



SOURCEINTELLIGENCE 

AN INTRODUCTION TO CALIFORNIA PROPOSITION 65

E-BOOK

A complete guide to understanding and
complying with California Proposition 65

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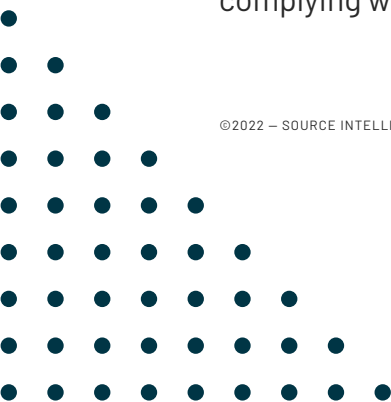


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ABSTRACT

California Proposition 65 is a state law that affects California businesses and companies operating in California. It applies to all products sold within the state, as well as residential and workplace areas. Complying with the law protects businesses from steep fines, expensive lawsuits, and potential reputational damage.

This E-Book is intended to serve as a complete guide to understanding and complying with California Proposition 65 requirements. It covers all aspects of Prop 65, including the chemical list, warning label requirements, safe harbor levels, and more. It will also provide an overview of how Source Intelligence's Prop 65 program simplifies Prop 65 compliance and helps companies reduce risk.

CALIFORNIA PROP 65 BASICS

DEFINING PROP 65 AND WHAT IT MEANS FOR COMPANIES

Proposition 65—commonly referred to as Prop 65—is officially known as the Safe Drinking Water & Toxic Enforcement Act of 1986. It was introduced as a ballot initiative and enacted in November 1986.

Under the act, companies are required to warn California citizens about potential exposure to chemicals known to cause cancer, birth defects, or other reproductive harm. Additionally, companies are prohibited from knowingly releasing harmful chemicals into any source of drinking water.

The purpose of Prop 65 is to protect the public health of Californians and the environment by reducing exposure to harmful chemicals and educating individuals about the dangers of exposure. [1]



EXPOSURE TO PROP 65 CHEMICALS

Chemicals in the scope of Prop 65 can be present in household or workplace products, as well as in products that release chemicals into the environment. For products, exposure occurs when an item is used or consumed. For environments, exposure occurs in homes or rental housing units, workplaces, or public areas. Regardless of how the exposure occurs, businesses must warn individuals of the risk.

For example, if a landscaping business uses pesticides on the Prop 65 chemical list, it must notify both its employees and customers of the potential exposure and associated health impacts. Another example is a property owner providing pamphlets to residents of a rental housing unit if they may be exposed to one or more listed chemicals in the building itself or on the property grounds.

PROP 65 ADMINISTRATION

The California Office of Health Hazard Assessment (OEHHA), which is part of the California Environmental Protection Agency (CalEPA), administers Prop 65. The organization is responsible for identifying chemicals that require oversight, maintaining a list of said chemicals, and developing the warning requirements mandated by Prop 65. [1]

PROP 65 CHEMICAL LIST

All chemicals within the scope of Prop 65 are included in the Proposition 65 chemical list, which is managed and annually published by the California OEHHA. The list currently contains over 900 chemicals, with more added each year.

Chemicals listed under Prop 65 include both naturally occurring and synthetic chemicals that are present in food, drugs, consumer products, dyes, solvents, and pesticide additives or ingredients. Some of the chemicals are used in construction or manufacturing, while others are byproducts of chemical processes. [2]

HOW CHEMICALS ARE ADDED TO THE PROP 65 LIST

There are four pathways for chemicals to be added to the Prop 65 list: [3]

1. STATE'S QUALIFIED EXPERTS (SQE)

Under Prop 65, two independent committees are designated as the "State's Qualified Experts" for chemical evaluation: the Carcinogen Identification Committee (CIC) and the Developmental and Reproductive Toxicant Identification Committee (DARTIC). The committee members of each organization, consisting of scientific and health experts, are assigned by the governor. The committees meet at least once a year to review new chemicals proposed for placement onto the Prop 65 list.

2. LABOR CODE (LC)

All compounds included in Labor Code section 6382(b)(1) and (d) are automatically added to the Prop 65 list. 6382(b)(1) includes cancer-causing chemicals identified by the World Health Organization's Internal Agency for Research on Cancer (IARC).

3. FORMALLY REQUIRED TO BE LABELED (FR)

If the federal government or an agency of the state identifies a chemical that must be labeled as causing cancer, birth defects, or other reproductive harm, it is added to the Prop 65 list. This method primarily applies to prescription drugs.

