

California's Proposition 65 New Warning Requirements



Marci Kinter,
Vice President,
Government
& Business
Information, SGIA

As of August 30, 2018, businesses that sell consumer goods to Californians are subject to new warning requirements. Through its one-of-a-kind labeling law, California regulates thousands of businesses, whether through e-commerce or retail outlets in the state. The changes to the warning requirements under Proposition 65 (Prop 65) — also known as California's Safe Drinking Water and Toxic Enforcement Act — have triggered many questions and requests for compliance guarantees and statements by print customers.

Prop 65 was enacted in 1987 and the compliance requirements have not changed. The duty to warn employees and the general public about exposure to over 800 chemicals that are carcinogenic or pose reproductive hazards above the “no significant risk level” or safe harbor level has been the cornerstone of the regulations.

Warning Requirements

There has been an expansion in the types of warnings that must be provided. The regulation now requires very specific elements be identified as to the content. In many instances, this must include a yellow triangle warning symbol with a statement that the product “can expose” the consumer to the chemical, along with a link to the Prop 65 website. The old warning simply had to state that the product “contains” a listed chemical.

The following are a few examples.

- For exposure to carcinogens:
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 P65Warnings.ca.gov.
- For exposure to reproductive toxins:
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 P65Warnings.ca.gov.
- For exposure to both carcinogens and reproductive toxins:
WARNING: This product can expose you to chemicals including [name of one or more listed chemicals], which is [are] known to the State of California to cause cancer, and [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 P65Warnings.ca.gov.



10 Employee Exemption

There is an exemption from the employee training, consumer warning requirements and prohibition on discharges into drinking water sources for companies with less than 10 employees. This is an important exemption for companies that sell directly to the consumer.

Those companies with less than 10 employees, however, need to comply with the Prop 65 warning statements if they sell products to a customer that is not exempt. Many print customers with 10 or more employees sell to consumers in California and will require their suppliers — regardless of exempt status — to comply.

Compliance Steps

The first step is to identify if any components (substrates, ink, coating, adhesive, etc.) used to manufacture the product(s) being shipped to California contain a Prop 65 chemical. This can be accomplished by reviewing the Safety Data Sheets (SDS). The information is usually found in either Section 11, “Toxicological Information;” Section 15, “Regulatory Information;” or Section 3, “Composition.” However, this information may also be provided in a different manner, such as a separate supplier communication, technical bulletin or other product-related documents. This is common in situations where an SDS is typically not required to be provided (substrates, inks, etc.). Contact your supplier if you are uncertain about how this information is being transmitted.

When reviewing the SDS or other product-related information, it is important to note the concentration of the chemical. If the concentration is omitted, contact the vendor to obtain this information. The most current list of chemicals can be found at oehha.ca.gov/proposition-65.

If no Prop 65 chemicals are found, no further action is required. This allows a company to easily state its products are in compliance. If a Prop 65 chemical is found to be among the materials going into the final product, then the following steps can be taken:

1. Contact the vendor and request products that do not contain any Prop 65 chemicals. Substituting these products will eliminate any warning statements.
2. If the product cannot be substituted, determine if the concentration is above the “no significant risk level” or safe harbor level as identified in the list of regulated chemicals. If the concentration present is less than the threshold, no further action is required.

The challenge with this step is that the SDS typically identifies components on a percent basis and this does not directly equate into the “no significant risk level” or safe harbor level, which are expressed as micrograms per day. If this is the case or no concentration is provided, contact the vendor and ask them to convert the percent amount and compare that to the “no significant risk level” or safe harbor level.

3. If there is not a published “no significant risk level” for a chemical, it is assumed to be zero. In this instance, contact the vendor and request information on anticipated exposure levels, and whether that would pose a significant risk to someone who would be exposed to them via the finished product.
4. If the vendor does not provide any assurances, or the concentrations are greater than the “no significant risk level,” the finished product can be tested to determine the concentration of the Prop 65 chemicals. If none are detected, or if they are below the “no significant risk level,” no warnings are required, and a compliance certification can be provided.

Given the relatively low concentration of Prop 65 chemicals found in substrates, inks, coatings and adhesives, testing the finished product will most likely result in showing that no warning is required.

FOR MORE INFORMATION

To assist businesses with compliance, the state of California has created guidance materials, including an overview of the new regulations and links to informative questions and answers. The materials can be found at p65warnings.ca.gov/new-proposition-65-warnings.

Questions? Contact SGIA’s Government & Business Information Department at govtaffairs@sgia.org.