



California Proposition 65

WHAT IS PROPOSITION 65?

In November 1986, California voters approved an initiative to address growing concern about exposures to toxic chemicals. That initiative became *The Safe Drinking Water and Toxic Enforcement Act of 1986*, better known as Proposition 65. Proposition 65 appears in California Law as Health and Safety Code Sections 25249.5 through 25249.13. The spirit of the law is to prevent contamination of the water sources, to help consumers make informed choices about products, and to enable residents or workers to protect themselves from exposures to the listed harmful chemicals. Amendments to the rule became effective in August of 2018.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Governor’s List.” Proposition 65 requires the Governor to publish a list of chemicals that are “known to the State of California” to cause cancer, birth defects, or other reproductive harm. This list must be updated at least once a year. Over 1014 chemicals had been listed as of March 8, 2019. Always review the current list of chemicals to be sure you have the latest information and up-to-date details. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings*. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to the State of California to cause cancer, birth defects, or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water.

WHAT KIND OF CHEMICALS ARE ON THE LIST?

A chemical is listed if the “state’s qualified experts” or a recognized “authoritative” organization finds that the chemical has been clearly shown to cause cancer, birth defects, or other reproductive harm. A chemical can also be listed if it is required to be labeled or identified as a carcinogen or as a reproductive toxicant by an agency of the state (of California) or federal government. The California list contains a wide range of chemicals, including dyes,

*This term is not used consistent with ANSI Z535 guidelines.

solvents, pesticides, drugs, food additives, and by-products of certain processes such as welding and cutting. Some of the chemicals are ingredients of common household products, while others are specialty chemicals used in very specific industrial applications. For a complete list of chemicals, see the list at <https://www.p65warnings.ca.gov/> provided on the Proposition 65 website.

ARE THERE ANY EXEMPTIONS?

Yes, there are several exemptions to the law as follows:

- Government agencies and public water utilities
- Businesses with nine or fewer employees.
- Exposures that pose no significant risk of cancer.
- Exposures that will produce no observable reproductive effects at 1,000 times the level in question.
- Discharges that do not result in a “significant amount” of the listed chemical entering into any source of drinking water. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” or “no observable effect” test if a person were exposed to such an amount in drinking water.
- Federally preempted – Proposition 65 may be preempted to the extent it is regulated by Federal Law, including OSHA and the Hazard Communication Act.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in California regulations.

WHAT HAPPENS TO VIOLATORS?



A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation. In most cases a settlement is reached in which the alleged violators must stop violating, pay a civil penalty, and pay the attorney fees.

WHO CAN I CONTACT FOR FURTHER INFORMATION?


By phone, contact the Office of Environmental Health Hazard Assessment’s Proposition 65 Implementation Office at 916-445-6900. Or go to their website at: www.oehha.ca.gov/prop65

WHAT DOES THIS MEAN FOR THE WELDING AND CUTTING INDUSTRIES?

Many welding and cutting manufacturers have committed to label their products in a uniform way and to label certain types of equipment and consumables that are for sale in California. The label may be on the product or carton – most manufacturers choose to put it on the carton. Product manuals and online point of sale locations are also required to carry the precautionary wording. These requirements and label wordings are specified as of the August 2018 rule changes:


- Specific text and the name of at least one listed carcinogen and one listed reproductive toxicant chemical, as applicable, that prompted the warning symbol -  (Black and white is allowed only when no other yellow is used on the site or packaging.)
- The link to the Prop 65 internet site
- Triangular yellow and black warning symbol -  (Black and white is allowed only when no other yellow is used on the site or packaging.)

Example:

 **WARNING:** *This product can expose you to chemicals, including hexavalent chromium, which is known to the State of California to cause cancer, and carbon monoxide, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.*

Safe Harbor Warnings may also be permitted by the rule for some cases, that provide a more simplified, but potentially more severe sounding warning.

Example:

 **WARNING:** *Cancer and Reproductive Harm – www.P65Warnings.ca.gov.*

(Note: In cases where previous legal judgements call for specific warning language, that language may still be applicable, or may need to be additionally included. Consult with legal counsel as necessary.)

INFORMATION SOURCES

California Health and Safety Code, Section 25249.4 through 25249.13.

The California Office of Environmental Health Hazard Assessment, 301 Capitol Mall, Sacramento, CA 95814; telephone 916-445-6900.

California Proposition 65 website:
<https://www.p65warnings.ca.gov/>

American National Standards Institute (ANSI). *Product Safety Signs And Labels* (ANSI Z535.4), available from ANSI, 25 West 43rd Street, New York, NY 10036; telephone: 212-642-4900; web site: www.ansi.org.