4. AUTHORITATIVE BODIES (AB)

Organizations that are designated as “authoritative bodies” by either the CIC or DARTIC can add chemicals that are formally identified as causing cancer, birth defects, or other reproductive harm to the Prop 65 list. Current “authoritative bodies” include the following organizations:

- U.S. Environmental Protection Agency (EPA)
- U.S. Food and Drug Administration (FDA)
- National Institute for Occupational Safety and Health
- National Toxicological Program of the U.S. Department of Health and Human Services
- International Agency for Research on Cancer (IARC)



NTP
National Toxicology Program
U.S. Department of Health and Human Services



PROP 65 WARNING LABEL REQUIREMENTS

Prop 65 requires California businesses or companies conducting business in California to provide a “clear and reasonable” warning before knowingly and intentionally exposing individuals to any chemicals on the Prop 65 list. This constitutes different approaches based on the exposure method. For example, the warning could be a label on product packaging, a flyer distributed in an apartment complex, or a sign posted in a workplace.

Regardless of the type of warning, its purpose is to indicate that the business providing the warning is aware of exposure or believes it is exposing Californians to a listed chemical. This helps individuals make informed decisions about the products they buy and the environments to which they expose themselves.

To ensure that Prop 65 warning labels for consumer products are, as required by the law, clear and reasonable, OEHHA dictates specific visual and language requirements for the labels. The requirements for Prop 65 warning include: [4]

LISTED CHEMICALS

The full name of the Prop 65 chemical and its associated hazard must be listed. If multiple Prop 65 chemicals are present, at least one compound must be listed for each hazard category: carcinogen, reproductive toxin, and birth defects.

RESOURCE INFORMATION

The label must include the URL to OEHHA’s Prop 65 warnings website (www.p65warnings.ca.gov), which allows consumers to access additional information about the listed chemicals.

TYPE SIZE

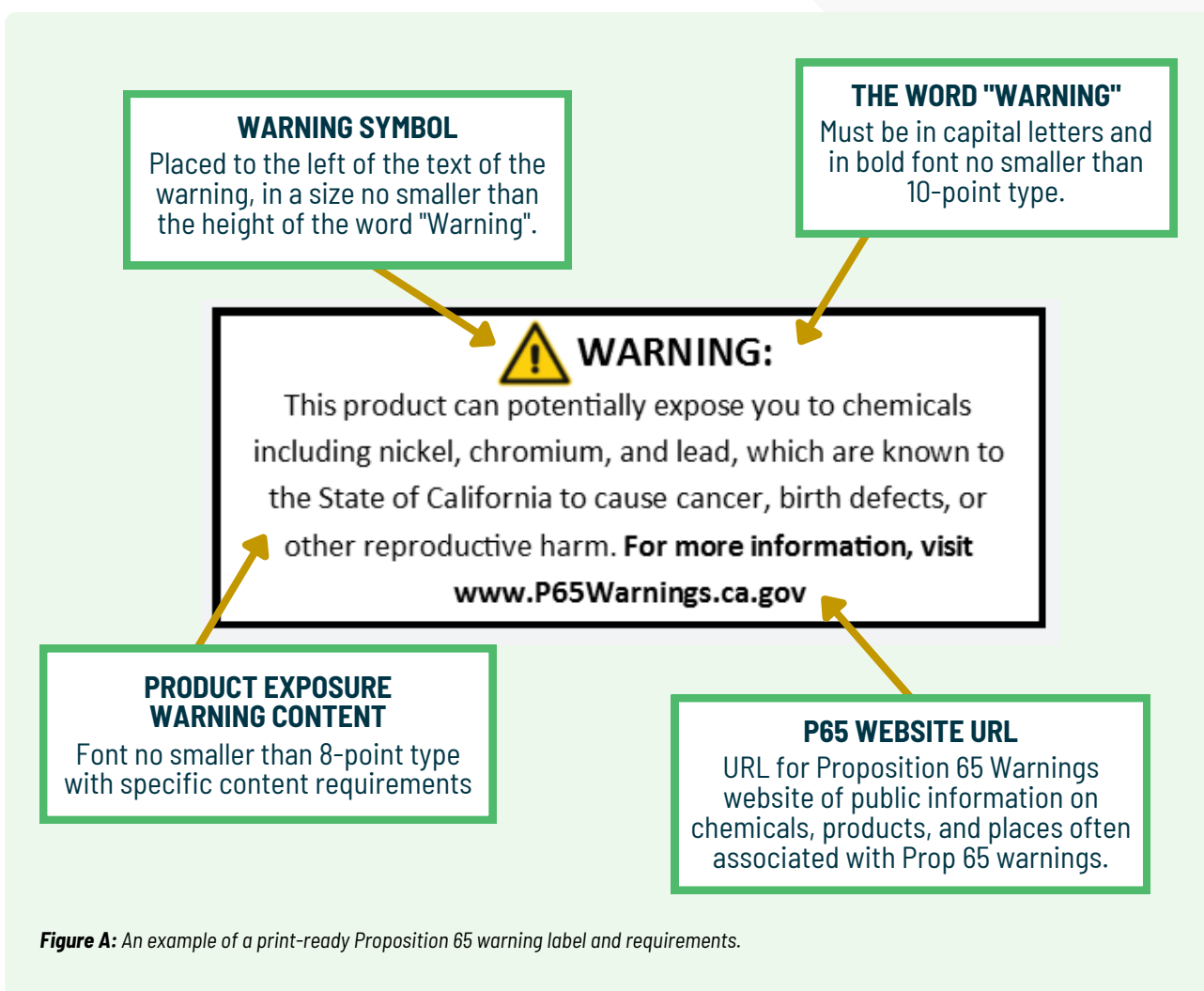
The warning label text must be the same size as other consumer information on the product’s packaging, with a 6-point type being the minimum size.

