

Business Strategies for Prop. 65 Compliance

Practical In-Use Strategies for the Retail Chain of Distribution; It's Not as Hard as it Seems

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Business wants to comply with the law

- Manufacturers, distributors and retailers have been proactive since the new regulations were approved
- Developing compliance program is company specific
 - Position in chain of distribution and products manufactured/ sold
- Reasoned approach to compliance
 - Cost vs. risk
- New provision re responsibility to provide consumer product exposure warnings
 - Section 25600.2 (f) allows for written agreement among those in chain of distribution to allocate responsibility - provided consumer receives warning

Manufacturers/Distributors/ Packagers/ Suppliers

- Know breadth of products/product category
- Know source/raw materials
- Identify target products/ chemicals
- Testing/ certification of compliance
 - Finished product
 - Raw materials
 - Only accessible parts
 - Every lot vs random sampling
 - 12 month period/protection under Section 25900(a) for non-detect
 - Spot checks

Communications with Downstream Distributors/Retailers

- Written agreements/letters re warnings needed in-store/ on internet
- On-product vs. in-store
 - Advance written approval from retailers for on-product/ point of sale warnings
- Notice re e-commerce/internet warnings required if product requires warning
- Short-form vs. long-form warning with chemical of concern
 - Avoid over warning with prophylactic short-form

Retailers Strategies for Compliance

- Letters/vendor agreements re manufacturer responsibility for warnings
- Advance authority to use warnings/require product reformulation
- Private label obligation under Section 25602(e)(1)
 - Special attention
- Quality Assurance/test reports required for supplied products/ reserve right to use U.S. certified lab
- Database of SKUs re products/chemicals
- Vendor portals required for product sales / chemicals / warnings
 - Third party environmental contractor vetting vendor portals
- Auto generated warnings based on vendor information
- Audit retail e-commerce website for required warnings

Don't Worry, Be Happy!

No one size fits all and company specific guidance will help with formulating a cost effective, reasoned approach to compliance and protection from litigation

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The Retail Trade Group represents clients in a wide variety of lawsuits, but particularly those involving false advertising, unfair competition, consumer class-action litigation, retail hazardous waste, Proposition 65, weights and measures, unfair business practices, consumer legal remedies, sales and use tax, and challenges to various state statutes, regulations and municipal ordinances affecting the retail industry. Our attorneys have a breadth of experience in all aspects of litigation and alternatives to litigation such as mediation, arbitration and negotiating with state and municipal regulatory and enforcement agencies to avoid litigation.



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