California Proposition 65 FAQ’s (Updated 12-6-17)

1. Q: What is Prop 65?
   A: The California Safe Drinking Water and Toxic Enforcement Act of 1986

2. Q: What is it?
   A: It is not: NOT a product safety law or a product substance limitation law

   What it is
   - A Right to Know law
     - Requires the public to be informed when a Prop 65 listed chemical is present above a designated threshold.
     - Attempt to use market forces to eliminate/restrict exposures
       - An informed public making buying decisions
     - Purpose is to notify individuals that they are being exposed to chemicals known to cause Cancer, birth defects or reproductive harm.
       - Birth defects + reproductive harm is referred to as reproductive toxicity

3. Q: Please clarify “Consumer products” and why our products built and sold to Professionals come under this regulation.
   A: There are 3 types of exposure covered:
   - Consumer products exposure – exposure form the things in your life
   - Environmental exposure – results from contact with an environmental medium (air, water, soil, vegetation, manmade or natural substances)
   - Occupational exposure – an exposure in the workplace

   Our products are covered under Occupational Exposure. Examples include:
   - If you work on a farm and drive a tractor and that tractor contains substances on the Prop 65 list, you have an occupational exposure from the tractor.
If you purchase a part and are, through your occupation (farmer, mechanic, technician,) exposed to that part, and the part, it’s packaging, or any preservatives on the part contain chemicals on the Prop 65 list, you are having an occupational exposure and those parts should contain a warning.

This has come into scope with changes clarifying occupational exposure contained in the latest changes to the law that come into effect August 30th, 2018.

4. **Q:** At what threshold of a prop 65 listed substance is a warning required?
   **A:** The Threshold is NOT the level known to cause harm
   The Threshold IS the level at which:
   - For Cancer: exposure poses no significant risk assuming a lifetime of exposure at that level
   - For reproductive toxicity: exposure will have no observable effect at one thousand (1000) times the level in question

5. **Q:** How can I do a risk assessment of my products to understand where I might find the chemicals on the list?
   **A:** Not all parts, components, or products have equal risk of harboring the chemicals on the prop 65 list.
   - If the part is made of steel or alloys exclusively, it is at low risk to have the chemicals on the list
   - If the part, component, or product has material as part of its make up that are rubber, plastic, Polly vinyl chloride or other manmade materials, it is a much higher risk of containing the chemicals on the prop 65 list.

6. **Q:** What chemicals are included in the list?
   **A:** Over 900 naturally occurring and synthetic chemicals are included on the list

7. **Q:** Where can I find the list?
   **A:** [https://oehha.ca.gov/proposition-65/proposition-65-list](https://oehha.ca.gov/proposition-65/proposition-65-list)

8. **Q:** How are chemicals/substances added and deleted from the list?
   **A:** There are four (4) ways to Add Chemicals to the List
   - All 4 ways include both listing and delisting processes
     - All include at a minimum
     - Public notice that a chemical is under consideration for listing
     - A public comment period
     - Review of comments received
     - Notice of the final decision

   1. Labor Code (LC)
      1. At a minimum, the Prop 65 list must contain chemicals referenced in Labor Code section 6382(b) (1) or (d).
a. Section 6382(b)(1) - Substances listed as human or animal carcinogens by the World Health Organization’s—International Agency for Research on Cancer
b. Section 6382(d) - any substance within the scope of the federal Hazard Communication Standard (29 C.F.R. Sec.1910.1200) is a hazardous substance subject to this chapter

2. State's Qualified Experts (SQE)
   2 Independent committees
   • Carcinogen Identification Committee (CIC)
   • Developmental and Reproductive Toxicant Identification Committee (DARTIC)
   • Meet at least once a year

3. Authoritative Bodies (AB)
   ▪ CIC and DARTIC may designate organizations as Abs
   ▪ Chemical is added to Prop 65 if one of the ABs formally identifies it as causing cancer or reproductive harm
   ▪ Current ABs are:
     o US Environmental Protection Agency (US EPA)
     o US Food and Drug Administration (US FDA)
     o National Institute for Occupational Safety and Health
     o National Toxicology Program, US Dept. of Health and Human Services
     o International Agency for Research on Cancer (IARC)

4. Formally Required to be Labeled (FR)
   ▪ State or Federal agency requires that a chemical be labeled or identified as causing cancer or birth defects
   ▪ Most commonly prescription drugs that are required by the US FDA to contain warnings relating to cancer or birth defects or other reproductive harm

9. Q: What is the mechanism for enforcement?
   A: Law suits
   - Any citizen is allowed to sue a business for compliance issues (see 11 CA ADC§3002)
   - Groups of lawyers, aka “bounty hunters”, make lucrative livings by finding possible violations
   - The state likes bounty hunters because the state gets a portion of the damages awarded

10. Q: Why is the Aftermarket Parts Business particularly at risk from this regulation?
    A: Because each part must be labeled
11. Q: Are all products new and used impacted by this regulation?
   A: Products Manufactured on or after August 30 2018 are impacted by this law. Products manufactured prior to this date are impacted by the laws in effect at that time.

12. Q: Is the short form label available for use after August 30 2018?
   A: Yes

13. Q: When can we use the short form warning?
   A: When you do not know what is in your product or when you want to be sure you are covered. There is no penalty at this time for “over labeling”

14. Q: How should labeling be done on the internet?
   A: Warning must be available to customer before the decision to purchase is made – this means on the product page
   - Fairly easy to deal with on your own website
   - Not so easy on Amazon or other distributor’s websites

   Complete warning must be:

   1. On the product display page by displaying
      a. Complete Warning; Or
      b. A clearly marked hyperlink labeled “Warning” that links to the complete warning; or
   2. By otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

   Warning is not deemed sufficient if the purchaser must search for it in the general content of the website.

15. Q: How is the need for a label determined?
   A: The law states that labeling requirements are based on the “Date of Manufacture”. Therefore, products manufactured on or after August 30, 2018 require the new labeling.

16. Q: What if I don’t know what is in my product?
   A: It is recommended you use the Short Form Warning until such time as you can identify what is in your product.

17. Q: Who is responsible for the warning?
   A: Requirement to warn is at this link:

   https://govt.westlaw.com/calregs/Document/I6AD0840F0AD34CBFA08424DDE493C959?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)
In essence if you manufacture the product you are best positioned to know its contents and should if at all possible provide the appropriate warnings.

18. Q: What is a “Safe Harbor Level”?
   A: Identifies a level of exposure to a listed chemical that does not require a Proposition 65 warning
      - No Significant Risk Levels for chemicals listed as causing cancer
      - Maximum Allowable Dose Levels for chemicals listed as causing reproductive toxicity

19. Q: Who determines the safe harbor level for a particular chemical?
   A: Developed by Office of Environmental Health Hazard Assessment (OEHHA)

20. Q: Have Safe Harbor levels been determined for all the chemicals on the Prop 65 list?
   A: Do not exist for every listed chemical
      - Currently 300+ safe harbor levels
      - More being developed

21. Q: Is it true that with this law the manufacturer is considered “guilty” unless you can prove you are innocent?
   A: Yes

Do you have any questions? Please email the question and your contact information to John Wagner at jwagner@aem.org.