California's Prop 65 Regulations

Jennifer M - 2018-10-12 - General

Prop 65 requires businesses with 10 or more employees selling products to anyone in California to provide warnings of exposures to listed chemicals. Since ASI distributor members sell your products in California, we are following up on recent changes to the Prop 65 regulations that may impact how your company provides these Prop 65 warnings.

Prop 65 requires that any person exposed to one or more of the more than 900 chemicals that the State of California has listed as known to cause cancer, birth defects and/or reproductive harm receive a warning regarding the exposure unless they qualify for a specific exemption. The list of chemicals contain many chemicals that are found in common household cleaners, foods, drugs etc. and may be in your products.

Under the current regulations, a warning was considered sufficient if it stated that the product contained chemicals known by the State of California to cause cancer and/or reproductive harm. Beginning on August 30, 2018 the regulations provide for new warning language that specifically identifies at least one of the chemicals creating an exposure for which the warning is being provided. This warning must also be provided for products sold on the Internet and through catalogs.

Actions for violating Prop 65 may be brought by government officials or by individuals . The civil penalty for a violation can be up to $2,500 per day, per violation. Successful plaintiffs may also recover their reasonable attorneys' fees and costs.

If your products create an exposure to one or more of the listed chemicals under Prop 65 and may be offered for sale in California, you should provide the necessary Prop 65 warnings.

The revised regulations provide guidance providing a warning, including new language that has been deemed to be clear and reasonable. The warnings set forth below for different types of exposures are taken from the regulations, and we provide them here as examples only. For more information on any and all of these Prop 65 warning, go to www.P65Warnings.ca.gov.

When the product creates exposures to a carcinogen:

> **WARNING:** This product can expose you to chemicals including [insert name of one or more chemicals], which is [are] known to the State of California to cause cancer.

When the product creates exposures to a reproductive toxicant:

> **WARNING:** This product can expose you to chemicals including [insert name of one

or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm.

When the product creates exposures to both a carcinogen and a reproductive toxicant:

WARNING: This product can expose you to chemicals including [insert name of one or more listed chemicals], which is [are] known to the State of California to cause cancer, and [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm.

When the product creates exposures to a substance listed as both a carcinogen and a reproductive toxicant (e.g., lead):

WARNING: This product can expose you to chemicals including [insert name of one or more chemicals], which is [are] known to the State of California to cause cancer and birth defects or other reproductive harm.

ASI relies on you to make sure your products comply with Prop 65. If you have determined that one or more of your products will include a Prop 65 warning, you need to identify those products and provide the information for the warning you select. To update and manage the Prop 65 regulations within ESP Updates, go to the Prop 65 section of the Basic Details tab.

Beginning on May 1, 2018, you will be able to select the appropriate warning for your products in ESP Updates which is our on-line product update system.

IMPORTANT: The information contained in this letter regarding Prop 65 is for informational purposes only and is not for the purpose of providing legal advice and should not be relied upon or used as such. You should contact your attorney to obtain advice with respect to any particular issue or problem, including the applicability of Prop 65 to your products.