WARNING SYMBOL

The design of the warning symbol must be an exclamation mark centered inside a yellow triangle with the word "WARNING" in capital letters and bold font. The text should be the same size font as the warning symbol.

SIMPLIFIED WARNING LABEL OPTION

Companies are permitted to use a simplified label on product packaging when space is limited. Simplified labels require the "WARNING" symbol, a statement about the hazard associated with the chemical, and the URL to the Prop 65 warnings website. [4]



PROP 65 SAFE HARBOR LEVELS

Not all exposure to listed chemicals requires notification under Prop 65. Some chemicals do not require a warning label and/or may be allowed in drinking water sources at levels below a certain threshold. These levels are referred to as Safe Harbor Levels and apply to certain listed chemicals that the California OEHHA has considered acceptable. Currently, over 300 listed chemicals have safe harbor levels.

Safe harbor levels are intended to help businesses determine if they fall within the scope of Prop 65. The levels fall into one of two categories: No Significant Risk Levels (NSRLs) and Maximum Allowable Dose Levels (MADLs). [5]



NO SIGNIFICANT RISK LEVELS (NSRLs)

NSRLs apply to carcinogens and are defined as “the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000, assuming lifetime exposure at the level in question.” [6]

MAXIMUM ALLOWABLE DOSE LEVELS (MADLs)

MADLs apply to chemicals that lead to reproductive damage, such as birth defects, and are defined as “the highest level at which the chemical would have no observable adverse reproductive effect assuming exposure at 1,000 times that level.” [6]

CHEMICALS WITHOUT SAFE HARBOR LEVELS

As noted previously, not every chemical on the Prop 65 list has a safe harbor level. In this case, it is the responsibility of the business to provide a Prop 65 warning—unless the business can prove that the chemical’s anticipated exposure level falls below safe harbor level requirements.

While OEHHA does provide some criteria to help businesses conduct these studies, determining levels of exposure can be a complex process. If a business believes that exposure to a listed chemical may fall under safe harbor levels, consulting with a qualified professional is recommended. [7]

DETERMINING IF SAFE HARBOR LEVELS APPLY TO YOUR BUSINESS

Businesses are exempt if exposure to a chemical occurs at or below the safe harbor levels. If the exposure level is found to be greater than the safe harbor levels, businesses must provide a warning. The same process applies to drinking water sources—if exposure is beyond the safe harbor levels, businesses are prohibited from discharging listed chemicals into drinking water sources. [5]

PROP 65 EXEMPTIONS

Two other criteria beyond Safe harbor Levels exempt certain businesses from Prop 65 notification requirements. [8]

- Companies with less than 10 employees
- Government agencies and water utility companies

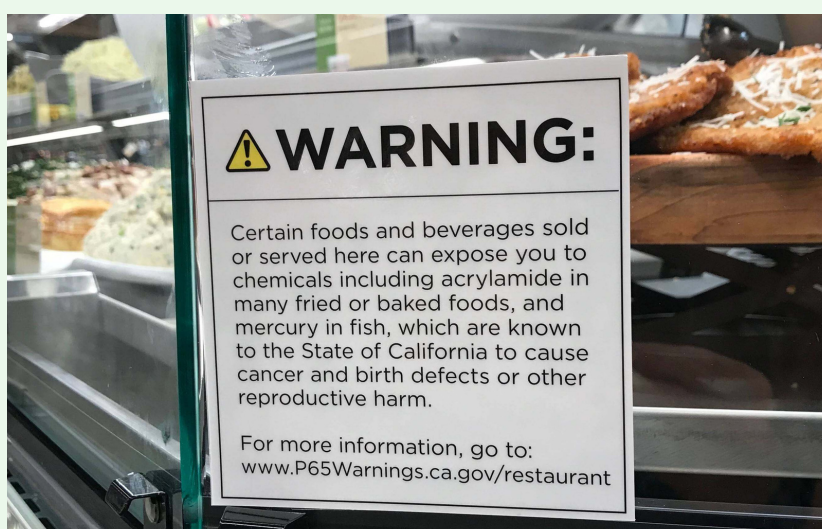


Figure B: Proposition 65 requires businesses to determine if they must provide a warning about exposure to listed chemicals.

