

CALIFORNIA PROP 65

Reminder to PHTA members on what is required

As PHTA previously reported last Summer, effective August 30, 2018, significant changes to California's **Proposition 65**, also called the Safe Drinking Water and Toxic Enforcement Act, took effect. Below is a brief overview of Prop 65 and the new requirements that were put in place August 30, 2018.

Q What is Proposition 65?

A California's **Proposition 65**, also called the Safe Drinking Water and Toxic Enforcement Act, was enacted in 1986 and was intended to help Californians make informed decisions about protecting themselves from chemicals known to cause cancer, birth defects, or other reproductive harm.

Under this rule the State is required to maintain and publish a list of chemicals known to cause cancer, birth defects or other reproductive harm. The list is administered by the Office of Environmental Health Hazard Assessment (OEHHA) and is updated at least once a year. First published in 1986, the list now includes approximately 900 chemicals. A complete list can be found at https://oehha.ca.gov/media/downloads/proposition-65/p65122917_0.pdf. This list is updated so companies need to check the list periodically.

Once a chemical is listed, businesses are required to:

- Provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, posting signs at the workplace, distributing notices at a rental housing complex, or publishing notices in a newspaper. Enforcement begins twelve months after listing.
- Cease discharging listed chemicals into sources of drinking water. Enforcement begins 20 months after listing.

The list contains a wide range of naturally occurring and synthetic chemicals that are known to cause cancer, birth defects or other forms of reproductive harm. They include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. They can also be chemicals used in manufacturing and construction, or byproducts of chemical processes, such as motor vehicle exhaust.

The list contains information on the chemical, the type of toxicity, its listing mechanism, CAS Number, the date it was listed, and any safe harbor level.

The OEHHA has established over 300 safe harbor levels. These include:

- No Significant Risk Levels (NSRLs) for cancer-causing chemicals
- Maximum Allowable Dose Levels (MADLs) for chemicals causing reproductive toxicity

Safe harbor levels are based on a daily exposure limit ($\mu\text{g}/\text{day}$). This is completely different from total content in a product (mg/Kg). There is no way to directly convert one figure into the other as they are different conceptual measurements. Exposure limits must take into account frequency of use and manner of interaction with the product (i.e. is a consumer likely to touch, ingest or inhale and how frequently). This may require human behavior studies.

While Prop 65 does not require a specific label format, it established "safe harbor" labeling, to protect companies that follow this format from liability.

Q Who must comply?

A The obligation is placed upon the manufacturer, producer, packager, importer, supplier or distributor of the product. Obligations may also be placed on the retail seller if they private label the product, alter the product, introduce a component that triggers the obligation to label, remove or obscure the label, or if the manufacturer takes certain prescribed steps to pass the obligation onto the retail seller.

Q How do I know what substances trigger an obligation under Prop 65?

A The list is administered by the Office of Environmental Health Hazard Assessment (OEHHA) and is updated at least once a year. First published in 1986, the list now includes approximately 900 chemicals. A complete list can be found at https://oehha.ca.gov/media/downloads/proposition-65/p65122917_0.pdf.

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Q What are the options for compliance?

A Proposition 65 requires Clear and Reasonable Warnings. While this is not defined, Proposition 65 does provide 4 safe harbors, meaning recognized and accepted methods of compliance. These safe harbors are:

- (1) A product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product.
- (2) 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 of the consumer product, without requiring the purchaser to seek out the warning.
- (3) A warning **on the label** that complies with the content requirements in Section 25603(a), OR
- (4) A short-form warning **on the label** that complies with the content requirements in Section 25603(b). The entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

If the “long form” warning is chosen it must now include:

- i. The word **WARNING** in all capitals and in bold.
- ii. The name of at least one listed chemical that prompted the warning. (a listed carcinogen and/or chemical linked to reproductive harm). NOTE: if the product contains one or more chemicals listed as a carcinogen and one or more chemicals listed as linked to reproductive harm, at least one of each must be listed on the label.
- iii. A link to the state’s [Prop 65 internet site](#), which includes additional information on the health effects of listed chemicals and ways to reduce or eliminate exposure to them.
- iv. A triangular yellow and black warning symbol (can be white and black only if the label for the product does not use the color yellow).



If the “short form” warning is chosen it now must:

- a. Be in a type size no smaller than the largest used for other consumer information, and not smaller than 6 point type
- b. State either “Cancer-www.P65Warnings.ca.gov,” or “Reproductive Harm- www.P65Warnings.ca.gov.”
- c. Contain the same symbol



Conspicuous website warnings are required for products purchased over the Internet. (b) For internet purchases, a warning that complies with the content requirements of Section 25603(a) must also be provided by including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If warning is provided using the short-form warning label content pursuant to Section 25602(a)(4), the warning provided on the website may use the same content. For purposes of this subarticle, a warning is not prominently displayed if the purchaser must search for it in the general content of the website.

For catalog purchases, a warning that complies with the content requirements of Section 25603(a) must also be provided in the catalog in a manner that clearly associates it with the item being purchased. If a short-form warning is being provided on the label pursuant to Section 25602(a)(4), the warning provided in the catalog may use the same content.

A procedure is provided where compliance responsibilities can be passed “downstream” to retail sellers, provided the necessary warnings are communicated to the retailer, acknowledged by the retailer, and re communicated in 6 months (February, 2019), and annually thereafter.

**Each manufacturer, distributor etc. must make its own decision as to the means of compliance.
Companies are encouraged to contact their own legal counsel.**

Enforcement of Prop 65.

Prop 65 can be enforced by

1. The [California Attorney General's Office](#)
 2. Any district attorney or city attorney (for cities whose population exceeds 750,000).
 3. Litigation by individuals or advocacy groups.
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For More Information

The OEHHA has also just updated its own FAQ at
https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa.pdf

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/cnr/side-sidearticle6.pdf>

To contact the Proposition 65 Implementation Program office: (916) 445-6900 or email
P65.Questions@oehha.ca.gov (link sends e-mail)

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https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa.pdf