



## ► REGULATORY UPDATE

# Prop 65 is tightening up: How to protect your business

Effective August 30, 2018, new standards will require companies impacted by California's Proposition 65 (Prop 65) to provide more detailed information about potential chemical exposure in their products and at their workplaces. In this regulatory update, learn more about how Prop 65 is changing and what you can do to safeguard your business.

### PROP 65 TODAY

Prop 65 was an initiative passed in a referendum by California voters in 1986. The law, officially known as the [Safe Drinking Water and Toxic Enforcement Act of 1986](#), requires the state of California to publish a list of chemicals known to cause cancer and/or reproductive toxicity. While the law requires the state to identify such chemicals, it does not ban or restrict the sale of chemicals on the list. California's Office of Environmental Health Hazard Assessment (OEHHA) administers the Prop 65 program. OEHHA's current list includes more than 850 chemicals ([OEHHA's current list](#)).

Prop 65 also requires businesses with 10 or more employees at which Prop 65 chemicals are present to provide warnings to the public and employees prior to exposure to these chemicals. The warnings are intended to provide information to the public and employees about their exposures to listed chemicals in the products they use and the places they visit.

### NEW PRODUCT AND WORKPLACE WARNING STANDARDS

Currently, Prop 65 requires affected businesses to provide a warning where a chemical is present that is known to the state of California to cause cancer or reproductive harm.

There is currently no requirement to identify the chemical(s) or to provide information about how a person may be exposed or ways to reduce or eliminate exposure to it.

This current warning indicates that one or more chemicals are present at a level of exposure above their regulatory "safe harbor" levels established by OEHHA. The new safe harbor warning language applies to consumer products' packaging, as well as specific products, chemicals, and areas located at businesses. Manufacturers and distributors of consumer products that are distributed in California that contain a chemical on OEHHA's chemical list are also required to provide similar warnings on or in the product packaging.

### CHANGES TO CONSUMER PRODUCT REQUIREMENTS

For consumer products, the current warning on the package must state that the product "can expose you to" a Prop 65 chemical rather than saying the product "contains" the chemical. The warning must also include the name of at least one listed chemical that prompted the warning and the Internet address for [OEHHA's new Proposition 65 warnings website](#), which provides additional information on the health effects of listed chemicals and ways to reduce or eliminate exposure to them. With few exceptions, the package warning must also include a triangular yellow warning symbol.

A current Prop 65 warning on a consumer product typically states:

**"WARNING:** This product contains a chemical known to the State of California to cause cancer."

An example of the new warning will look similar to this:



**“WARNING:** This product can expose you to chemicals including arsenic, which is known to the State of California to cause cancer. For more information, refer to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

Because the new changes for product packaging take full effect on August 30, 2018, as of this date, the old warning system will no longer be valid. However, products manufactured before August 30, 2018, are not required to meet the new warning requirements if the warnings are compliant with the Prop 65 requirements that were in effect at the time of their manufacture.

### ARE THERE NEW WARNING REQUIREMENTS FOR BUSINESSES THAT USE PROP 65 CHEMICALS?

Maybe. The new regulations do not require affected businesses that use Prop 65 chemicals in the workplace to use the new safe harbor warning language to comply with the law; however, using the new safe harbor warning language is an effective way for businesses to protect themselves against Prop 65 enforcement actions. Businesses that use the safe harbor warnings are deemed compliant with the law’s requirement for clear and reasonable warnings.

However, the new warning requirements do apply to specific products, chemicals and areas identified by OEHHA. If any of the following products, chemicals or areas are located at a business, then the new warning requirements apply to the business:

- Alcoholic beverages
- Food and non-alcoholic beverages
- Prescription drugs
- Dental care
- Wood dust
- Furniture products
- Diesel engines
- Vehicles
- Recreational vessels
- Enclosed parking facilities
- Amusement parks
- Petroleum products
- Service stations and vehicle repair facilities
- Designated smoking areas
- Hotels

As an example, a current Prop 65 warning for carbon monoxide, gasoline, and diesel exhaust in a parking garage at a place of business typically reads:



And an example of the new warning in the parking garage will look similar to this:



### For more information:

The current and new Prop 65 regulations are on OEHHA’s website here: <https://oehha.ca.gov/proposition-65/law/proposition-65-law-and-regulations>

You can also contact the OEHHA’s Proposition 65 Implementation Program office: (916) 445-6900 or email [P65.Questions@oehha.ca.gov](mailto:P65.Questions@oehha.ca.gov)

### To discuss specific challenges your business may face as a result of Prop 65 changes, please contact:

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