

Summary of California Proposition 65

California Proposition 65 (California's Safe Drinking Water and Toxic Enforcement Act of 1986) requires products that contain any of a list of chemicals must have a warning label about the product. The list of chemicals on the list can be found [here](#): [Chemicals or Listed under Proposition 65](#). You can download a list of the chemicals [here](#). There are currently **967** chemicals on the list and the list adds new chemicals yearly. However, there is a one-year grace period to comply with the required warnings after a chemical has been added to the list.

In the past, if you thought, your product might contain one of the chemicals on the list; you simply put the warning on the product. Those days are gone. Now, you **MUST** know all chemicals in your product. If your product contains one of the chemicals, you have to list at least one of the chemicals on your label. The broad approach to warning will no longer work.

The new labels have been created to counteract this mass labeling by requiring a list of the dangerous products in the product to be included in the warning. The labels must include a specific yellow triangle, a link to the California Proposition 65 website and other information.

The bigger problem is the list of chemical's changes every year. In the past, it has changed several times in a year. However, the state of California seems to be attempting to limit the changes to be yearly now, publishing the new list every July.

Warnings are broken down into two categories, those that may cause cancer and those that may harm an unborn fetus. The first group is identified as carcinogens. The second group is identified as reproductive toxicants.

The new warning will look like this if the chemical is on the list that might cause cancer:



WARNING

This product contains the following: Chemical 1

This product can expose you to chemicals including Chemical 1 which is [are] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

If the chemical is on the list because it may injure a fetus the warning must look like this.



WARNING

This product contains the following: Chemical 1

This product can expose you to chemicals including Chemical 1 which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to <http://www.P65Warnings.ca.gov>.

If your product contains chemicals that are on both lists, meaning the chemical can cause cancer or injury to a fetus, that warning must look like this.



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 and birth defects or other reproductive harm. For more information go to <http://www.P65Warnings.ca.gov>.

This is a different warning if you place the warning directly on the product. If the warning contains both a carcinogen and a toxicant, the safe harbor warning will look like this.



WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov

However, this warning has minimum type size requirements. The type size must be a minimum of 6pt or not smaller than the largest type size used for other consumer information on the product.

Catalogs

The New Warning and Requirement to list the known chemicals in the warning are not all that is now required. Warnings must also be posted in Catalogs and on websites. For catalog sales, the warning must be located in a position to be associated with the product that is being sold that contains the chemical. This means you can't just post the warning in the beginning of the catalog; it must be on the page with the product.

Websites

Websites must have the warning on the same page as the product is being sold on. If not on the same page as the product, the warning must be communicated to consumers prior to finalizing the purchase.

My Thoughts,

I would urge you to adopt the new warnings and put them on your products now. Even though your product was manufactured prior to August 30, 2018, you may still be forced into a court of law to prove the manufacturing date. Plan now to put the new labels on and safe that possible nightmare.

FAQs

What if I don't sell products in California?

You may not sell products in California. That is not the issue; the issue is if your product is sold in California, you will be the one paying the fines and penalties.

What if I label the products "Not for Sale in California?"

When was the last time you read a label? Your product is labeled and sold to someone in Nevada, who then travels to a flea market in California. Again, you pay the fines.

What other ways are there around this?

There aren't any.

What if my manufacturer won't tell me the chemical composition of the components in my product?

Find a new manufacturer, quickly.

Based on current articles and reading there is no way around this. You either find out what is in your product, or you go out of business. If you don't go out of business a lawyer or the State of California will put you out of business.

We have decided to just wait and see if we get caught.

Everyone will be caught because there is too much money involved. If you are a manufacturer with one hundred sku's half of which contain a chemical that is on the California list would be facing \$3,750,000 in damages at the end of the first month. By the time you respond to a demand, test your product and respond, you will be bankrupt.

Speaking of that, the law allows law by private citizens to sue manufacturers for failing to comply. The citizen gets a portion of the money collected, and you pay for the attorney who sued you as well as your own attorney. There

are law firms and “consumers” setting up and starting these lawsuits already.

Get ahead of the game.

If you want help with this contact me.

Email jim@rec-law.us or call 720 334 8529

[US Based Manufacturers: Information and Agreement to Review Your Products and Product Information](#)

[Foreign Based Manufacturers: Information and Agreement to Review Your Products and Product Information Foreign Imports](#)

Additional Information

[New Proposition 65 Warnings](#)

[Listed Chemicals](#)

[Law & Regulations](#)

[Frequently Asked Questions for Businesses](#)

[Office of Environmental Health Hazard Assessment \(OEHHA\)](#)