

ARTICLE 6. CLEAR AND REASONABLE WARNINGS

§ 12601. Clear and Reasonable Warnings

(a) Whenever a clear and reasonable warning is required under Section 25249.6 of the Act, the method employed to transmit the warning must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure. The message must clearly communicate that the chemical in question is known to the state to cause cancer, or birth defects or other reproductive harm. Nothing in this section shall be construed to preclude a person from providing warnings other than those specified in subsections (b), (c), and (d) which satisfy the requirements of this subsection, or to require that warnings be provided separately to each exposed individual.

(b) Warnings for consumer products exposures which include the methods of transmission and the warning messages as specified by this subsection shall be deemed to be clear and reasonable. A “consumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.

(1) The warning may be provided by using one or more of the following methods singly or in combination:

(A) A warning that appears on a product’s label or other labeling. The term “label” means a display of written, printed or graphic matter upon a product or its immediate container. The term “labeling” means any label or other written, printed or graphic matter affixed to or accompanying a product or its container or wrapper.

(B) Identification of the product at the retail outlet in a manner which provides a warning. Identification may be through shelf labeling, signs, menus, or a combination thereof.

(C) A system of signs, public advertising identifying the system and toll-free information services, or any other, system, that provides clear and reasonable warnings.

(D) For alcoholic beverages, including, without limitation, beer, malt beverages, wine and distilled spirits:

1. Primarily intended for consumption off the premises where sold or distributed:

(i) at least one notice or sign, no smaller than 10 inches wide by 10 inches high, and bearing the warning message set forth in subparagraph (4)(E) of this subsection; or

(ii) at least one horizontal strip marker no smaller than 10 1/2 inches wide by 1 1/4 inches high, and bearing the warning message set forth in subparagraph (4)(E) of

this subsection; or

(iii) a notice no smaller than 5 inches by 5 inches, and bearing the warning message set forth in subparagraph (4)(E) of this subsection.

(iv) If signs 10 inches high by 10 inches wide are used, the word “warning” shall be centered three-quarters of an inch from the top of the sign in ITC Garamond bold condensed type face all in one-inch capital letters. Three-sixteenths of an inch from the base of the word “warning” shall be a line extending from left to right across the width of the sign one-sixteenth of an inch in thickness. Centered one-half inch below the line shall be the body of the warning message in 36/50 ITC Garamond bold condensed type face with the initial letter of each word other than the conjunctive “and,” capitalized. For the body of the warning message, left and right margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be observed. Larger signs shall bear substantially the same proportions of type size and spacing to sign dimension as the sign 10 inches high by 10 inches wide.

(v) If the 10 1/2 inch by 1 1/4 inch horizontal strip markers are used, the word “WARNING,” punctuated by a colon, shall be justified left and located three-sixteenths of an inch from the top of the strip notice in ITC Garamond bold condensed type face all in capital letters measuring eleven sixteenths of an inch in height. Three thirty-seconds of an inch from the base of the word “WARNING” shall be a line extending from left to right across the width of the word “WARNING” and the punctuating colon one thirty-second of an inch in thickness. Located one-fourth of an inch from the top and one-fourth of an inch from the bottom of the strip notice, and to the immediate right of the word “WARNING,” shall be the body of the warning message in 12/16 point ITC Garamond bold condensed type face with the initial letter of each word, other than the conjunctive “and” capitalized. The word “WARNING” shall be one-half inch from the left edge of the strip notice and the requisite warning message shall extend to within one-half inch from the right edge.

(vi) If the 5 inch by 5 inch signs are used, they shall bear substantially the same proportions of type size and spacing to sign dimension as the sign 10 inches high by 10 inches wide, with both the word “WARNING” and the warning text set in white on a contrasting red background.

(vii) Such sign or notice shall be placed in the retail establishment so as to assure that it is readable and likely to be read either at each retail point of sale or each point of display. Such sign or notice shall be placed either at all retail points of sale or all points of display, but need not be placed at both. If 10 inch by 10 inch signs or notices are placed at the point of display, each shall be placed no more than ten feet from any alcoholic beverage container and in a manner associating the sign or notice with the display. If horizontal strip notices are used, they shall be placed at ten-foot intervals horizontally along the display. If a 5 inch by 5 inch sign is used, it shall be conspicuously placed at each retail point of sale (e.g., checkout counter, cash register, cash box) so that it is likely to be read and understood during the sales transaction.

(viii) All measurements specified or referred to in paragraphs (iv), (v) and (vi), above, are not required to be precisely accurate.

