

# 60-DAY NOTICE OF VIOLATION

*Cal. Health & Safety Code § 25249.5, et seq. (Proposition 65)*

**DATE:** March 28, 2026

**TO:** Nestle USA, Inc.; Nestle Health Science US Holdings, Inc.; Nestle Holdings, Inc.  
California Attorney General's Office, District Attorney's Office for All California Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

**FROM:** Public Health Enforcement Advocates, LLC

## I. INTRODUCTION

Public Health Enforcement Advocates, LLC ("PHEA") is an organization dedicated to protecting the public from environmental health hazards and toxic exposures. Acting in the public interest, PHEA seeks to safeguard the health of Californians, protect the environment and consumer rights, and hold corporations accountable. PHEA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), codified in California Health & Safety Code § 25249.5 et seq., with respect to the product identified below.

PHEA serves this Notice of Violation ("Notice") on NESTLE USA, INC.; NESTLE HEALTH SCIENCE US HOLDINGS, INC.; NESTLE HOLDINGS, INC. ("Alleged Violators"), and the appropriate public enforcement agencies pursuant to California Health & Safety Code § 25249.6 et seq. PHEA intends to bring a citizen enforcement lawsuit in the public interest 60 days after the effective service of this Notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to redress these violations.

|                     |                                                                   |
|---------------------|-------------------------------------------------------------------|
| Product Exposure:   | See Sections VI                                                   |
| Listed Chemical:    | Lead                                                              |
| Routes of Exposure: | Ingestion                                                         |
| Type of Harm:       | Developmental Toxicity, Birth Defect, and other Reproductive Harm |

## II. PROPOSITION 65 INFORMATION – SUMMARY

A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under Proposition 65, is enclosed as Appendix A and served on the Alleged Violators. For more information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHHA") Proposition 65 Implementation Office at (916) 445-6900.

Specifically, on February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental and reproductive toxicity (California Health & Safety Code § 25249.8). Lead became subject to the Act's "clear and reasonable warning" requirements 12 months after its listing, on February 27, 1988 (California Health & Safety Code § 25249.10(b)). Lead is referred to hereinafter as the "Listed Chemical."

## III. STATEMENT OF VIOLATIONS

The Exemplar Product, which causes consumer exposure in violation of Proposition 65, is identified in Section VI ("Covered Product"), along with the specific toxin or carcinogen listed therein. Consumers have been subjected to exposure to the Listed Chemical without receiving the "clear and reasonable warning" required by Proposition 65. In the absence of such warnings, California consumers are deprived of their right to make informed decisions regarding the reduction or elimination of their exposure to the Listed Chemical.

## IV. NUMBER AND DURATION OF VIOLATIONS

Every sale of the Covered Product in California, whether in-store, online, or through catalogs, constitutes a violation in the absence of a clear and reasonable warning. These violations have occurred daily since at least March 28, 2023, and will continue until such warnings are provided before exposing California consumers to the Listed Chemical. It should be noted that PHEA may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

## V. ROUTE OF EXPOSURE

The consumer exposures outlined in this Notice arise from the product's intended use. The primary route of exposure to the Listed Chemical has been and continues to be through ingestion.

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## VI. COVERED PRODUCT

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The product identified below (the "Exemplar Product") was recently purchased and observed as being available for sale in California. Publicly available information regarding its retailers, distributors, importers, and/or manufacturers is provided herein. The Exemplar Product is identified for the purpose of assisting the Alleged Violator in investigating the consumer exposure described in this Notice. The Exemplar Product is not intended to be the sole product within the category of the Covered Product; rather, it is representative of the class of products identified as **ABUELITA AUTHENTIC MEXICAN HOT CHOCOLATE GRANULATED MIX**.

