

UPDATES TO CALIFORNIA PROPOSITION 65 GUIDELINES- UPDATED JAN 2025

Compliance with California's Proposition 65 has been a longstanding issue for fishing tackle manufacturers, distributors and retailers, and 2025 regulatory changes will require further action by industry members. The American Sportfishing Association is dedicated to helping keep our members informed on relevant regulations affecting the industry and is providing these guidelines to assist our members in understanding and responding to changes in Proposition 65 regulations.

DISCLAIMER

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OVERVIEW

Since it became law in November of 1986, Proposition 65 has required any person (including companies) doing business in California to "provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm." The state's Office of Environmental Health Hazard Assessment (OEHHA) maintains a list¹ of approximately 900 chemicals and chemical families that are subject to the provisions of Proposition 65. While OEHHA has developed safe harbor exposure limits for some listed chemicals, many chemicals have no listed limits. However, businesses can use a disclosure label to warn the consumer to avoid liability.

California residents may enforce Proposition 65 as long as the putative plaintiff first gives written notice to the alleged violator and the California Attorney General, and the Attorney General fails to commence a civil action within 60 days. Plaintiffs must also execute a "certificate of merit" stating that they have consulted with experts and have a reasonable belief that their claims have merit. Under Proposition 65, the Attorney General cannot stop

¹ Chemicals subject to Proposition 65 warning requirements are listed at <http://oehha.ca.gov/media/downloads/proposition-65//p65single10212016.pdf>

a private plaintiff from filing a lawsuit, and law firms have specialized in filing Proposition 65 cases against a variety of consumer product manufacturers and retailers.

Businesses selling in California need to be aware of recent changes to short-form warning language as well as placement requirements for warning labels attached to products.

NEW SHORT FORM WARNING REQUIREMENTS

EFFECTIVE JANUARY 1, 2025

As mentioned above, Proposition 65 offers a complete liability defense for businesses that provide effective warning labels on their products. Nearly all Proposition 65 disputes entangling manufacturers and retailers concern whether a warning was required and the adequacy of such safe harbor warnings. Before California's new regulations, an adequate short-form warning could be stated generally with reference to one of two public health endpoints (cancer or reproductive harm). For example, a short form warning for a product that may cause significant exposure to a carcinogen could read:

 **WARNING:** Cancer -- www.P65Warnings.ca.gov.

Such nonspecific warning language will become obsolete on January 1, 2028. Products manufactured on or after that date and sold in California must carry more specific short warning labels that identify at least one specific chemical for a potential public health risk (cancer or reproductive harm). This new short-form warning format is not required for products manufactured and labeled before January 1, 2028. However, ASA strongly advises that manufacturers and importers incorporate the new short-form warning language as soon as practicable to minimize the risk of future disputes.

RESPONSIBILITIES OF MANUFACTURERS AND RETAILERS

Under Proposition 65, the manufacturer, producer, packager, importer, supplier or distributor has the primary responsibility for providing a compliant product warning.

However, a retailer can still be held responsible for failure to provide a required warning where the retailer has:

- a. knowingly introduced a listed chemical into the product, or knowingly caused a listed chemical to be created in the product;
- b. covered, obscured or altered a warning label;
- c. received a warning notice and materials from the manufacturer or supplier, but sold the product on the internet without supplying the warning after a period of 60 days; or

- d. actual knowledge of the potential consumer product exposure requiring the warning, and there is no manufacturer, producer, packager, importer, supplier or distributor of the product who is subject to Proposition 65.

Moreover, a retailer selling a product under its own brand or trademark bears primary responsibility for compliance.

PLACEMENT OF WARNINGS

California has provided some guidance on the placement of warnings. In choosing where to place warnings, manufacturers (or retailers, where appropriate) should ensure that warning placement unambiguously provides notice to consumers prior to or at the time of purchase.

There is no change to long-form warning regulations

As noted above, the new regulation does not affect long-form warnings, the current warning still applies to all goods manufactured and sold in California.

An effective warning must be provided in one or more of the following places:

1. On a posted sign, shelf tag or shelf sign, for the consumer product, at each point of display of the product.
2. A product label.
3. On the product.


The forgoing requirements are primarily tailored to “brick and mortar” sales. Online sales present a somewhat different situation because the purchase is made remote from the physical product, its packaging or physical display.

For products sold over the internet, manufacturers and retailers will need to prominently display either the full text of the applicable warning or a hyperlink to the full text with the word “WARNING” on the product display page. A physical disclosure is also required through a product label or on the product.


THE CURRENT LONG-FORM WARNING

The new regulation does not affect long-form warnings. Required full warnings follow the 2018 regulation.


Long-form warnings for exposures to listed carcinogens must contain the words:

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** 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.

Long-form warnings for exposures to listed reproductive toxicants must contain the words:

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** 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.

Long-form warnings for exposure to both listed carcinogen and listed reproductive toxicants must contain the words:

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** 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.

Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information, such as directions or ingredient list, in a language other than English, the warning must also be provided in that language in addition to English.

UPDATED ON PRODUCT SHORT-FORM WARNINGS

Companies should switch to the new short-form warning language as soon as possible.

