



California's Proposition 65



CALIFORNIA'S SAFE DRINKING WATER and Toxic Enforcement Act of 1986, better known as "Proposition 65," requires businesses that sell consumer products—including food and beverages—to notify Californians about certain chemicals found in those products.

WHO IS REQUIRED TO COMPLY?

Virtually any food and beverage company that conducts business in California needs to comply with Proposition 65. Proposition 65 imposes primary responsibility for providing warnings on product manufacturers, producers, packagers, importers, suppliers, or distributors; however, retailers will remain responsible for their private-label products, where upstream sellers are not available, and if they have actual knowledge of potential exposure to a Proposition 65 chemical.

WHAT CHEMICALS AND FOOD PRODUCTS PRESENT PROPOSITION 65 RISKS?

There are over 900 chemicals subject to Proposition 65, but enforcers have recently focused on the following chemicals found in foods:

LEAD: ginger, seaweed, spices, chocolate, teas, juices, and shellfish

CADMIUM: seaweed, spices, chocolate, and shellfish

ACRYLAMIDE: potato- and vegetable-based snacks and foods, coffee, cookies, crackers, prune juice, olives, and breads

ARSENIC: brown rice syrup, sardines, and olives

WHAT WARNINGS ARE REQUIRED?

As of August 30, 2018, businesses may comply with Proposition 65 by providing a warning on or with any consumer product that may contain one of the substances on the Proposition 65 list. As an example, a product containing lead would be required to bear the following warning:

WARNING: This product can expose you to chemicals, including lead, which are known to the State of California to cause cancer or birth defects or other reproductive harm. For more information, go to www.p65Warnings.ca.gov.

Alternatively, businesses may use a short-form warning on the product label, such as the example below. Note that the short-form warning must be in a type size no smaller than the largest type size used for other consumer information on the product.

WARNING: Cancer and Reproductive Harm - www.p65Warnings.ca.gov.

Warnings also must accompany any online or catalog sales.

PERKINS COIE'S EXPERIENCE

Perkins Coie helps many food and beverage industry clients manage risks in this constantly changing area. We maintain regular contact with key industry experts to understand emerging science and potential defenses. In addition, we monitor and track Proposition 65 filings daily to stay abreast of emerging trends. For additional information, please go to PerkinsCoie.com/Prop65.

PRE-SUIT NOTICES FILED WITH CALIFORNIA ATTORNEY GENERAL, 2021

