

New Prop 65 Amendments: Supply Chain Compliance Policies, Proposed Changes to Regulations, Industry Trends and Chemicals of Concern

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What Every Business Needs to Know About Prop 65

Buchalter

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Agenda

- History of Prop. 65, scope, governing bodies, trends
- How to determine chemicals of concern and conduct an exposure analysis; potential changes
- How to meet the warning requirements
- Compliance and enforcement trends/alcohol

Important

Email from OEHHA

- *“The new regulations **do not** determine when a warning is required, they provide guidance for businesses when they have decided to provide a warning for a given exposure to a listed chemical!”*



Brief Primer on Proposition 65

Prop 65 – The Basics

- Safe Drinking Water and Toxic Enforcement Act
- Covers both Product and Environmental/Occupational Warnings
- Regulated by California Office of Environmental Health Hazard Assessment and Enforcement by California Attorney General
- Warnings for Exposure to over 1,000 Enumerated Chemicals
- Applies to businesses with 10 or more employees

The list of chemicals

Q

Listed Chemicals

- Choose - ▼

Products

- Choose - ▼

Places

- Choose - ▼

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

CHEMICALS KNOWN TO THE STATE TO CAUSE CANCER OR REPRODUCTIVE TOXICITY
March 19, 2021

The Safe Drinking Water and Toxic Enforcement Act of 1986 requires that the Governor revise and republish at least once per year the list of chemicals known to the State to cause cancer or reproductive toxicity. The identification number indicated in the following list is the Chemical Abstracts Service (CAS) Registry Number. No CAS number is given when several substances are presented as a single listing. The date refers to the initial appearance of the chemical on the list. For easy reference, chemicals which are shown underlined are newly added. Chemicals or endpoints shown in ~~strikeout~~ were placed on the Proposition 65 list on the date noted, and have subsequently been removed.

<u>Chemical</u>	<u>Type of Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
A-alpha-C (2-Amino-9H-pyrido [2,3-b]indole)	Cancer	26148-68-5	January 1, 1990
Abiraterone acetate	developmental, female, male	154229-18-2	April 8, 2016
Acetaldehyde	cancer	75-07-0	April 1, 1988
Acetamide	cancer	60-35-5	January 1, 1990
Acetazolamide	developmental	59-66-5	August 20, 1999
Acetochlor	cancer	34256-82-1	January 1, 1989
Acetohydroxamic acid	developmental	546-88-3	April 1, 1990
2-Acetylaminofluorene	cancer	53-96-3	July 1, 1987
Acifluorfen sodium	cancer	62476-59-9	January 1, 1990
Acrylamide	cancer	79-06-1	January 1, 1990
Acrylamide	developmental, male	79-06-1	February 25, 2011
Acrylonitrile	cancer	107-13-1	July 1, 1987
Actinomycin D	cancer	50-76-0	October 1, 1989
Actinomycin D	developmental	50-76-0	October 1, 1992
AF-2:[2-(2-furyl)-3-(5-nitro-2-furyl)]acrylamide	cancer	3688-53-7	July 1, 1987
Aflatoxins	cancer	---	January 1, 1988
Alachlor	cancer	15972-60-8	January 1, 1989
Alcoholic beverages	cancer	---	April 29, 2011

Wide range of chemicals

- Additives in pesticides;
- Household products, food, drugs, dyes, solvents, used in manufacturing and construction;
- Byproducts of chemical processes.
- Lead in surface coatings/paint and materials;
- Phthalates in soft plastics (BBP, DBP, DEHP, DIDP, DINP, DnHP);
- BPA in hard plastics.

