



WARNING
Chemicals Known to the State of
California to Cause Cancer, or
Birth Defects or Other Reproductive
Harm May be Present on these Premises.
Persons and articles entering this
building are subject to search
Smoking is not permitted in this building.

Successfully Navigating California Prop 65

October 5, 2018

On August 30, 2018, changes to California's Proposition 65 warning regulations went into effect for companies who do brick-and-mortar or online business in California. The changes are designed to help consumers better understand and protect themselves from chemicals that the state of California has determined cause cancer, birth defects, or other reproductive harm. The new regulations do not require warnings be placed on products. Rather, they provide guidance for businesses when they have decided to provide a warning for a given exposure to a listed chemical in terms of the label content, method of transmission, and responsibilities of manufacturer and retailers. Companies who do business in California should understand the recent changes and comply accordingly to minimize litigation risk and ensure business viability in the state.

For more information on the August 30th changes to Prop 65 warnings, [click here](#).

A strong understanding of Prop 65 is important for several reasons. First and foremost, it can help manufacturers avoid potential litigation. Manufacturers who receive Prop 65 litigation notices often reach costly settlement agreements that may even require reformulating their products. Manufacturers can also face significant pressure from retailers, some of whom may adjust their purchasing criteria to avoid selling products that require Prop 65 warning labels. Finally, manufacturers who do place warning labels on their products must be prepared to handle consumer questions about what the label means and its potential implications.

Product knowledge is the single biggest indicator of a company's success when it comes to navigating the Prop 65 landscape. Manufacturers must recognize that component suppliers are often confused about Prop 65 requirements themselves. Manufacturers should have a strategy for double-checking the ingredient or materials information that suppliers provide to properly maintain Prop 65 compliance throughout the entire product lifecycle.

Companies must also understand that the mere presence of a Prop 65-listed chemical does not always warrant a warning label. Is the chemical present at levels that would result in an exposure below the designated safe harbor level? Does a safe harbor level even exist? Will the average consumer be exposed to the chemical while using or handling the product?

Is a Safe Use Determination (SUD) a viable possibility? Manufacturers should ask themselves each of these questions as they evaluate the need for a warning label for the California market.

Sometimes, a manufacturer chooses to issue a Prop 65 warning label rather than to fully evaluate its product. While this can minimize the risk of litigation, this preemptive approach might not work for all brands. A warning label can be contrary to the image of a brand associated with health, cleanliness, or food. It may also result in intensified retailer scrutiny, as noted above. In general, it may not be the best strategy to place a Prop 65 warning label on a product if there is no scientific reason to have that warning.

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Companies who do business in California often turn to third parties to help them understand the complex Prop 65 landscape (as I shared at the September 24, 2018 Prop 65 Clearinghouse Conference in San Francisco). Exponent is unique in that it approaches Prop 65 from both a scientific and strategic basis. Exponent's team of toxicologists, materials engineers, and exposure assessors can evaluate product lines, identify high-risk products, and provide the scientific information companies need to make informed decisions and minimize the risk of litigation.

This includes but is not limited to:

- Reviewing product lines to help companies understand and focus efforts on their highest-risk chemicals and products to determine whether warning labels are needed.
- Developing safe harbor levels for chemicals that don't already have them.
- Gathering exposure data, conducting exposure simulations, and developing strategies for product SUDs.
- Providing the toxicology and scientific expertise during the Proposition 65 listing mechanism process.
- Evaluating chemical substitutions.
- Communicating exposure and health risk information to consumers.

Companies should consider Exponent for technical and scientific support to address Proposition 65 as well as other chemical product exposure matters.



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