PROP 65 ENFORCEMENT TRENDS & PENALTIES

While OEHHA administers Prop 65, it is not an enforcement agency and has no legal power to issue fines or other consequences for non-compliance. Enforcement falls under the California Attorney General's Office and local district or city attorneys for cities with populations exceeding 750,000. Additionally, individual citizens and entities have the right to enforce Prop 65 by "acting in the public interest" and filing a lawsuit against a business believed to be in violation of Prop 65. [8]

LITIGATION TRENDS

Since the development of Prop 65 in 1986, various entities have filed litigation in California, including the Attorney General's office, district attorneys, city attorneys, customer advocacy groups, private law firms, and citizens.

In recent years, the rate of Prop 65 litigation has grown exponentially. Between 2008 and 2018, the number of cases increased fourfold. While some of these cases are directed by government attorneys, private citizens are responsible for the majority. Furthermore, the number of "Bounty hunter" plaintiffs—individuals who bring lawsuits against businesses for low-level infractions in the hope of financial gains—increasing. By industry, the quantity of cases involving food and plastic products has been on the rise. [9]

NON-COMPLIANCE PENALTIES

Noncompliance with warning requirements can be damaging both financially and reputationally. Fines for violating Prop 65 can be as high as \$2,500 per violation per day. Additionally, companies that lose Prop 65 litigation will typically be responsible for attorney fees. [8]



SIMPLIFY PROP 65 COMPLIANCE WITH SOURCE INTELLIGENCE

With the significant financial and legal risk of non-compliance, companies must be diligent in meeting Prop 65 requirements. Remaining compliant with Prop 65's annually updated chemical list can be time-consuming and challenging without the right resources. While warning label requirements are more straightforward, understanding which chemicals require warnings at various levels is more complex.

Source Intelligence's Prop 65 program takes the complexity out of the process. The platform collects information from suppliers, manages documentation, and consolidates data for reports. The key benefits of our Prop 65 program include the following:

BILL OF MATERIAL (BOM) ANALYSIS

The Source Intelligence platform reviews BOMs to identify compounds listed in Prop 65, report where a compound is used in a product, and determine notification criteria. Additionally, our chemical database is updated as new chemicals are added to the Prop 65 list.

SUPPLIER ENGAGEMENT

Secondly, the platform streamlines supplier contact and data collection. As new chemicals are added to the Prop 65 list, suppliers are contacted to collect product substance information and gather relevant supporting documentation.

DATA VALIDATION

Thirdly, the platform reviews supplier documentation to locate inconsistencies and ensure all Prop 65 compounds have been correctly submitted by the supplier. If data gaps are found, Source Intelligence's supplier engagement team contacts suppliers to obtain additional information.

COMPLIANCE REPORTING

Lastly, the platform generates reports providing Prop 65 requirements within your business, identifies areas of noncompliance, and provides a risk analysis. Furthermore, the platform performs a gap analysis on your current Prop 65 compliance process and gives on-demand access to supplier documentation.

SCHEDULE A DEMO

The Source Intelligence team has decades of experience helping companies manage Prop 65 compliance. We offer industry-leading tools for companies that run their own compliance programs, or our expert team can manage the program for you. In either case, our regulatory experts constantly monitor changes to ensure your business is compliant with Prop 65 now and in the future. Schedule a demonstration to discover how we can help.



***Request a demo of our Prop 65 compliance solution
to see how effortless compliance can be.***

[REQUEST A DEMO](#)

REFERENCES

- [1] <https://oehha.ca.gov/proposition-65/about-proposition-65>
- [2] <https://www.latimes.com/business/story/2020-07-23/prop-65-product-warnings>
- [3] <https://oehha.ca.gov/proposition-65/how-chemicals-are-added-proposition-65-list>
- [4] <https://www.p65warnings.ca.gov/businesses/new-proposition-65-warnings>
- [5] <https://oehha.ca.gov/proposition-65/general-info/current-proposition-65-no-significant-risk-levels-nsrls-maximum>
- [6] <https://oehha.ca.gov/media/downloads/crn/2001safeharborprocess.pdf>
- [7] <https://www.p65warnings.ca.gov/faq/businesses/what-if-there-no-safe-harbor-level>
- [8] <https://oag.ca.gov/prop65/faq>
- [9] <https://www.natlawreview.com/article/california-s-prop-65-amendments-one-year-later-litigation-trends-and-what-to-look>



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