| <u>Exemplar Product</u>                                                                                                                                        | <u>Toxin/Listed Chemical</u> | <u>Alleged Violator</u>                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------------------------------------------------------------------|
| Abuelita Authentic Mexican Hot Chocolate Granulated Mix - UPC No.: 0-2800029978-1<br>Lot No. 50270215X1 - Product of Mexico<br>Distributed by Nestle USA, Inc. | Lead                         | Nestle USA, Inc.<br>Nestle Holdings, Inc.<br>Nestle Health Science US Holdings, Inc. |

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## VII. NOTICE OF DUTY TO PRESERVE EVIDENCE

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"The duty to preserve evidence is triggered when litigation is pending or reasonably foreseeable, at which time a party is required to preserve all relevant evidence and put into place a litigation hold to preserve relevant documents." *Net-Com Servs. v. Eupen Cable USA, Inc.*, 2013 U.S. Dist. LEXIS 109810, at \*6-7 (C.D. Cal. Aug. 5, 2013).

We accordingly notify the Alleged Violators of their duty to preserve evidence relevant to the potential litigation our client may initiate if the Alleged Violators do not undertake the steps demanded herein. This includes, but is not limited to, documents, tangible things, and electronically stored information (ESI) that are potentially relevant to the anticipated lawsuit, as well as efforts to comply with Proposition 65 from March 28, 2023, through the date of any trial on the claims alleged in this Notice.

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## VIII. DEMAND TO IDENTIFY MANUFACTURER, PRODUCER, PACKAGER, IMPORTER, SUPPLIER, AND DISTRIBUTOR

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Pursuant to 27 C.C.R. 25600.2(g), "[t]he retail seller of a product that may cause a consumer product exposure shall promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product to ... [a]ny person who has served notice under Section 25249.7(d)(1) of the Act alleging that the consumer product causes an exposure that requires a warning under the Act." This notice includes the description of the specific product type that is subject to this notice, as well as one or more specific examples of the product in Section VI.

Please accept this Notice as a formal demand for any non-manufacturing seller or distributor receiving this notice to provide the name and contact information for the manufacturer, producer, packager, importer, supplier, promoter, and distributor of the Covered Product.

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## IX. RESOLUTION OF NOTICED CLAIM

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Based on the allegations outlined in this Notice, PHEA intends to bring a citizen enforcement lawsuit against the Alleged Violators unless the Alleged Violators agree, in a binding written instrument, to (1) either reformulate the Covered Product to eliminate exposure to the Listed Chemical, or if reformulation is not possible or feasible, to provide clear and reasonable warnings for the Covered Product sold or otherwise provided to California consumers in the future, and (2) pay the appropriate civil penalty, fees and costs based on the factors enumerated in California Health and Safety Code Section 25249.7(b). Should the Alleged Violators wish to resolve this matter without engaging in a protracted litigation, please contact PHEA's counsel, specified below.

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## X. CONTACT INFORMATION

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The entity giving this Notice is Public Health Enforcement Advocates, LLC, with a principal address at 2522 West Beverly Blvd. Montebello, CA 90640. PHEA identifies Roya Mohseni as a responsible individual within the entity and requests that all communications be directed to PHEA's attorneys at Cornerstone Law Firm, PC.

In furtherance of Proposition 65's public-interest purpose of reducing or eliminating consumer exposure to the Listed Chemical, PHEA remains willing to resolve these ongoing violations of California law in a constructive and amicable manner. Should you have any questions or wish to discuss the resolution of this matter, please contact me at david@davarlaw.com or direct your correspondence to our office: Cornerstone Law Firm, P.C., 357 S. Robertson Blvd., 2nd Floor, Beverly Hills, CA 90211. Tel: (310) 444-0055 | Fax: (310) 444-0066.



Davar Danialpour, Esq.