2. Provided for consumption on the premises at tables served by food or beverage persons, or sold or distributed through over the counter service;

(i) a notice or sign displayed at each of the tables where alcoholic beverages are served or may be consumed at least 5 inches high by 5 inches wide bearing substantially the same type face and substantially the same proportion of type size and spacing to sign dimension as described in paragraph (D)1. (vi); or

(ii) the warning message set forth in subparagraph (4)(E) of this subsection, placed upon a menu or list in association with the alcoholic beverages listed thereon and served at such premises, or if alcoholic beverages are not listed thereon, on any menu or list provided to patrons in association with the listing of food or beverage offerings, in type size and design, such that the text is conspicuous and likely to be read prior to consumption of alcoholic beverages or,

(iii) at least one 10 inch by 10 inch sign, meeting the specifications set forth in paragraph (D)1. (iv) of this subsection, placed so that it is readable and likely to be read by patrons as they enter each public entrance to the establishment. If the establishment does not have clearly defined physical boundaries delineating those areas where, by permit or license, alcoholic beverages are served, the 10 inch by 10 inch sign shall be posted so that it is readable and likely to be read by patrons as they enter the area or areas where, by permit or license, alcoholic beverages are served; and

(iv) If sold or distributed through over-the-counter service, at least one sign, meeting the specifications set forth in paragraph (D)1. (iv) of this subsection, placed in the retail establishment so that the warning message is, prior to the consumption of alcoholic beverages, readable and likely to be read from all counter locations available to the public. Therefore, a retail establishment providing a warning pursuant to the preceding sentence, also would be required to provide a warning in accordance with either paragraph 2.(i), 2.(ii) or 2.(iii) of this subsection.

3. For premises which are specially licensed to sell and serve alcoholic beverages both on and off the licensed premises (e.g., in facilities that offer both “tasting” and retail sales), the off-sale portion of the premises shall comply with the provisions of subparagraph (D)1, above, and the portion of the premises where alcoholic beverages are served shall comply with the provisions of subparagraph (D)2, above.

4. For alcoholic beverages sold or distributed to consumers through the mail or package delivery services, warnings may be provided by incorporating or placing the warning message set forth in subparagraph (4)(E) on or in the shipping container or delivery package in such a manner so that the warning message is likely to be read by the recipient prior to consumption of the alcoholic beverage(s).

5. All signs or notices referred to in subparagraphs (D)1., (D)2. and (D)3., above, shall be displayed so that they are clearly visible under all lighting conditions normally encountered during business hours.

(2) To the extent practicable, warning materials such as signs, notices, menu stickers, or labels shall be provided by the manufacturer, producer, or packager of the consumer product rather than by the retail seller. For alcoholic beverages, the placement and maintenance of the warning shall be the responsibility of the manufacturer or its distributor at no cost to the retailer, and any consequences for failure to do the same shall rest solely with the manufacturer or its distributor, provided that the retailer does not remove, deface, or obscure the requisite signs or notices, or obstruct, interfere with, or otherwise frustrate the manufacturer's reasonable efforts to post, maintain, or periodically replace said materials.

(A) For prescription drugs, the labeling approved or otherwise provided under federal law and the prescriber's accepted practice of obtaining a patient's informed consent shall be deemed to be a clear and reasonable warning.

(B) For exposures resulting from emergency or urgent medical or dental care as defined in Section 12102(g) the accepted practice of obtaining the patient's informed consent shall be deemed to be a clear and reasonable warning when any of the following circumstances exists:

1. the patient is unconscious; or
2. the procedure must be undertaken because the licensed medical personnel, licensed dental personnel, or certified emergency medical personnel responsible for administering the care, as these terms are defined in Sections 12102(q), 12102(d), and 12102(b), respectively, reasonably believes that the procedure should be undertaken immediately; and therefore, there is insufficient time to fully inform the patient; or
3. the procedure must be performed on a person legally incapable of giving consent, and the licensed medical personnel, licensed dental personnel, or certified emergency medical personnel responsible for administering the care reasonably believes the procedure should be undertaken immediately; and therefore, there is insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.

(3) The warnings provided pursuant to subparagraphs (1)(A) and (1)(B) shall be prominently placed upon a product's label or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

(4) The warning message must include the following language:

(A) For consumer products that contain a chemical known to the state to cause cancer:

“WARNING: This product contains a chemical known to the State of California to cause cancer.”

(B) For consumer products that contain a chemical known to the state to cause reproductive toxicity:

“WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.”

(C) For food, other than alcoholic beverages, sold, served, or otherwise provided in food facilities, as defined in Health and Safety Code Section 27521(a), which is intended for immediate consumption:

“WARNING: Chemicals known to the State of California to cause cancer, or birth defects or other reproductive harm may be present in foods or beverages sold or served here.”

