

California Prop 65 Legislation: Summary for GFA Partners

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According to California Office of Environmental Health Hazard Assessment (OEHHA), Proposition 65, officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, was enacted as a ballot initiative in November 1986. The proposition protects the state's drinking water sources from being contaminated with chemicals known to cause cancer, birth defects or other reproductive harm, and requires businesses to inform Californians about exposures to such chemicals.

Proposition 65 requires the state to maintain and update a list of chemicals known to the state to cause cancer or reproductive toxicity. <https://www.p65warnings.ca.gov/chemicals>

On August 30, 2018, new regulations went into effect under "California Proposition 65." In relevant part, Proposition 65 requires businesses to provide consumer warnings for products containing significant levels of certain chemicals known to cause cancer, birth defects or other reproductive harm.

Businesses located outside of California are often surprised to learn that they are not immune from Proposition 65, as the law's consumer product warning requirements can apply any time a business participates in the supply chain that is responsible for exposing Californians to Listed Chemicals. This means that suppliers, packagers, importers and producers, in addition to manufacturers, may be required to comply with Proposition 65, even if they do not conduct business within California's borders or sell products at retail directly to California consumers. Proposition 65 enforcement actions are often brought against unsuspecting out-of-state manufacturers and producers whose third party distributors sell products without appropriate warning labels to California retailers or online retailers who make sales to California consumers.

Even when a business is otherwise subject to Proposition 65, if exposure to a Listed Chemical via consumer product use or workplace exposure poses no significant risk of cancer and would produce no observable reproductive effect at one thousand times (1,000x) the actual exposure level, no Proposition 65 warning is required. However, because there is no presumption under Proposition 65 that a warning is not required, if challenged, the business has the burden of proving that exposure levels are safe.

With respect to consumer products, the burden of providing notice regarding exposure to Listed Chemicals has historically fallen disproportionately upon manufacturers, producers or packagers rather than retailers. However, all entities in the supply chain were potentially subject to steep penalties for noncompliance with warning requirements. New California regulations which took effect on August 30, 2018, clarify that primary responsibility for providing Proposition 65 warnings now rests decidedly with upstream entities like manufacturers, producers, packagers, importers, suppliers and, to a lesser extent, distributors, except where the retailer selling a product is responsible for introducing a Listed Chemical into the product, removes or alters an upstream entity's warning, sells the product under a brand owned by the retailer or has otherwise accepted responsibility for providing the warning pursuant to a private written agreement.

Where a warning is required, but not provided, a business found to be in violation of Proposition 65 may be assessed civil penalties of up to \$2,500 per day for each violation. Enforcement actions may be brought by the State of California, private citizens, private attorneys or consumer advocacy groups, exposing manufacturers and others responsible for providing Proposition 65 warnings to a broad pool of parties that could seek to allege violations of California law. Due to the pro-consumer terms of Proposition 65, even out-of-court settlement of claims by private citizens can mean costly payments for defendant businesses.

To comply with Proposition 65's consumer product warning requirements, each non-compliant product should ship with a warning label affixed directly to the product or the product's immediate packaging. Such labeling follows the requirements for clear and reasonable warnings under the "safe harbor" provisions of the Proposition 65 regulations. If items are repacked, or one of these labels is removed or otherwise modified, another Proposition 65-compliant label must replace it. If the product is incorporated into a finished good, a Proposition 65-compliant warning label should be placed on the finished good or its immediate packaging by the manufacturer (e.g. Warning Label on next page).

⚠️ WARNING: This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP) which is known to the State of California to cause cancer and birth defects or other reproductive harm.

For more information go to www.P65Warnings.ca.gov.

Generally, font sizes need to be the same as other relevant product information (see OEHHA sizing requirements).

As referenced above, if your business or your customers offer products for sale to California consumers online, Proposition 65 now requires a warning to be placed on the product display page or elsewhere by prominently displaying the warning to the purchaser prior to completing the transaction. We recommend using the abbreviated warning provided for in the Proposition 65 regulations, which consists of the word "WARNING" hyperlinked to www.p65warnings.ca.gov/ (e.g. Online Product Warning below).

Item	Quantity	Units	Price	Total
445 1IN X 36YD 36 Rolls/Case, 21 LBS/Case WARN- ING: CA Prop. 65	Update Remove	Case		

Steps to implement California Prop 65 Compliance

- Have your compliance team survey your vendors to find out if products comply
- Tag your items Compliant, Cancer Causing or Reproductive Harm Causing
- Develop a system for proper package labeling of all non-compliant goods
- Develop a system for proper labeling of all non-compliant items on your website
- Notify and document (letter & email) all customers of your Cali 65 compliance policy and their obligation to properly label products that could possibly be distributed into California (directly or indirectly anywhere in the supply chain)
- If customers balk at having the products labeled, have them sign an Indemnification letter that protects you from liability
- Annual review of products and customer notification updates

For details about Proposition 65, please visit www.p65warnings.ca.gov.



OEHHA
California Office of Environmental
Health Hazard Assessment



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Have a question
come up while
working on a
project?

1



2

Submit your
inquiry through
our portal.

Our experts will
review and
discuss your
submission.

3



4

The experts will
reach out with
solutions or
further ideas.

Apply the
solutions with the
knowledge at
your hands.

5



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