

CALIFORNIA PROPOSITION 65 - BpA LABELING GUIDE

BACKGROUND

On May 11, 2015 the state of California added Bisphenol A (BpA) to the Prop 65 list of substances known to the state to cause cancer, birth defects or reproductive toxicity. At this time, California has not published a safe harbor level for BpA; any product containing BpA must have a Prop 65 warning or run the risk of being the basis for a Prop 65 lawsuit. This includes products that are already “on the shelf,” or in inventory in California. In addition, this will include areas where polycarbonate is processed and dispensed, and where employees or customers might be exposed to it. Enforcement of this requirement can commence on or after May 11, 2016.

For more helpful information on California Prop 65 and optical products, please visit: www.thevisioncouncil.org/prop65.

Questions? Please contact us at Prop65questions@thevisioncouncil.org.

CONSUMER PRODUCT EXPOSURE WARNING

Consumer product warnings “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.”

If you choose to use signage displayed at the retail outlet rather than on a product label, then it is imperative that the warning on the sign be associable with the consumer product at issue. Proximity alone may not be sufficient, as different circumstances will warrant different treatments. Identifying specific products on a point of sale warning sign may suffice, as long as the warning itself is not modified and the sign is visible to the consumer prior to any possible exposure. The issue of whether a point of sale sign provides a clear and reasonable warning for a specific product is subjective. Therefore, it is recommended that you discuss this issue with your legal counsel if you elect to warn using point of sale signage rather than warnings on product labels. Likewise, given the different materials in the market, products may or may not contain BpA. As such, it is best to discuss your individual situation with your corporate legal counsel.

By regulation, California has approved the following language for use as consumer product warnings; note that these are tailored for use on product label warnings. If you use them for point of sale signs, please review the above information to ensure that the warning-to-product linkage is satisfied. Use the first warning if you are warning about the presence of a substance identified on the Prop 65 list as a carcinogen; use the second if you are warning about the presence of a substance identified on the Prop 65 list as causing birth defects or other reproductive harm; use the third if you are warning about the presence of a substance or substances that requires a warning against both cancer and birth defects/other reproductive harm:

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| <p><u>WARNING</u></p> <p>This product contains a chemical known to the State of California to cause cancer</p> | <p><u>WARNING</u></p> <p>This product contains a chemical known to the State of California to cause birth defects or other reproductive harm</p> | <p><u>WARNING</u></p> <p>This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm</p> |
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IF YOU ARE WARNING ABOUT THE PRESENCE OF BpA, THEN YOU MUST INCLUDE IN THE WARNING THE LANGUAGE ABOUT “BIRTH DEFECTS OR REPRODUCTIVE HARM.”

It is important to note that businesses with fewer than 10 employees are exempt from the warning requirement. However, if your individual facility has fewer than 10 employees but is part of a larger company, even if that company is not located in California, then you will exceed the 10 employee exception. This will trigger the requirement to provide a Prop 65 warning.

This document has been prepared by The Vision Council for its members for informational purposes only and does not constitute legal advice. The Vision Council does not and cannot guarantee that the proposed warning signs are legally compliant for your particular product and makes no such guarantee, and you must not rely on this as an alternative to obtaining advice from you attorney regarding the applicability of the proposed warnings for your products. This information is not intended to create, and the receipt of it does not constitute, an attorney - client relationship.

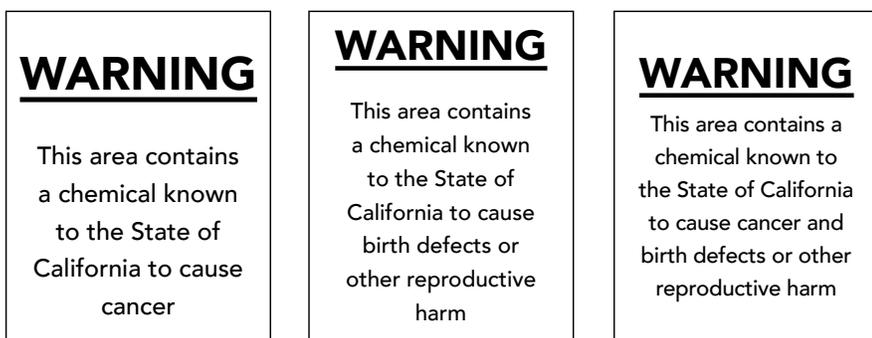
OCCUPATIONAL EXPOSURE WARNINGS

The method employed to transmit the warning must include *one* of the following alternative methods:

1. 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.
2. 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, customers and other individuals prior to the exposure for which the warning is given.
3. The occupational warning can be satisfied if the employer 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 July 6, 2004), or, for September 2008 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.

Given the different products in the market, products may or may not contain BpA. As such, it is best to discuss your individual situation with your corporate legal counsel.

The following are only examples of occupational warnings. As stated above, chose the warning appropriate for the specific substance(s) that triggers the requirement to warn. If you chose to post a warning on wall signage then make sure that it is posted proximate to where the possible occupational exposure could occur.



IF YOU ARE WARNING ABOUT THE PRESENCE OF BpA, THEN YOU MUST INCLUDE IN THE WARNING THE LANGUAGE ABOUT "BIRTH DEFECTS OR REPRODUCTIVE HARM."

For businesses, **Title 27, California Code of Regulation, Article 6: Clear and Reasonable Warning**, starting at section 25601 addresses these requirements.

For more information on Prop 65 requirements including the current list of chemicals, visit [California's Prop 65 website](#).

PROPOSITION 65 SIGNAGE COMPANIES

Below are several examples of companies that provide Proposition 65 related signage:

<http://www.compliancesigns.com/Chem-Bio-CA-PROP-65-Product.shtml>

<http://www.safetysign.com/california-prop-65-signs>

<http://www.mysafetysign.com/prop-65-signs>

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For further questions or comments, send an email to prop65questions@thevisioncouncil.org