



California's Proposition 65 Labeling Rule Changes to Take Effect in August 2018

September 2017

"The Safe Drinking Water and Toxic Enforcement Act of 1986," more commonly known as Proposition 65, was approved by almost two-thirds of California voters in 1986 in a direct voter initiative. It became law in California to protect drinking water sources from toxic substances that may cause cancer (carcinogens) and birth defects (teratogens), and to regulate exposures to chemicals by requiring warnings in advance of those exposures. Significant changes to the warning provision become effective in the summer, 2018.

Background: Proposition 65 is administered by Cal/EPA's California Office of Environmental Health Hazard Assessment (OEHHA). This law regulates substances listed by California as having a 1 in 100,000 chance of causing cancer over a 70-year period or birth defects or other reproductive harm in two ways. The first statutory requirement of Proposition 65 prohibits businesses from knowingly discharging listed substances into drinking water sources, or onto land where the substances can pass into drinking water sources. The second prohibits businesses from knowingly exposing individuals to listed substances without providing a clear and reasonable warning.

An official [list of chemicals](#) covered by Proposition 65 is updated frequently and made publicly available. Chemicals are added or removed from the list based on California's analysis of current scientific information. All chemical substances listed show (1) their known risk factors, (2) a unique CAS chemical classification number, (3) the date initially listed, and, if so, whether they have been delisted.

Proposition 65 continues to be politically controversial even after 30 years. Major controversy exists because it puts the burden of proof solely on business instead of government to determine safety levels for specific toxic chemicals that the businesses are knowingly exposing members of the public to.

According to the California Environmental Protection Agency, "Proposition 65 has... increased public awareness about the adverse effects of exposures to listed chemicals.... [and] provided an incentive for manufacturers to remove listed chemicals from their products.... Although Proposition 65 has benefited Californians, it has come at a cost for companies doing business in the state."

The law has also been criticized for the large increase of "bounty hunter" lawsuits. Since 2000, Plaintiff attorneys have collected more than two-thirds of the settlement money paid by businesses accused of Proposition 65 violations.

Proposition 65's effectiveness also remains controversial, with some pointing out the lack of any studies suggesting a decrease in cancer rates in the state. More on Proposition 65 is available at [OEHHA website](#).

Rule Change: On August 30, 2017, the "[Clear and Reasonable Warnings](#)" portion of the California Code of Regulations was amended to require not only the warning requirement but also that at least one chemical covered by the warning be identified for both carcinogens and teratogens. This new requirement becomes effective on August 30, 2018.

To assist businesses impacted by Proposition 65, especially recent changes to "Clear and Reasonable Warnings" requirements, OEHHA has provided guidance in "[Questions and Answers for Businesses](#)" dated August 2017.

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