

Is your Company in Compliance with the New Warning Regulations under California's Proposition 65?

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All consumer products sold or distributed into the State of California may be subject to new chemical warning regulations that go into effect in three months.

Revisions to a critical environmental law regarding warnings for chemicals in consumer products will change the way companies assess and label products they distribute or sell into California.

The change takes effect August 30.

These new warning regulations fall under California's Safe Drinking Water and Toxic Enforcement Act, referred to as Proposition 65. While the California's Office of Environmental Health Hazard Assessment (OEHHA) facilitates the addition of new chemicals to the State's list of carcinogens and reproductive toxicants (there are over 900 chemicals on the list),¹ anyone in the State can sue for enforcement under Proposition 65. In order to manage the significant financial and business operation risks of non-compliance, the regulatory changes provide new "Safe Harbor" warning content and methods of transmission.

Companies that do business in California are encouraged to update their operating procedures and product labeling compliance protocols before the deadline. New warning language transmission covers all modes of purchase and distribution, including online/internet purchases as well as direct-import and drop-ship delivery.

The significant changes to Proposition 65's warning requirements warrant knowledge of the chemical constituents of all products sold or distributed into the State of California. As a corollary, one new method of warning requires the identification of at least one chemical found on the Proposition 65 list of chemicals if it is present in a product such that exposure may exceed a regulatory established threshold level.² The Proposition 65 chemical list includes a wide range of naturally occurring chemicals (including in food), as well as synthetic chemicals including lead and phthalates. The new warning regulations apply to all products manufactured after August 30, 2018.

¹<https://oehha.ca.gov/proposition-65/proposition-65-list>

Out of the 900+ chemicals on the Proposition 65 List, approx. 300 have established threshold exposure levels. Thus, for those chemicals without such promulgated levels, it is incumbent upon the company to establish what the threshold exposure level would be for that ²particularly chemical in the subject product.

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