CORNERSTONE LAW FIRM, PC – March 28, 2026

**CERTIFICATE OF MERIT**  
Health and Safety Code Section 25249.7(d)

I, Davar Danialpour, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the Listed Chemical that is the subject of this action;
4. Based on the information obtained through those consultations and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established, and the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: 03/28/2026

  
\_\_\_\_\_  
Davar Danialpour

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I am over the age of 18 and not a party to this case. I am a resident or employed in the county where the mailing occurred. My business address is 357 S. Robertson Blvd. 2<sup>ND</sup> Floor Beverly Hills, CA 90211.

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 3) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)

on the following parties by placing a true and correct copy thereof in a sealed envelope addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office by Certified Mail:

|                                                                                                                                                            |                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Attn: Legal Department<br>Nestlé USA, Inc.; Nestle Holdings, Inc.<br>Nestle Health Science US Holdings, Inc.<br>1812 N Moore Street<br>Arlington, VA 22209 | Attn: Legal Department<br>Nestle Health Science US Holdings, Inc.<br>Nestlé USA, Inc.; Nestle Holdings, Inc.<br>1007 US Highway 202/26 – JR2<br>Bridgewater, NJ 08807                 |
| Attn: Legal Department<br>Nestle Holdings, Inc.<br>Nestle USA, Inc.<br>30003 Bainbridge Road<br>Solon, OH 44139                                            | CT Corporation System<br>Agent for Service of Process for<br>Nestle USA, Inc.; Nestle Holdings, Inc.<br>Nestle Health Science US Holdings, Inc.<br>330 N. Brand Blvd.<br>Glendale, CA |

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 3) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)
- 4) Supporting Factual Information Sufficient to establish the basis for Certificate of Merits

on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website at: <https://oag.ca.gov/prop65/add-60-day-notice>

**Office of the California Attorney General**

Proposition 65 Enforcement  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)

on each of the parties on the "Distribution List" attached and depositing it at a U.S. Postal Service office with postage fully prepaid for delivery by First Class Mail, and on each of the parties listed on the "Electronic Service" when a true and correct copy thereof was sent via electronic mail.

Executed on 03/28/2026 in Beverly Hills, California.