Products



Alcoholic Beverages



Diesel Engine Exhaust



Food



Furniture Products



Passenger and Off-Highway Vehicles



Petroleum Products



Recreational Vessel



Wood Dust

Places



Amusement Parks



Dental Offices



Designated Smoking Areas



Enclosed Parking Facilities



Hotels



Restaurants



Service Stations



Vehicle Repair Facilities

Trends and Recent Notices

1/1/21-12/9/21- 3,026 1/1/20-12/9/20- 3,330	1/1/20-12/31/20- 3,514 1/1/19-12/31/19- 2,410	
Acrylamide	Crackers, chips	255 notices this year
Asbestos	Makeup-eyeshadow, bronzer and blush	15 notices this year
BPA	Everywhere! Socks, toys, sunglasses, phone cases, face shield, helmet, canned food	280 notices this year
Benzene	Sunscreen, hand sanitizer, antiperspirant	27 notices this year
Heavy metals- cadmium, arsenic	Spaghetti, cereal, seafood mix	Chromium- 40; Arsenic- 70
Lead and lead compounds	Dietary supplements, mussels	336 notices
Phthalates- DEHP, DINP, DBP	Jump rope, pliers, wallets, jewelry organizer, sandals, blood pressure monitor	DEHP- 1,019; DBP – 49; DINP- 222 notices this year

Alcohol- generally the responsibility of the manufacturer but sellers have a burden

- “**WARNING** Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects. For more information go to www.P65Warnings.ca.gov/alcohol.”
- 8*11 in. sign, 22-pt type; through delivery- no smaller than 8 point
- 8/30/18- Warning at point of sale- for off-premises (website or catalog to CA consumer); Or on a menu or list for on-premises;
- Parties subject to a prior consent judgment bound by those terms

Select Pickup Option

[+ Add Promo Code](#)

Subtotal:	\$73.97
Service Fee: ?	\$--
Estimated Tax:	\$5.73
<small>(Final taxes will be calculated at checkout)</small>	
Estimated Total:	\$79.70

[Secure Checkout](#)

WARNING: Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects. For more information go to www.P65Warnings.ca.gov/alcohol.

Total Wine order for CA resident

Alcohol-April 1, 2021

- Prop 65 warning at point of sale;
- 4/1/21-Warning prior to or contemporaneous with the delivery (on container and web/app or text/email);
- Potentially a BPA warning too for the container?
- Who has control over the packaging and point of sale documentation?
- Prior consent judgment with the State of CA indicates that the seller has a major burden!

Commonly Targeted

- Easy for bounty hunters to spot and cheap;
- Looking for non-labeled products; short form;
- Phthalates- softened plastics and vinyl materials;
- Cadmium- found in yellow, red and orange pigments;
- Lead- brass alloys;
- Easily identified in product detail pages on websites;

Practical Advice

- All parties in stream of commerce subject to Prop 65 (suppliers-manufacturers-distributors);
- Compliance or resolution is on all parties;
- Can you put the compliance on others;
- Ask upstream retailers for information;
- Provide written notice to downstream retailers;
- Indemnification agreements are key.

Practical Advice

- Where to find/put Prop 65 compliance terms:
 - Written notification forms;
 - Vendor agreements, supplier agreements
 - Agreements of Sale
 - Terms and Conditions
 - Purchase Orders
 - Warranty Agreements

Common Issues

- Do you want a label on all products exported into North America with a warning label (despite destination to CA);
- Will you permit products exported *outside* North America to be unlabeled (competition);
- Altered, obscured, removed or tampered with warnings by retailers.

Common Issues

- Bulk packaging (“not to be re-packaged for individual sale”);
- If repurposed or repackaged- the re-packer will agree to defend and indemnify the company in the event the product ends up in consumer’s hand not labeled;
- Ensure prompt notice to everyone in the stream of a Prop. 65 claim or lawsuit.

AG's Enforcement Trends

- Concern about over warning; improper warning; short form;
- Ethics of Prop. 65- pre notice letters being sent;
- Settlements with little testing;
- Consent judgments vs out of court settlements;
- Out of state sales.



Notice to Retailer

- Currently manufacturers, producers, etc. can either put a label on the product or provide the retailer with the required warnings;
- Due to confusion in supply chain, amendment to allow parties in the supply chain to provide the notice to the authorized agent to the next link in the supply chain, even if it is not the retailer;
- If no authorized agent to accept the notice, then it can go to the legal agent for service of process;
- This is not intended to circumvent the current policy of minimizing burden on retailers

Notice to Retailer

If retailer has actual knowledge- must warn

Must:

- State that a warning is required
- Include the name, description or identifying information for the product;
- Include all necessary warning materials

Business providing notice must obtain confirmation of receipt of notice, electronically or in writing. Set up an email address to track.

