

CALIFORNIA PROPOSITION 65 PRACTICE



Every manufacturer and retailer that introduces products into California is potentially responsible for compliance with California's Proposition 65. Proposition 65, enacted in November 1986, contains an ever-growing list of more than 800 chemicals deemed by the State to pose a risk of cancer or reproductive harm to state residents. From ensuring fair standards when a chemical is listed to defending enforcement actions alleging violations, our Proposition 65 team's goal is simple: to efficiently minimize the cost and risk that Proposition 65 poses to your business. Our national team offers expertise across the Proposition 65 spectrum:

COMPLIANCE – TESTING, WARRANTIES AND WARNINGS

- Perhaps the greatest challenge that Proposition 65 poses to businesses is ongoing compliance because the regulatory and enforcement landscapes are constantly evolving. We partner with our clients to simplify that process by keeping them updated as new products are added to the Proposition 65 list, informing them of changes in the regulations and labelling requirements, and keeping them apprised of new enforcement trends. For those clients who are new to the marketplace or are unsure of their existing Proposition 65 compliance obligations, we can perform compliance audits to make sure their testing protocols reflect the latest requirements and safe harbor levels, and work with them to implement practical and effective compliance protocols. For those clients that have decided to use warning labels either on their products, at the point of sale, on their website, or elsewhere in their retail space, we help ensure that the warnings contain the required language and are in compliant locations. Finally, we help businesses entering into either upstream or downstream supply contracts to negotiate the allocation of Proposition 65 risk, and help clients ensure that their contracts contain appropriate indemnity and warranty provisions. In short, we do everything that we can to help businesses get in compliance with Proposition 65 and stay that way.

ENFORCEMENT – 60-DAY NOTICES AND PROPOSITION 65 LITIGATION

- The private enforcement bar continues to actively “litigate to regulate,” seeking to add new chemicals to the Prop 65 list, and to apply the Prop 65 warning requirements to new product families. As a result, we have extensive experience defending retailers, distributors, and manufacturers in Proposition 65 enforcement actions, involving a wide range of products. From the time that a business receives a 60-day notice of violation, we work through the process of evaluating the risk, determining whether a product recall, reformulation or warning label is necessary, and negotiating either a dismissal or reasonable settlement with the enforcement group.

CHEMICAL LISTING

- From the inception of Proposition 65 we have helped our clients and the California business community work with OEHHA to implement “significant risk” thresholds that require a showing of harm before a chemical can be added to the list of regulated chemicals as a carcinogen.
- We have managed the chemical listing process for specific chemicals by working with regulators to establish scientifically-based safe harbor thresholds. The listing process often involves in-depth public comment periods to establish and rebut what the appropriate safe harbor level should be, which in turn can mean the difference between Proposition 65 compliance or non-compliance for a company's flagship products depending on the concentration of the proposed chemical.

Bryan Cave Leighton Paisner Key Contacts



Marcy J. Bergman
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Counseled retailers and consumer products manufacturers on Proposition 65 compliance for over 15 years. Ms. Bergman regularly works with clients including retailers and household brands to proactively assess Prop 65 liability, tailor testing and/or compliance policies, and educate vendors regarding toxic chemical exposure in consumer products.



Megan Irwin
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Currently representing a client in one of the most high stakes and high profile Prop. 65 cases to date regarding whether Prop. 65 warnings are required for coffee (*Council for Education and Research on Toxics v. Starbucks et al.*, pending in Los Angeles Superior Court). Ms. Irwin also assists clients in implementing Prop. 65 compliance programs, provides advice to clients in various industries regarding Prop. 65 requirements, and defends and negotiates resolution of Prop. 65 claims by private parties.



Thomas Lee
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Performed a compliance audit of a client's product testing protocols to ensure compliance with recent Proposition 65 consent judgments, and conducted an overhaul of the testing vendor's protocols. Mr. Lee has negotiated the dismissal, settlement, or other resolution of several Proposition 65 enforcement claims.



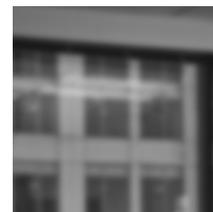
Brandon Neuschafer
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Recently represented a company during the listing process for the active ingredient of one of its flagship products. He assisted in the preparation of public comments in order to establish reasonable safe harbor levels, and advised the client on how to ensure compliance in light of the listing.



Merrit Jones
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Defended dozens of enforcement actions involving a broad range of chemicals and consumer products, including furniture and home decor, tools, fashion apparel and accessories, and food and beverage products. Ms. Jones regularly advises clients on chemical compliance testing, product reformulation, and warning requirements in order to anticipate and avoid enforcement actions.



Frank Plescia
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Managed the "listing" process for specific chemicals and assisted clients with comments on recently proposed regulations implementing Proposition 65 "clear and reasonable warnings" requirements. Advised agricultural and food manufacturing trade groups regarding comment letters in response to proposed regulatory changes.