(D) For fresh fruits, nuts and vegetables:

“WARNING: This product may contain a chemical known to the State to cause cancer, or birth defects or other reproductive harm.”

(E) For alcoholic beverages, including, without limitation, beer, malt beverages, wine and distilled spirits:

“WARNING: Drinking Distilled Spirits, Beer, Coolers, Wine and Other Alcoholic Beverages May Increase Cancer Risk, and, During Pregnancy, Can Cause Birth Defects.”

(5) A person in the course of doing business, who manufactures, produces, assembles, processes, handles, distributes, stores, sells or otherwise transfers a consumer product which he or she knows to contain a chemical known to the state to cause cancer or reproductive toxicity in an amount which requires a warning shall provide a warning to any person to whom the product is sold or transferred unless the product is packaged or labeled with a clear and reasonable warning.

(c) Warnings for occupational exposures which include the methods of transmission and the warning messages as specified by this subdivision shall be deemed clear and reasonable. An “occupational exposure” is an exposure, in the workplace of the employer causing the exposure, to any employee.

(1) The method employed to transmit the warning must include one of the following alternative methods:

(A) A warning that appears on the label or labeling of a product or substance present or used in the workplace. The label or labeling shall be prominently displayed on the product or substance and the product or substance shall be used under circumstances which make it likely that the warnings will be read and understood by employees or other individuals prior to the exposure for which the warning is given.

(B) A warning that appears on a sign in the workplace posted in a conspicuous place and under conditions that make it likely to be read and understood by employees and other individuals prior to the exposure for which the warning is given.

(C) A warning to the exposed employee about the chemical in question which fully complies with all information, training and labeling requirements of the federal Hazard Communication Standard (29 CFR section 1910.1200, as amended on March 7, 1996), the California Hazard Communication Standard (Cal. Code Regs., title 8, section 5194, as amended on March 15, 1999), or, for pesticides, the Pesticides and Worker Safety requirements (Cal. Code Regs., title 3, section 6700 et seq. as amended on June 20, 2001) authorized in Food and Agricultural Code section 12981 as amended by Governor's Reorganization Plan No. 1 of 1991).

(2) For purposes of subparagraph (1)(A) of this subsection, the warning shall be provided in terms which would provide a clear warning for a consumer product as specified above.

(3) For purposes of subparagraph (1)(B) of this subsection, the following specific warning messages shall be deemed to clearly communicate that an individual is being exposed to a chemical known to the state to cause cancer, or birth defects or other reproductive harm.

(A) For exposure to a chemical known to the state to cause cancer:

“WARNING: This area contains a chemical known to the State of California to cause cancer.”

(B) For exposure to a chemical known to the state to cause reproductive toxicity:

“WARNING: This area contains a chemical known to the State of California to cause birth defects or other reproductive harm.”

(d) Warnings for environmental exposures which include the methods of transmission and the warning messages as specified by this subsection shall be deemed clear and reasonable. An “environmental exposure” is an exposure which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or natural substances, either through inhalation, ingestion, skin contact or otherwise. Environmental exposures include all exposures which are not consumer products exposures, or occupational exposures.

(1) The method employed to transmit the warning must include the most appropriate of the following alternative methods under the circumstances:

(A) A warning that appears on a sign in the affected area. The term “sign” means a presentation of written, printed or graphic matter. The term “affected area” means the area in which an exposure to a chemical known to the state to cause cancer or reproductive toxicity is at a level that requires a warning.

(B) A posting of signs in the manner described in Section 6776(d) of Title 3 of the California Code of Regulations as amended on May 10, 1999 shall be sufficient for purposes of this paragraph.

(C) A warning which is in a notice mailed or otherwise delivered to each occupant in the affected area. Such notice shall be provided at least once in any three-month period.

(D) A warning provided by public media announcements which target the affected area. Such announcements shall be made at least once in any three-month period.

(2) Environmental exposure warnings shall be provided in a conspicuous manner and under such conditions as to make it likely to be read, seen or heard and understood by an ordinary individual in the course of normal daily activity, and reasonably associated with the location and source of the exposure.

(3) For purposes of subparagraph (1)(A) of this subsection, the following specific warning messages shall be deemed to clearly communicate that an individual is being exposed to a chemical known to the state to cause cancer, or birth defects or other reproductive harm.

(A) For exposure to a chemical known to the state to cause cancer:

“WARNING: This area contains a chemical known to the State of California to cause cancer.”

(B) For exposure to a chemical known to the state to cause reproductive toxicity:

“WARNING: This area contains a chemical known to the State of California to cause birth defects or other reproductive harm.”

NOTE: Authority cited: Section 25249.12, Health and Safety Code Section. Reference: Sections 25249.6 and 25249.11, Health and Safety Code.