Notice to Retailer

- Additional notice within 90 days when a new or different chemical endpoint is included;
- If a retailer gets knowledge through a NOV, it has 5 business days to provide the noticing party with the manufacturer's information;
- Best practice – warning on product or package

What is a Prop 65 Safe Harbor Level?

- A level of EXPOSURE to a listed chemical that does not require a warning
 - no significant risk level (NSRL) for carcinogens
 - maximum allowable dose level (MADL) for chemicals that cause reproductive or developmental toxicity
- SHLs are in units of micrograms/day ($\mu\text{g}/\text{day}$)
- It is NOT a concentration or content level of a chemical (NOT ppm, mg/kg or %)

Prior Settlements/Guideposts

- There are composition limits set by prior settlements that can be used for guidance
- **Lead**
 - SHL = 0.5 $\mu\text{g}/\text{day}$
 - Settlement value = 90 ppm in paints/coatings
- **Phthalates**
 - SHL = range from 8 to 2200 $\mu\text{g}/\text{day}$
 - Default settlement value = 1,000 ppm (0.1%)

Testing options

- Content- prioritize your high risk chemicals, sample batches and determine presence, does not tell you the whole story
- Exposure – requires a toxicologist or exposure assessor to conduct and evaluate the data, present to opposing party

Safe Use Determinations (SUDs)

- Written statement by OEHHA which interprets and applies Prop. 65 to a specific set of facts in response to a request by a business or trade group;
- Is the exposure or discharge at or below the Safe Harbor Level;
- OEHHA can decline, issue a letter or use interpretive guidance
- Recent: BPA in eyewear [.53 micrograms/day]

Standard Warning

Cancer and Reproductive Harm

- ✓ Fill in for a chemical known to be a carcinogen
- ✓ Fill in for a chemical known to be a reproductive toxin
- ✓ Delete one if inapplicable



WARNING: This product can expose you to chemicals including lead and DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Current Short Form Warning Cancer and Reproductive Harm

- ✓ Fill in for a chemical known to be a carcinogen
- ✓ Fill in for a chemical known to be a reproductive toxin
- ✓ Delete one if inapplicable



WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Revised Short Form Warning

- ✓ NPRM 12/17/21-1/14/22
- ✓ List the chemical
 - ✓ May still use short form warning in catalogs or internet websites
- ✓ Max label size (from 5 square inches to 12 square inches)- cannot accommodate full-length warning
- ✓ CA Warning or California Warning verbiage added to warning
- ✓ The term “product” was removed from the term “product label”
- ✓ Takes effect one year after effective date of amendment

Revised Short Form Warning

- The word “WARNING:” or the words “CA WARNING:” or “CALIFORNIA WARNING:” in all capital letters and bold print, and:
- (A) For exposures to listed carcinogens, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.”
- (B) For exposures to listed reproductive toxicants, the words, “This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”
- (C) For exposures to both listed carcinogens and reproductive toxicants, the words, “This product can expose you to chemicals including [name of one or more 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. For more information go to www.P65Warnings.ca.gov.”

What To Expect If You Get A 60-Day Notice Of Violation

60 Day Notice

Prop 65 Enforcers:

- Attorney General
- District Attorney
- City Attorney
- Citizens, groups or “bounty hunters”

Private Party Enforcement

- 60 days notice of intent to sue
- If no enforcement- lawsuit can proceed

Statute of Limitations

- 1 year for statutory penalty violations (1 year prior to date of notice or complaint)

October 10, 2019

Evriholder Products, LLC
c/o Honeylyn Chang
1500 S. Lewis St.
Anaheim, CA 92805

T.J. Maxx of CA, LLC
c/o CT Corporation System
818 W. 7th St., Suite 930
Los Angeles, CA 90017

