

