



Updated Prop 65 Regulations Regarding Alcohol Beverage Warning Sign

The California State Office of Environmental Health and Hazard Assessment (OEHHA) has adopted new Proposition 65 (“Prop 65”) warning regulations which go into effect on August 30, 2018.

As manufacturers, California brewers have specific obligations under the law to provide a “clear and reasonable” warning to consumers about exposure to chemicals that cause cancer, birth defects or other reproductive harm. Proposition 65 applies to hundreds of foods, additives, other substances, finished goods, equipment, building materials, and locations for specific purposes that may be used by brewers or present in a brewery. This update addresses two Prop 65 warnings that are applicable to alcohol beverage manufacturers, the **general alcohol beverage warning** and the **BPA warning** for brewers using packaging materials that contain bisphenol A (“BPA”).

The new OEHHA regulations impact most CCBA members. Clear and reasonable warnings concerning the risks of alcohol beverages and BPA must be provided to—

- (a) California retail accounts that sell your products to consumers;
- (b) California consumers on signs at brewpubs, taprooms, displays, and points of sale within your brewery;
- (c) California consumers in your written and digital solicitations (print publications, websites, social media pages, apps, etc.);
- (d) California consumers in shipments to fulfill orders of your products offered via catalog or via digital devices.

See the **FAQ section** (page 5) of this update for additional resources to determine whether Prop 65 warnings may be required elsewhere in your brewery or on products you produce or sell.



ALCOHOL BEVERAGE WARNING SIGNS AT RETAIL POINTS OF SALE

The **existing** Prop 65 alcohol beverage warning sign reads:

WARNING: Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects.

The **updated** Prop 65 alcohol beverage warning sign simply adds a website URL to the existing language:

WARNING: Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects. For more information go to www.P65Warnings.ca.gov/alcohol.

ALCOHOL BEVERAGE WARNING SIGN AT BREWPUBS AND BREWERY TASTING ROOMS

The updated sign should be displayed in your brewery tasting room and at Point of Display (POD) of your retail products. It should also be displayed on your website if you are selling direct-to-consumer through an online portal. For more information on alcohol beverages exposure warnings, go [HERE](#).

IMPORTANT: You must post the updated warning sign at your brewery tasting room. The following are your two options:

- a) Posting an 8½ by 11-inch sign with 22-point type, placed at eye level in a location that is readable and conspicuous to customers as they enter the area where alcoholic beverages are sold, or;
- b) Posting a notice or sign no smaller than 5 by 5 inches placed at *each* retail point of sale or display to assure that it is readable and conspicuous. This type of warning notice must be in a type size no smaller than 20-point and enclosed in a box.



ALCOHOL WARNING SIGNS AT RETAIL LOCATIONS THROUGHOUT CALIFORNIA

Prop 65 alcohol warnings signs will continue to be sent to all alcohol retail licensees in California by Sign Management Corporation on behalf of the industry.

Background on Sign Management Company

Since Prop 65 became effective in 1988, manufacturers have been responsible for providing the clear and reasonable warning to consumers mandated by Prop 65. Alcohol Beverage Warning signs were distributed to all licensed retailers that carry your product. Previously, this has been accomplished by a third-party entity called the Sign Management Company (SMC). SMC is jointly funded by industry associations. SMC has been providing the warning sign for 30 years on behalf of the alcohol beverage industry.

SMC distributes a sign to retailers that was approved in 2014 to settle a lawsuit filed against numerous alcohol beverage manufacturers because warning signs were not consistently displayed at several California retail accounts. The settlement was secured on behalf of those who were named in the suit and those who “opted in” to the suit. This settlement provides participants with protection from future Prop 65 lawsuits as long as the warning signs are provided to all existing and new California retailers. Because the settlement specifically references the sign with text required by OEHHA in 2014, SMC will continue to send that sign to retailers and will not be sending the updated sign. The settlement with the approved warning text was approved by the OEHHA, the California Attorney General, and a California Superior Court judge as a means of providing a clear and reasonable warning to California consumers. OEHHA regulations state that “a party to a court-ordered settlement or final judgment establishing a warning method or content is deemed to be providing a “clear and reasonable” warning for that exposure,” provided that the warning is compliant with the court order or judgment

OEHHA has also stated in writing that *“The parties to the 2014 alcohol industry Consent Judgment...may use the warnings described in the Consent Judgment. Non-parties to the court-ordered settlement... can post any warning that is clear and reasonable, including the one adopted in the court settlement. There is no requirement in law or regulation that both versions of the warning must be posted where alcohol is sold.”*



What You Need to Know

- a) SMC will continue to send Prop 65 alcohol warning signs on behalf of manufacturers/distributors/importers and will obtain confirmations that retailers received the notice;
- b) The required notice to the retailers must be renewed annually (re-distributed);
- c) The retailer is responsible for the placement and maintenance of warning signs received from manufacturers;
- d) OEHHA regulations allow manufacturers/distributors/importers and retailers to contract with each other to specify which party must provide the required warnings. (Check your existing contracts for current obligations with respect to Prop 65 and review future contracts to make sure that you understand your obligations going forward!)