Re: NOTICE OF VIOLATION AGAINST EVRIHOLDER PRODUCTS, LLC AND T.J. MAXX OF CA, LLC OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6

To Whom It May Concern and to Public Prosecutors:

Ecological Alliance, LLC, a California limited liability company (“Alliance”) is a California company acting in the interest of the general public seeking to further, among other causes, the protection of the environment, toxics reduction, the promotion and improvement of human health, the improvement of workers and consumer rights, environmental education and corporate accountability. As described below, Alliance has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65” or “Act”), codified at Cal. Health & Safety Code §25249.5 *et seq.* by Evriholder Products, LLC, an Indiana corporation and T.J. Maxx of CA, LLC, a Virginia limited liability company (collectively the “Violators”). This letter serves to provide Alliance’s notification of these violations to the Violators and elected prosecutors. Pursuant to §25249.7(d) of the statute, Alliance intends to bring an enforcement action sixty (60) days or more after effective service of this notice unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

The products which are causing an exposure without a warning in violation of Proposition 65, are telescopic dusters, including but not limited to Item #150606/UPC #714415263362 (“Products”) manufactured/distributed by Evriholder Products, LLC and offered for sale by retailers, including T.J. Maxx of CA, LLC, to California consumers.

A copy of the Proposition 65 summary prepared by the Office of Environmental Health Hazard Assessment is attached, to the copy of this letter served to the Violators.

Certificate of Merit

- Has been in effect since 2001
- Applies to private enforcers
- Attest that enforcer has consulted with someone with relevant expertise and there is a reasonable and meritorious basis for action
- Must attach “factual information” to back up certificate of merit-filed with Cal. AG

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

Re: Ecological Alliance, LLC's Notice of Proposition 65 Violations by Evriholder Products, LLC and T.J. Maxx of CA, LLC

I, Vineet Dubey, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience and have assembled evidence attached to the copy for the California Attorney General as Exhibit 1 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.

4. Based on the information obtained and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2).

What do I do next?

- Consult with defense attorney / contact noticing party
- Insurance or indemnity
- Collect testing and data from plaintiff
- Collect internal testing and sales data
- Consider lab testing and exposure assessment
- Consider settlement / consent judgment
- Stop selling product / instruct retailers
- Reformulate or warn

Settlements vs. Consent Judgment

Settlement

- Settlement agreement must be submitted to AG's office
- Release on own behalf-not public
- Cannot prevent future suits
- Publicly available

Court approval

- If filed in court, the court must approve the settlement – binding
- Served on AG
- Can prevent future suits
- Violation = contempt
- Publicly available

Penalties and Fines

- \$2,500 per day, per violation
- Injunctive relief
- Public prosecutor-unfair business practice claim = more penalties!
- Legal fees
- Attorney's fees/costs, penalties to noticing party and OEHHA
- 2019- 898 settlements
- \$29,810,351- total settlement payments
- \$22,676,093- Attorneys' fees

California Prop 65 : Supply Chain Compliance Policies and Industry Trends



Presented by
Michelle Corrigan Erikson

December 14, 2021

California Prop 65

Practical Tips for Supply Chain Agreements



California Prop 65

- How do you handle compliance throughout the supply chain?
 - Vendor/supplier agreements
 - Written notices to upstream suppliers of obligations
 - Written notices to downstream customers of Prop 65 chemical identification and warnings

California Prop 65

- How you handle compliance will depend on:
 - Where you fit in the supply chain
 - The product at issue
 - Whether Prop 65 chemicals are in the product *to the extent* consumers could be exposed to them

What determines potential consumer exposure?

- Cal. Code of Regulation 25600.1
 - Prop 65 applies to any products (including component parts) that are **"produced, distributed or sold for the personal use, consumption or enjoyment of a consumer."**
 - Section 25600.1 definition of "consumer product"
 - If a consumer can come into contact with the product (*not just by touch* but also by inhalation or ingestion), Prop 65 probably applies.

What determines potential consumer exposure?

