

CALIFORNIA PROPOSITION 65

What Suppliers Must Know

Officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, California Proposition 65 requires businesses to warn Californians when exposure to toxic chemicals known to the state may cause cancer, birth defects, or other reproductive harm.

Businesses are required to provide a “clear and reasonable warning” via labels on product or product packaging prior to Californians using products that may expose them to one of the listed chemicals. As of August 31, 2018, a similar warning must be made prior to a purchase via a catalog or website.



Warning Label Examples

There are two series of warning labels – long form and short form. The long form requires specifying one or more chemical. The short form simply requires the disclosure of the harm that might occur to a user.

One can use either set, but for our industry’s needs, the short form should work best for most.



Long form specifying cancer risk

WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information, go to www.P65Warnings.ca.gov



Long form specifying the potential of birth defects or other reproductive harm

WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov



Short form specifying cancer risk

WARNING: Cancer - www.P65Warnings.ca.gov



Short form specifying the potential of reproductive harm

WARNING: Reproductive harm - www.P65Warnings.ca.gov

Non-Compliance Can Be Costly

There is a big financial incentive for citizens to bring action against violators, and nearly every day it is happening.

Delivery and use in California of products exposing users to one of the toxic chemicals without the proper warnings can lead to fines and penalties as high as \$2,500 per violation per day. Consequently, violations nearly always lead to legal settlements totaling tens of thousands of dollars.

Everyone Is Liable

Everyone in the supply chain — suppliers, distributors, and end buyers — are considered responsible for delivering safe products. So, suppliers must inform distributors of products requiring warnings, and distributors must inform their customers (end buyers) in paper catalogs and websites.

The products that are ultimately delivered must carry the same warnings on each product or product package.

Some Supplier Best Practices

- **Know Your Products;** Disclose What You Know. Identify all products you sell that must carry warnings.
 - Test your products for those chemicals that have been subject to legal settlements.
 - Stay on top of settlement trends: www.oehha.ca.gov/prop65.html
 - Determine which label will go on each product requiring a warning
 - Be prepared to share Prop 65 test results, product lists, product and warning language with your distributor customers.
- **Labeling.** Determine how and when you will label.
 - Where will the label be placed – on product or package?
 - Will you apply the label on all products shipped to any U.S. location, only on products shipped to CA, or only when specified on a PO? (Keep in mind, if the product is shipped to another state but ends up being used in California, such as at a trade show, it must be labeled.)
 - Will you not label if requested by a distributor? (Be very careful!)
- **Education and Communication.** Everyone on your team needs to understand the law and the policies you set to deal with it. Your policies and practices need to be part of your ongoing dialogue with your distributor customers.
 - Pay attention to whether a product will be shipped to CA or end up being used in CA.
 - Make sure quotes, proofs, and order confirmation make clear of any warning requirements.
 - Use appropriate warning language next to each product requiring it in catalogs and websites.
 - Clarify to your distributors your labeling practices.
- **Record keeping.** Keeping clear records that you can easily find when needed is essential.
 - Establish document retention policies.
 - Organize contracts and test reports by supplier.
 - Include document destruction policies as well.

Do you have a facility in California?

- If workers or visitors to your California facilities will be exposed to Prop 65 listed chemicals, post a Prop 65 warning in your facility close to the source of potential exposure.
- Create a “map”— a floor plan delineating the affected area of the facility.

This document can only cover some key elements of Prop 65’s requirements. Your compliance person or department needs to learn more and possibly reach out for expert legal advice for your company’s specific situation.

Online Resources

PPAI Prop 65 & State Regs Presentation: <https://onlineeducation.ppai.org/products/prop-65-and-state-regulations>

PPAI Orientation To Prop 65: <http://www.ppai.org/media/1814/pr-bp-proposition-65.pdf>

PPAI Responsible Sourcing Frequently Asked Questions:

<http://ppai.org/corporate-responsibility/product-responsibility/product-responsibility-faqs/>

California Prop 65 Webpage: oehha.ca.gov/prop65.html

P R O D U C T[™]
RESPONSIBILITY
POWERED BY PPAI