



AMCA INTERNATIONAL PROPOSITION 65 FREQUENTLY ASKED QUESTIONS

AMCA members manufacture, distribute and sell a broad scope of air movement and air control products. A number of these products are sold into the State of California and contain chemicals known to cause cancer, birth defects or other reproductive harm, and may therefore require a warning under the California Safe Drinking Water and Enforcement Act, otherwise known as Proposition 65. This FAQ will provide a summary of Proposition 65's requirements and address a number of issues pertinent to manufacturers of air movement and air control products.

1. What is Proposition 65?

Proposition 65 requires businesses, regardless of where located, to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm. These chemicals can be found in products that Californians purchase, whether in their homes or workplaces, or that are released into the environment. Proposition 65 requires the State to publish a list of chemicals known to cause cancer, birth defects or other reproductive harm. The list, which is updated annually, presently contains over 1,000 chemicals.

2. Who administers Proposition 65?

The California Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program. In this role, OEHHA determines whether chemicals meet the scientific and legal requirements for placement on the Proposition 65 list. OEHHA also issues regulations that govern warnings and other aspects of Proposition 65.

3. What chemicals are on the Proposition 65 list?

The list contains a wide range of naturally occurring and synthetic chemicals that include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. Listed chemicals also include those that may be used in manufacturing and construction, or that may be byproducts of chemical processes.

Of particular note to AMCA members, listed chemicals include: Bitumen (black shaft coating), Cadmium (plated fasteners), Carbon Black (V-belts, some colors of powder coating),

Chromium (stainless steel and plated fasteners), Crystalline Silica (some colors of powder coating), DEHP (electrical wire insulation), Lead, Nickel (stainless steel and plated fasteners), Styrene (isolators, mountings, belts), Titanium Dioxide (some colors of powder coating), and Wood Dust (crating).

The Proposition 65 list can be found at: <https://oehha.ca.gov/proposition-65-list>.

4. What does the warning requirement mean for manufacturers of air movement and air control products?

The lynchpin of Proposition 65 is a warning label (including a triangle and exclamation mark) and the associated text that includes the specific chemical(s) that triggered the warning. The manufacturer of the product bears full responsibility for (a) determining whether the product is subject to Proposition 65 and (b) distributing the warning label and text to everyone in the distribution chain. Effective August 30, 2018, warning labels must comply with the following requirements in order to fall within the Safe Harbor language specified by the OEHHA:

- Include the word **“WARNING”** in all capital letters and bold print
- List at least one chemical contained in the product
- Include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where there is no other yellow content on the product or package, the triangle can be printed in black and white.
- The font size for the warning must be in a type size no smaller than the largest type size used for other consumer information on the product, and no smaller than size 6-point type.
- The warning text must notify a consumer if the product contains carcinogens, reproductive toxins, or both.
- If the product is sold over the internet, including through online portals for contractors, the warning must be present on the product display webpage prior to purchase.
- If the product is sold through a catalog, the warning must be provided in the section of the catalog associated with the product.
- If non-English consumer information is printed on the product, the warning must also be printed in the same language.

5. Are you required to use the safe harbor methods and content described above?

Businesses are not required to use the safe harbor methods and content set out in response to question No. 4. However, the safe harbor methods and content are deemed by OEHHA to be clear and reasonable, and provide a “safe harbor” for purposes of defending against enforcement

actions. While a business can elect to use other warning methods and content, it may have to defend such warnings content in legal proceedings if it were challenged by a public or private enforcer as not being clear and reasonable. AMCA highly recommends to its members that they use the safe harbor methods and content.

6. When can a manufacturer use a short-form warning?

The on-product or “short-form” warning allows a product manufacturer to use the truncated short-form warning content on a product label that is affixed to the product. The short-form option was included in the regulations by OEHHA in response to industry concerns about the limited amount of space available on product labels. The short-form warning may also be affixed to a product’s immediate container or wrapper. Notably, it is imperative that the short-form warning label be placed in a location or manner to ensure that the consumer(s) receive the warning prior to exposure.

7. If you use a short-form warning on a product, can the same warning also be used for on-line sales?

Yes. If a manufacturer uses a short-form warning on the product, it may use the same content for the warning on its website and/or in a product catalog.

8. Can a manufacturer provide the warning on packaging for products where the consumer would not typically be expected to see the packaging under normal conditions of purchase or use?

The Proposition 65 regulations require the product manufacturer in this scenario to either (a) label the product with the required warning or (b) provide a warning notice and materials to the packager, importer, supplier or distributor via their authorized agent. If the latter option is chosen, the manufacturer must take appropriate steps to ensure the warning is passed along to the retailer and ultimately the consumer such as through a contractual requirement entered into with others in the chain of commerce.

9. Can a manufacturer use an owner’s manual to provide a safe harbor warning?

No. The OEHHA has stated that a standalone warning in an owner’s manual will not suffice for purposes of providing a safe harbor warning sufficient to comply with Proposition 65.

10. Can the Proposition 65 warning content be combined or incorporated into existing product warnings?

No. The OEHHA requires that Proposition 65 warning content be separate and distinguishable from other warnings on the product such as existing UL, ANSI or OSHA warnings.

11. If a manufacturer places a warning directly on a product, must it also include the warning on the packaging or wrapper?

Under the Proposition 65 regulations, a warning printed or affixed directly on a product suffices as a safe harbor warning, assuming the warning meets all the requirements set forth above.

12. What is the responsibility of the manufacturer for placing warnings where it has little to no control over how information is ultimately conveyed to the consumer such as on retail websites, sales floors or new construction?

The manufacturer's responsibility under the Proposition 65 regulations is to affix a label on the product with a warning and/or to provide written notice and warning materials to the authorized agent for the retail seller. Once the manufacturer has complied with its obligations, the retail seller is responsible for providing the warnings.

13. What is the responsibility of the manufacturer if the retail seller removes, obscures or alters the label?

Once the manufacturer has complied with its obligations with respect to the warnings, the retail seller assumes responsibility for making sure the warning is available and conveyed to the consumer. In the event that a retail seller removes, covers, obscures or alters a warning label that has been affixed to the product, the retail seller will be the responsible party.

14. Can a label be removable by the consumer?

Yes. There is no requirement in the Proposition 65 regulations that the warning label be permanently affixed to the product. The consumer is free to remove the warning.