Davar Danialpour

## Distribution List

|                                                                                                                                    |                                                                                                                                     |                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| Honorable Stacy Grassini<br>Contra Costa County Deputy District Attorney<br>900 Ward St.<br>Martinez, CA 94553                     | Honorable Susan J. Kronen<br>Lake County District Attorney<br>255 N. Forbes Street<br>Lakeport, CA 95453                            | Honorable Nora Frimann<br>San Jose City Attorney's Office<br>200 East Santa Clara Street, 16 <sup>th</sup> Floor<br>San Jose, CA 95113 |
| Honorable Todd Riebe<br>Amador County District Attorney<br>708 Court Street, Suite 202<br>Jackson, CA 95642                        | Honorable Nathan Hochman<br>Los Angeles County District Attorney<br>211 West Temple Street, Suite 1200<br>Los Angeles, CA 90012     | Honorable Clint Curry<br>Yuba County District Attorney<br>215 Fifth Street, Suite 152<br>Marysville, CA 95901                          |
| Honorable Michael L. Ramsey<br>Butte County District Attorney<br>25 County Center Drive<br>Oroville, CA 95965                      | Honorable Hydee Feldstein Soto<br>Los Angeles City Attorney's Office<br>200 N. Main Street Suite 800<br>Los Angeles, CA 90012       | Honorable Stephanie A. Bridgett<br>Shasta County District Attorney<br>1355 West Street<br>Redding, CA 96001                            |
| Honorable Brendan Farrell<br>Colusa County District Attorney<br>346 Fifth Street Suite 101<br>Colusa, CA 95932                     | Honorable Sally O. Moreno<br>Madera County District Attorney<br>300 S. G Street, Suite 300<br>Madera, CA 93637                      | Honorable Sandra Groven<br>Sierra County District Attorney<br>PO Box 457<br>Downieville, CA 95936                                      |
| Honorable Katherine Nell Micks<br>Del Norte County District Attorney<br>450 H Street, Suite 171<br>Crescent City, CA 95531         | Honorable Cassandra Jenecke<br>Tuolumne County District Attorney<br>423 N. Washington Street<br>Sonora, CA 95370                    | Honorable Kirk Andrus<br>Siskiyou County District Attorney<br>PO Box 986<br>Yreka, CA 96097                                            |
| Honorable David M. Brady<br>Trinity County District Attorney<br>PO Box 310<br>Weaverville, CA 96093                                | Honorable David C. Eyster<br>Mendocino County District Attorney<br>PO Box 1000<br>Ukiah, CA 95482                                   | Honorable Krishna A. Abrams<br>Solano County District Attorney<br>675 Texas Street, Suite 4500<br>Fairfield, CA 94533                  |
| Honorable Dwayne R. Stewart<br>Glenn County District Attorney<br>PO Box 430<br>Willows, CA 95988                                   | Honorable Nina Salarno-Besselman<br>Modoc County District Attorney<br>204 S. Court Street, Suite 202<br>Alturas, CA 96101           | Honorable Jeff Laugero<br>Stanislaus County District Attorney<br>832 12 <sup>th</sup> Street, Suite 300<br>Modesto, CA 95354           |
| Honorable Stacey Eads<br>Humboldt County District Attorney<br>825 5 <sup>th</sup> Street 4 <sup>th</sup> Floor<br>Eureka, CA 95501 | Honorable Jason Anderson<br>San Bernardino County District Attorney<br>303 West Third Street<br>San Bernardino, CA 92415            | Honorable Jennifer Dupre-Tokos<br>Sutter County District Attorney<br>463 Second Street<br>Yuba City, CA 95991                          |
| Honorable George Marques<br>Imperial County District Attorney<br>940 West Main Street Suite 102<br>El Centro, CA 92243             | Honorable David Anderson<br>Mono County District Attorney<br>PO Box 617<br>Bridgeport, CA 93517                                     | Honorable Matt Rogers<br>Tehama County District Attorney<br>PO Box 519<br>Red Bluff, CA 96080                                          |
| Honorable Cynthia Zimmer<br>Kern County District Attorney<br>1215 Truxtun Avenue, 4 <sup>th</sup> Floor<br>Bakersfield, CA 93301   | Honorable Stephen M. Wagstaffe<br>San Mateo District Attorney<br>500 County Center 3rd Floor<br>Redwood City, CA 94063              | Honorable Farimah Faiz Brown<br>Berkeley City Attorney's Office<br>2180 Milvia St, 4 <sup>th</sup> Floor<br>Berkeley, CA 94704         |
| Honorable Sarah Hacker<br>Kings County District Attorney<br>1400 West Lacey Boulevard, Building # 4<br>Hanford, CA 93230           | Honorable Joel Buckingham<br>San Benito County District Attorney<br>419 Fourth Street, 2 <sup>nd</sup> Floor<br>Hollister, CA 95023 | Honorable Barbara J. Parker<br>Oakland City Attorney's Office<br>1 Frank Ogawa Plaza 6 <sup>th</sup> FL<br>Oakland, CA 94612           |
| Honorable Ursula Jones Dickson<br>Alameda County District Attorney<br>CEPDProp65@acgov.org                                         | Honorable Allison Haley<br>Napa County District Attorney<br>CEPD@countyofnapa.org                                                   | Honorable Eric J. Dobroth<br>San Luis Obispo County Deputy District Attorney<br>edobroth@co.slo.ca.us                                  |
