

CALIFORNIA PROPOSITION 65

Distributor Considerations

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 Warning:

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 Distributor Best Practices

• Know Your Products And Your Suppliers' Policies

- Stay on top of settlement trends: www.oehha.ca.gov/prop65.html. By doing so you will be familiar with which chemicals are being scrutinized and what your suppliers need to be testing for.
- Ask your supplier which of their products require Prop 65 warnings, the exact warning that will be placed on each product or product package, and what chemicals they have tested for.
- Ask your supplier about their labeling policies – do they label all products shipped to any U.S. location, only on products shipped to CA, or only when specified on a PO?
- If you are importing products directly without going through a supplier, you are the supplier, and you must test to determine whether warning labels are required. Review the Supplier Best practices document.

• Education and Communication.

Everyone on your team must 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 customers.

- At the front end of the sale process, explain the law to your customers and why it is vital that you comply.
- Pay attention to whether a product will be shipped to CA or end up being used in CA.
- Make sure quotes, proofs, and order confirmations make clear of any warning requirements.
- Use warning language next to each product requiring it in paper catalogs and websites. The warning must be the same as on each product requiring it.

• PO Instructions

- Where appropriate, clearly inform your supplier to apply a Prop 65 warning label to a product or product package.
- 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.

• 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.

This document can only cover some key elements of Prop 65's requirements. Your compliance manager 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/psa-required-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