- **EXCEPTION:**

- Does the level of exposure to the chemicals in the product fall below Safe Harbor limits (SHL) established by OEHHA?
 - No significant risk level (NSRL)
 - Maximum allowable dose level (MADL)
- If within SHL, no potential exposure and no warning required
- If above SHL, Prop 65 warning likely required

California Prop 65 Exemption:

- If a company employs fewer than 10 people, it is not subject to the requirements of Prop 65.
 - An exempt company may be exempt from lawsuits by consumers for failing to comply with Prop 65 requirements.
 - What is an “employee” for this purpose?
 - May include officers and directors, partners, or even independent contractors of the company
 - Check Labor regulations and California Corporations Code section 25102

California Prop 65 Exemption:

- **HOWEVER**, if an exempt company sells products to a retailer or distributor who subsequently sells consumer products into California, that retailer or distributor may not be exempt (if they have 10 or more employees)
 - The retailer or distributor may require their manufacturers/upstream suppliers to provide an applicable Prop 65 warning on their products, or at least may defer to the manufacturer/supplier (even if exempt) to provide all warning information about the product required under Prop 65.
 - Check you vendor and supply chain agreements for such requirements, i.e. indemnity clauses.

Who determines the potential exposure?

Likely depends on where you fit in the supply chain

- Scenarios:

- Manufacturer ↔ CA Retailer
- Material Suppliers ↔ Manufacturer
- Manufacturer ↔ Distributor

Scenario #1: Manufacturer ↔ CA Retailer

- **Manufacturer does all of its own testing on the product before it is sold to a retailer in California**
 - Goes through Third Party Lab for Prop 65 testing, or
 - Does testing in-house
- **Manufacturer determines that the product contains one or more chemicals listed by OEHHA as causing cancer and/or reproductive harm**
 - Place the proper Prop 65 directly on the product or its packaging, OR
 - Provide written notice to the Authorized Agent for the Retailer
- ***Practical Tip*** - Most retailers won't agree to assume this responsibility from a manufacturer who likely has a better understanding of what chemicals are in the product. So manufacturers - Be prepared to WARN!
 - This applies even if the manufacturer has less than 10 employees.

Scenario #2: Material Suppliers ↔ Manufacturer or Assembler of Product

- **Manufacturer doesn't do Prop 65 testing on the product, but rather relies on its material suppliers to do the testing**
 - This often arises when a manufacturer makes thousands of products and cannot possibly test each one for 900+ chemicals listed by the OEHHA
- **Manufacturer should send written notice to suppliers asking for identification of any Prop 65 chemicals that may be in the materials:**
 - "In order to ensure that [Manufacturer's] products are in compliance with Prop 65, [Manufacturer] requires its suppliers and vendors to identify any of the products or parts sold to [Manufacturer] that contain any of the chemicals listed by the OEHHA in excess of the safe harbor limits "

Scenario #2: Material Suppliers Manufacturer or Assembler of Product

- **Manufacturer's written notice to Material Suppliers continued...**
- Have the Material Suppliers inform you what specific Prop 65 chemicals are above the SHL in the materials they sell you
- Get an acknowledgement from the Material Suppliers following receipt of the notice
 - Or indicate in the notice that if they don't respond with the requested information, you will understand that none of the materials they sell you contain Prop 65 chemicals above the SHL
- Have the Material Suppliers provide you the Prop 65 warning labels they affix to the materials they sell to you
 - Or indicate that if they don't give you such a warning label for any of the materials they sell you, you will understand that their materials do not require a warning

Scenario #2: Material Suppliers ↔ Manufacturer or Assembler of Product

• **Manufacturer vs. Assembler**

- It can be reasonably assumed that the more involvement you have in the manufacturing process, the more likely people in the supply chain of the product will assume you will do Prop 65 testing
 - If all you do is assemble materials purchased elsewhere, you are less likely to conduct full-scale testing on the materials you assemble
 - If you are buying materials that are absorbed into the manufacturing process such that it is difficult to distinguish the separate materials that went into the product, you should consider doing more full-scale Prop 65 testing