ALCOHOL BEVERAGE WARNING SIGN FOR ONLINE SALES

IMPORTANT: The warning applies to all sales directly to a consumer, including internet sales or direct shipping.

Electronic Warnings on the Internet and Warnings in Catalogs

Proposition 65 Alcohol Beverage warnings for online sales must provide the full warning text in a text box as described above and the warning must be "clearly associated" with the item being purchased. OEHHA states the warning "must be displayed with such conspicuousness as compared to other words" as to assure the warning is "likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use." The warning must be always be provided to the consumer prior to the finalizing the purchase. If doing online sales, you must;

- a) Place the full text in a text box directly on the product display page;
- b) Put the word "WARNING" on the product display page with a hyperlink that provides one-click immediate access to the full text, or;



- c) Include the warning as part of the check-out process prior to the final purchase. It is acceptable to provide the warning, for example, as a pop-up whenever a purchaser enters a California zip code.

If you are shipping, the alcoholic beverage warning must additionally be on or in the shipping container or package "in a type size no smaller than the largest type size used for other consumer information on the product." And in no case, may the type size be smaller than 8-point. The rule requires that the warning "be readable and conspicuous" to the consumer prior to consumption of the alcoholic beverages.

BPA WARNING SIGN:

BPA WARNING SIGN AT BREWPUBS AND BREWERY TASTING ROOMS

IMPORTANT: To comply with OEHHA regulations, California brewery tasting rooms must post the Point of Sale BPA Warning at cash registers. Breweries that sell products with BPA online should add the Point of Sale warning to websites and catalogs to be visible before the point of purchase.

BPA WARNING SIGNS AT RETAIL LOCATIONS THROUGHOUT CALIFORNIA

To meet the new requirements, SMC sent the new BPA Warning Signs (Point of Sale and Point of Display) to all California ABC retail licensees in January 2018.

Alcohol beverage companies that produce products with cans, lids and/or bottle cap liners containing BPA can rely on the warning signs sent by SMC to California ABC retail licensees since they follow the format of the new Proposition 65 regulations (effective Aug. 30, 2018) authorized by OEHHA. Under OEHHA regulations, it is the responsibility of retailers to post and maintain the new Point of Display (POD) and Point of Sale (POS) signs not the producers.

BPA WARNING SIGN FOR ONLINE SALES

IMPORTANT: For direct-to-consumer sales, breweries selling products with BPA must include both a general alcohol warning and the Point of Display BPA warning in or on the package for orders sent to a California address.

Additional information and an FAQ on BPA warning signs can be found on CCBA's [INDUSTRY ADVISORY \(updated 2/16/18\)](#). If you have read the industry advisory and would like to add products to the consumer database, please enter each brand individually into [THIS BPA PRODUCT UPDATE FORM](#).



GENERAL FAQs:

Q. Where can I get more details on Prop 65 requirements?

A. In addition to warnings for alcoholic beverages and BPA, other Proposition 65 warning requirements may exist for consumer exposures, environmental exposures, and occupational exposures depending upon processes, materials, and other substances used at a given brewery. A full list of substances and materials subject to Proposition 65 requirements can be found [here](https://oehha.ca.gov/proposition-65/proposition-65-list) (<https://oehha.ca.gov/proposition-65/proposition-65-list>)

General information and links to other resources can be found at the following link:
<https://oehha.ca.gov/proposition-65/law/proposition-65-law-and-regulations>

The text of OEHHA regulations can be found at the following link:
<https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I42D79370D45011DEA95CA4428EC25FA0&originationContext=documenttoc&transitionType=Default&contextData=%28sc.Default%29>

If you are looking at Article 6 of OEHHA regulations, which covers “clear and reasonable warnings,” be sure to use the link to the regulation that is “operative August 30, 2018.”

Q. I have fewer than 9 employees. Am I exempt from all Prop 65 requirements?

A. If your business has nine or fewer employees on payroll, you are exempt from all Prop 65 requirements. An employee is anyone on payroll, including part-time, which is important for brewers at or close to the “nine employees” threshold. Although companies with 9 or fewer employees () are generally exempted from providing the required warning, know that if you sell products to a larger retailer who is not exempt, the large retailer may require you to comply with the Proposition 65 warning requirement regardless of your size or location.