While new warnings are not required for products manufactured prior to January 1, 2028, Proposition 65 bounty hunters are likely to move against products with “old” warnings once the requirements for new warning language takes effect. A critical feature of the new warning is the need to identify at least one listed chemical contained in the product along with the specified public health endpoints.

Therefore, brands may avoid aggravation and potential liability by affixing new warning labels to inventory products before January 1, 2028. Short-form warnings must be written in at least 6-point font and be no smaller than the largest font size used for other consumer information provided on the product.

The following short form warning labels styles are available until December 31, 2027.

For exposure to listed carcinogens:

 **WARNING:** Cancer -- www.P65Warnings.ca.gov .

For exposure to listed reproductive toxicants:

 **WARNING:** Reproductive Harm -- www.P65Warnings.ca.gov.

For exposure to both listed carcinogens and reproductive toxicants:

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


After January 1, 2028, businesses must switch to the following short-form label language.


For exposure to listed carcinogens:

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Cancer risk from exposure to [name of chemical]. See www.P65Warnings.ca.gov; or


 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Can expose you to [name of chemical], a carcinogen. See www.P65Warnings.ca.gov.


For exposure to listed reproductive toxicants:

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Risk of reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov; or

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Can expose you to [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov.

For exposure to both listed carcinogens and reproductive toxicants:

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Risk of cancer from exposure to [name of chemical] and reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov; or

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Can expose you to [name of chemical], a carcinogen, and [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov.


EXAMPLES

Manufacturer or importer

To apply the correct warnings, you need to know: (1) which listed chemicals your product or packaging contains; and (2) whether those chemicals present a risk of reproductive toxicity or cancer or both.

Reproductive Harm: Let's say that a product contains chemicals which the State of California only requires a warning for reproductive exposure and one of those chemicals, by way of example, is di-isodecyl phthalate (DIDP).

A long-form warning would read:


 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** This product can expose you to chemicals including di-isodecyl phthalate which are known to the State of California to cause reproductive harm. For more information go to www.P65Warnings.ca.gov.

A short-form product warning under the new regulations would read:


 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Risk of Reproductive Harm from exposure to di-isodecyl phthalate. See www.P65Warnings.ca.gov.

Carcinogenic Harm: If a product only contains chemicals which the State of California requires a warning for carcinogenic exposure then warnings only need to be provided for cancer risk. For example, see below for cancer-only warnings related to exposure to di-isononyl phthalate (DINP).

A long-form warning would read:


 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** This product can expose you to chemicals including di-isononyl phthalate which are known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

A short-form product warning under the new regulations would read:


 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Cancer risk from exposure to di-isononyl phthalate. See www.P65Warnings.ca.gov.

Reproductive and Carcinogenic Harm: If a product contains chemicals which the State of California requires warnings for both reproductive and carcinogenic exposure, then the warning must identify at least one chemical for each harm unless one chemical can cause both types of exposure. For example, the following labels could apply a product contains both di-isodecyl phthalate (DIDP), a reproductive toxicant only, and di-isononyl phthalate (DINP), a cancer toxicant only.

A long-form warning would read:


 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** This product can expose you to chemicals including di-isononyl phthalate, which is known to the State of California to cause cancer, and di-isodecyl phthalate, which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov.

A short-form product warning under the new regulations would read:


 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Risk of cancer from exposure to di-isononyl phthalate and reproductive harm from exposure to di-isodecyl phthalate. See www.P65Warnings.ca.gov.

Some chemicals, such as di(2-ethylhexyl)phthalate (DEHP), are both a reproductive and cancer toxicant. A product containing such “dual-toxicant” chemicals need not identify other chemicals.

A long-form warning would read:

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** This product can expose you to chemicals including di(2-ethylhexyl)phthalate, which is 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.

A short-form product warning under the new regulations would read:

 **[WARNING: or CA WARNING: or CALIFORNIA WARNING:]** Risk of Cancer and Reproductive Harm from exposure to di(2-ethylhexyl)phthalate. See www.P65Warnings.ca.gov.

Finally, ASA strongly advises that manufacturers and importers should incorporate new warning language as soon as practicable to minimize the risk of future disputes. Goods manufactured on or after the January 1, 2028 effective date as well as online or catalog offers for sale as of the effective date must contain the new abbreviated warning language.

Retailers:

Even though the new regulations present a liability safe harbor for retailers under certain circumstances, retailers should keep the following in mind:

- Retailers bear primary responsibility if they are the importer or if the goods are sold under the retailer's brand.
- Retailers are responsible if they cover, obscure or alter a warning or if they receive a warning notice and materials from the manufacturer or supplier, but sell the product without supplying the warning.
- Retailers are responsible if they have actual knowledge of the potential consumer product exposure requiring the warning, and there is no manufacturer, producer, packager, importer, supplier or distributor of the product who is subject to Proposition 65.
- For internet purchases made before January 1, 2028, retailers have 60 calendar days after receiving the updated abbreviated warning to post or display the new abbreviated warning.

CONCLUSION

Proposition 65 regulations are complex and the risks of liability are significant. The purpose of this alert is to make ASA members aware of these issues and to encourage members to consult the legal counsel of their choice. This alert is not legal advice, not a compliance guide and not a comprehensive review of Proposition 65 requirements.