| Honorable Barbara Yook<br>Calaveras County District Attorney<br>Prop65Env@co.calaveras.ca.us                                       | Honorable Clifford H. Newell<br>Nevada County District Attorney<br>DA.Prop65@co.nevada.ca.us                                        | Honorable Christopher Dalbey<br>Santa Barbara County Deputy District Attorney<br>DAProp65@co.santa-barbara.ca.us                       |
| Honorable Stacey Grassini<br>Contra Costa County Deputy District Attorney<br>sgrassini@contracostada.org                           | Honorable Morgan Briggs Gire<br>Placer County District Attorney<br>Prop65@placer.ca.gov                                             | Honorable Nora V. Frimann<br>Santa Clara County City Attorney<br>Proposition65notices@sanjoseca.gov                                    |
| Honorable James Clinchard<br>El Dorado County Assistant District Attorney<br>EDCDAPROP65@edcda.us                                  | Honorable David Hollister<br>Plumas County District Attorney<br>davidhollister@countyofplumas.com                                   | Honorable Bud Porter<br>Santa Clara Supervising Deputy District Attorney<br>EPU@da.sccgov.org                                          |
| Honorable Lisa A. Smittcamp<br>Fresno County District Attorney<br>consumerprotection@fresnocountyca.gov                            | Honorable Paul E. Zellerbach<br>Riverside County District Attorney<br>Prop65@rivcoda.org                                            | Honorable Jeffrey S. Rosell<br>Santa Cruz County District Attorney<br>Prop65DA@santacruzcounty.us                                      |
| Honorable Thomas L. Hardy<br>Inyo County District Attorney<br>inyoda@inyocounty.us                                                 | Honorable Anne Marie Schubert<br>Sacramento County District Attorney<br>Prop65@sacda.org                                            | Honorable Carla Rodriguez<br>Sonoma County District Attorney<br>ECLD@sonoma-county.org                                                 |
| Honorable Devin Chandler<br>Lassen County Program Coordinator<br>DChandler@co.lassen.ca.us                                         | Honorable Summer Stephan<br>San Diego County District Attorney<br>SanDiegoDAProp65@sdcdca.org                                       | Honorable Phillip J. Cline<br>Tulare County District Attorney<br>221 S. Mooney Blvd. Visalia, CA 95370                                 |
| Honorable Lori E. Frugoli<br>Marin County District Attorney<br>consumer@marincounty.gov                                            | Honorable Mark Ankorn<br>San Diego County Deputy City Attorney<br>CityAttyProp65@sandiego.gov                                       | Honorable Gregory D. Totten<br>Ventura County District Attorney<br>daspecialops@ventura.org                                            |
| Honorable Walter W. Wall<br>Mariposa County District Attorney<br>mcda@mariposacounty.org                                           | Honorable Henry Lifton<br>San Francisco County Deputy City Attorney<br>Prop65@sfcityattty.org                                       | Honorable Jeff W. Reising<br>Yolo County District Attorney<br>cfepd@yolocounty.org                                                     |
| Honorable Kimberly Lewis<br>Merced County District Attorney<br>Prop65@countyofmerced.com                                           | Honorable Brooke Jenkins<br>San Francisco County District Attorney<br>Prop65@sfgov.org                                              | Honorable Todd Spitzer<br>Orange County District Attorney<br>Prop65Notice@ocdapa.org                                                   |
| Honorable Jeannine M. Pacioni<br>Monterey County District Attorney<br>Prop65DA@co.monterey.ca.us                                   | Honorable Tori Verber Salazar<br>San Joaquin County District Attorney<br>DAConsumer.Environmental@sjcda.org                         | Honorable Robert K. Priscaro<br>Alpine County District Attorney<br>prop65enf@alpinecountyca.gov                                        |

**APPENDIX A**  
**OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**  
**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**  
**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT**  
**ACT OF 1986 (PROPOSITION 65): A SUMMARY**

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>

Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001. These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>

#### WHAT DOES PROPOSITION 65 REQUIRE?

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

**Grace Period.** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

**Governmental agencies and public water utilities.** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getMADLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on alleged violator's premises to extent onsite consumption is permitted by law
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

#### FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS:

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65PublicComments@oehha.ca.gov](mailto:P65PublicComments@oehha.ca.gov).

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.