

California Proposition 65 Compliance – What Your Business Needs to Know

Proposition 65 is required by businesses to notify California residents about significant amounts of chemicals in the products they purchase, inside their homes and workplaces, or released into the environment. The law was enacted in 1986, but beginning August 30, 2018, new regulations took effect requiring any business with 10 or more employees to provide a “clear and reasonable warning” before exposing a person to a known dangerous chemical. This labeling requirement affects manufacturers, distributors and retailers. Failure to provide the warning can result in penalties of up to \$2,500 per day per violation.


The State of California is required to publish a list of chemicals known to cause cancer, birth defects or other reproductive harm and this list is updated at least once a year, now including approximately 800 chemicals. Chemicals listed under Proposition 65 range from naturally occurring to synthetic. These chemicals can include:

- Additives
- Ingredients in pesticides
- Common household products
- Food, drugs, dyes, or solvents
- Byproducts of chemical processes, such as motor vehicle exhaust

Any chemical known to cause cancer or birth defects, or other reproductive harm will be on the list.

Top Changes Taking Full Effect August 2018 for Consumer Products

The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program. For nearly three decades, the original warning requirements were used; most Proposition 65 warnings simply needed to state that a chemical is present that causes cancer or reproductive harm, but the chemical did not need to be specifically identified nor did specific information about how a person may be exposed or ways to reduce or eliminate exposure to it need to be listed. New OEHHA regulations, adopted in August 2016, took full effect August 30, 2018. Some notable changes listed on The Proposition 65 website include:

- Consumer products must now use the language “can expose you to” a Proposition 65 chemical rather than saying the product “contains” the chemical.
- The name of at least one listed chemical that prompted the warning.
- The Internet address for OEHHA’s new Proposition 65 warnings website, <http://www.P65Warnings.ca.gov>, which includes additional information on the health effects of listed chemicals and ways to reduce or eliminate exposure to them
- A triangular yellow warning symbol on most warnings 

The new warning regulation also:

- Adds new “tailored” warnings that provide more specific information for certain kinds of exposures, products, and places.
- Provides for website warnings for products purchased over the Internet.
- Provides for warnings in languages other than English in some cases.
- Clarifies the roles and responsibilities of manufacturers and retailers in providing warnings.
- Provides specific warnings for exposures from: Alcoholic beverages, food and non-alcoholic beverages, prescription drugs, dental care, wood dust, furniture products, diesel engines, vehicles, and recreational vessels. Enclosed parking facilities, amusement parks, petroleum products, service stations and vehicle repair facilities, and designated smoking areas are also included on this list.

California’s Safe Drinking Water and Toxic Enforcement Act, known as Proposition 65, was passed by 63% of the popular vote in 1986. The reform to Proposition 65 taking place this month was proposed back in 2013 by Governor Edmund Brown Jr. in order to “require more useful information to the public on what they are being exposed to and how they can protect themselves.” Brown added, “This is an effort to improve the law, so it can do what it was intended to do – protect Californians from harmful chemicals.”

By 2015, an interview of more than 1,500 randomly selected California residents picked by UC Davis researchers concluded that 77% of the group said the new warnings would be more helpful than the current generic warnings. With that, the new warning system was introduced with several main goals stated on the Proposition 65 website, including:

- Making warnings more meaningful and useful for the public
- Reducing “over-warning” in which businesses provide unnecessary warnings
- Giving businesses clearer guidelines on how and where to provide warnings

An example of the change in warnings:

- Current warning: “ WARNING: This product contains a chemical known to the State of California to cause cancer.”
- New sample warning: “ WARNING: This product can expose you to chemicals including arsenic, which is known to the State of California to cause cancer. For more information, go to <http://www.P65Warnings.ca.gov>.”

OEHHA is the lead agency for implementation of Proposition 65 and may adopt and modify these regulations as necessary. The regulations state that a business is not required to use the new safe harbor warning system to comply with the law, but using this warning system is an effective way for a business to protect themselves from enforcement actions against Proposition 65. By using the safe harbor warnings, a business is also deemed compliant with

the law's requirement for clear and reasonable warnings- so it is worth taking this into consideration. However, a business does have the option to provide different warnings if they believe they comply with the law.

By law, a warning must be given for listed chemicals unless exposure is low enough to pose no significant risk of cancer or is significantly below levels observed to cause birth defects or other reproductive harm. To guide businesses in determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited, OEHHA has developed safe harbor levels. A business has "safe harbor" from Proposition 65 warning requirements or discharge prohibitions if exposure to a chemical occurs at or below these levels. OEHHA has established over 300 safe harbor levels to date and continues to develop more levels for listed chemicals. More information regarding safe harbor levels and warnings can be found [here](#).

A business need not use the "safe harbor warning," and can provide an alternative warning as long as it is "clear and reasonable" under the statute.

[Other exemptions to California's Proposition 65 include:](#)

- Governmental agencies and public water utilities: All federal, state and local government agencies, as well as entities operating public water systems, are exempt.
- Businesses with fewer than 10 employees
- Exposures that pose no significant risk of cancer: The most recent list of no significant risk levels can be found [here](#).
- Exposures that will produce no observable reproductive effect at 1,000 times the level in question: The most recent list of maximum allowable dose levels can be found [here](#).
- Exposures to listed chemicals that occur naturally in foods: To avoid excessive warnings on common food items, OEHHA regulations allow an exemption for listed chemicals in food that a business proves to be "naturally occurring" and reduced to the "lowest level currently feasible."
- Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water: There is an exemption for businesses that can demonstrate that the discharge will not cause a "significant amount" of the listed chemical to enter any drinking water source, and complies with all other applicable laws, regulations, permits, requirements, or orders.

It's important to remember that as of August 30, 2018, the old warning system will expire and if your business wants "safe harbor protection" it must be in compliance with the new Proposition 65 warning system. If your business is found non-compliant, it could face a civil lawsuit from the California Attorney General or by a district attorney or city attorney of a city with a population exceeding 750,000. Furthermore, if a business is found to be in violation of

Proposition 65, a court may order the business to stop committing the violation and the business could also be subject to civil penalties of up to \$2,500 per day for each violation. If you have products manufactured before August 30, 2018, they will not need new warnings if they meet the requirements that were in effect at the time of their production.

Manufacturers have the primary responsibility for providing Proposition 65 warnings. The manufacturer can also choose whether to put warning labels on their products or to provide notices to their distributors, importers or retail outlets that a product may cause an exposure to a listed chemical that requires a warning provide warning signs or other warning materials. By law, manufacturers can also enter written agreements with retailers to modify this allocation of responsibility as long as the consumer receives a clear and reasonable warning before he or she is exposed to a Proposition 65 chemical. Retailers must confirm that they received the notice and must use the warning signs or other materials provided by the manufacturer.

Where Can I Find More Information on Proposition 65 Warning Requirements?

Proposition 65 and its regulations are posted at <https://oehha.ca.gov/proposition-65/law/proposition-65-law-and-regulations>.

For a side-by-side comparison of the current and new warning regulations, see <https://oehha.ca.gov/media/downloads/crn/side-sidearticle6.pdf>.

If your business is selling finished goods for retail in the state of California, please contact Drytac's technical team at 1-804-545-9220 for more information on your labeling responsibilities.