



Fox Rothschild LLP
ATTORNEYS AT LAW

California's Proposition 65 Consumer Product Warning Law IWPA World of Wood April 4, 2019

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TOPICS

- **Brief Summary of the Law**
- **Which Parties/Products in the Supply Chain are Obligated to Comply?**
- **Compliance**
- **2018 Amended Warning Rules**
- **Overlap with OSHA Requirements**
- **Agency Resources for Businesses**



Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”): Keep in Mind:



- **No Clear Answers (with two exceptions)**
- **Confusing**
- **Unreasonable**
- **Illogical**
- **Unconstitutional**
- **The Positives**



*“I’m not crazy,
my
reality is
just different from yours.”*



**“Those who wish to do
business in **California**
remain well cautioned to
remember Alice’s discussion
with the Cheshire Cat:**

‘But I don't want to go among mad people,’ Alice remarked. ‘Oh, you can't help that,’ said the Cat, ‘we're all mad here. I'm mad. You're mad.’ ‘How do you know I'm mad?’ said Alice. ‘You must be,’ said the Cat, ‘or you wouldn't have come here.’ ”*

*Jeffrey B. Margulies, “Court Ruling Reveals Absurdity of California’s Proposition 65,” 17 Legal Backgrounder No. 8 (2002), Washington Legal Foundation (*quoting* Lewis Carroll, [**Alice’s Adventures in Wonderland**](#)).

SUPPLY CHAIN OBLIGATIONS & LIABILITY

Which Parties, Which Products?



High Enforcement Risk



810 Listed Chemicals/By-Products/Misc. Substances Known to the State of California to Cause Cancer or Reproductive Toxicity

High Enforcement Risk:

- **Phthalates (DEHP, DINP . . .)**
- **Lead**
- **Acrylamide**
- **Cocamide DEA**
- **Cadmium**
- **Carbon Monoxide**
- **BPA**
- **Benzophenone**
- **Arsenic**
- **Flame Retardants**
- **Mercury**



Wood Products: Lower Risk

Wood Dust, Formaldehyde, VOCs, Phthalates (plasticizers)



COMPLIANCE STEPS

- **REVIEW MATERIALS LISTS FROM SUPPLIERS**
- **SEARCH PROPOSITION 65 LIST**
- **EXEMPT FROM WARNING?**
- **WARN?**
- **REMOVE OR REFORMULATE?**
- **WORK WITH AND EDUCATE YOUR SUPPLIERS & CUSTOMERS**
- **SUPPLIER DECLARATIONS**



EXEMPT FROM WARNINGS?

- **“Safe Harbor” Exposure Levels: Not Helpful**
 - Quantified as micrograms per day ($\mu\text{g}/\text{day}$) “exposure,” not content level
- **Acceptable Content Levels**
- **Location of Chemical in Product**
- **Inaccessible Component/Infrequent Contact**

AMENDED WARNING RULES 2018


The Law Did NOT Change, Only How and Where to Warn
SAME PARTIES OBLIGATED/LIABLE

OLD

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.



AMENDED WARNING RULES

 **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.

Or


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

- **Now Required on Internet and in Catalogues (in addition to product warning)**



AMENDED SPECIFIC WARNINGS

■ WOOD DUST:

 **WARNING:** Drilling, sawing, sanding or machining wood products can expose you to wood dust, a substance known to the State of California to cause cancer. Avoid inhaling wood dust or use a dust mask or other safeguards for personal protection. For more information go to www.P65Warnings.ca.gov/wood.

- **FURNITURE PRODUCTS:** See warning example:
<https://www.p65warnings.ca.gov/warning-translations-businesses/furniture-product-exposure-warnings>

OCCUPATIONAL-USE PRODUCTS & OSHA OVERLAP

**Out-of-State Companies Exempt
OSHA Always Preempts Proposition 65**



Proposition 65 Website

RESOURCES

- **List of Chemicals (always search most recent list)**
 - <https://oehha.ca.gov/proposition-65/proposition-65-list>
- <https://www.p65warnings.ca.gov/sample-warnings-and-translations-businesses>
- <https://www.p65warnings.ca.gov/businesses>
- <https://www.p65warnings.ca.gov/fact-sheets/wood-dust>
- <https://www.p65warnings.ca.gov/fact-sheets/formaldehyde>
- <https://www.p65warnings.ca.gov/fact-sheets/formaldehyde-furniture-products>

CA Attorney General Proposition 65 Website

- <https://oag.ca.gov/prop65>

Questions?

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