Scenario #2: Material Suppliers Manufacturer or Assembler of Product

• Material Supplier's Duty

- If you know your material is going to be used in products that will be sold into California for use by consumers....
 - Familiarize yourself with the Prop 65 OEHHA's list of chemicals
 - Perform Prop 65 testing to determine the amount of chemicals in materials, if it is likely that one or more of these chemicals will be in your material
 - Get a quantification of chemicals in material, and determine exposure mechanism
- If your material contains a Prop 65 chemical, send a written notice to your customer (Manufacturer in this scenario):
 - "You are receiving this Notice because one or more of the products sold to you by **[your company name]** may contain one or more chemicals that are currently on the OEHAA list. Therefore, if you incorporate these products into any products you sell in California, or if you repackage and/or sell any of these products in bulk in California, you should mark your product [with the proper Prop 65 warning] ... "

Scenario #2: Material Suppliers ↔ Manufacturer or Assembler of Product

- **Material Supplier's Duty continued ...**
 - If you don't know whether your customers will put your materials into products sold in California, there is less expectation that you will do Prop 65 testing
 - However, ask your customers if the materials will be used in products sold in California for consumer use
 - Heed any written notice received from your customer (Manufacturer in this scenario) about Prop 65 compliance, as all of you in the chain of sale are subject to Prop 65
 - The better those in the supply chain communicate, the easier Prop 65 compliance will be!

Scenario #3: Manufacturer ↔ Distributor

- **Distributor who has little to no physical contact with the product, but rather acts simply as a middleman, has less expectation to perform Prop 65 testing**
 - Go to your Manufacturer or Upstream Distributor to seek information on Prop 65 chemicals contained in the product, as discussed in Scenario #2
- **Manufacturer has reason to believe that one or more Prop 65 chemicals are contained in the product**
 - Put a proper Prop 65 warning on the product or its packaging, as discussed in Scenario #1

Scenario #3: Manufacturer ↔ Distributor

• Manufacturer's Duty

- The distributor in this scenario is not a retailer but rather a middleman, so this is different than Scenario #1
- Here, the distributor also has a duty to know whether the products it distributes contain Prop 65 chemicals
- You may send a written notice to the distributor that the product contains one or more Prop 65 chemicals
- **Practical Tip** – Most distributors will take the position that the Manufacturer is in a better position to place the Prop 65 warning on the product or its packaging. So don't expect most distributors to agree to assume this duty.

Methods for providing Notice

- Notice requirements can and should be included in your Agreements with all upstream suppliers and downstream customers
 - **Supply/Vendor Agreements** – Manufacturers should require their material suppliers to notify them of any Prop 65 chemicals contained in the materials they sell to Manufacturer above SHL
 - **Distribution Agreements** – If you are a Distributor, seek agreement with Manufacturer that Manufacturer is responsible for the content of any warnings or instructions that should accompany the product in compliance with Prop 65
 - Distributors should do this even if the manufacturer has less than 10 employees.
 - However, if the Distributor is in a position to place warnings on the product or packaging, or if they repackage or sell Manufacturer's items in bulk, then Manufacturer should try to place the obligation on Distributor to warn.

Sample Prop 65 Compliance Term in Distribution Agreements

- **RESPONSIBILITY FOR PRODUCT WARNINGS AND PROP 65 COMPLIANCE.** [Company A] assumes all responsibility for any warnings and/or instructions that should accompany the final product sold to end users, including but not limited to those warnings and/or instructions required by federal, state, or local law. The parties expressly agree that the [Company A], not [Company B], is responsible for the content of any warnings or instructions that should accompany the product in compliance with California Prop 65 requirements in effect at the time of these Terms and Conditions...
 - You may find similar language in supply chain agreements even if Company A has less than 10 employees.

Where to put Prop 65 Compliance Terms?

- Written Notification Forms
- Vendor Agreements
- Supplier Agreements
- Agreements of Sale
- Terms and Conditions
- Purchase Orders
- Warranty Agreements
- **It is better to have both parties sign off on the agreement, but that is not always practical. When that happens, confirm receipt from the entity from whom you are seeking information or compliance.**

Any Questions?

Thank You



Michelle Corrigan Erikson

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