



September 2018

## **Important Information: California Proposition 65 Warning Requirements**

Dear Distributor Partner:

California's Safe Drinking Water and Toxic Enforcement Act of 1986 (known as "Prop 65"), seeks to ensure that individuals in California are informed about exposure to chemicals known by the State to cause cancer and/or reproductive harm. To comply, businesses are required to provide a clear and reasonable warning before exposing anyone to a listed chemical. Failure to comply may result in the business having to suspend sales, conduct a recall, reformulate, pay civil penalties up to \$2,500 per violation per day, and pay the plaintiff's attorney fees. In late 2016, the State of California amended the warning language and methods that are deemed "clear and reasonable" under the statute (i.e., that provide a "safe harbor" from enforcement). These amendments become effective on August 30, 2018.

This letter serves as notice that certain NTE products may result in an exposure to a Prop 65 chemical. All NTE product lines are currently under review and are undergoing a "risk assessment". The Proposition 65 list contains almost 900 chemicals, however, only a small number of chemicals from the list is expected to be relevant to any product or line.

NTE has determined to the best of its knowledge and belief the certain NTE products may contain one or more of the chemicals on the Prop 65 list. If present these chemicals are not intended to be released or discharged during normal product usage. If after review of the available material content information and our products we determine an exposure requiring Prop 65 warning may exist, NTE will provide the necessary "clear and reasonable warning" on the packaging.

### **Providing the Warning – Your Duties as a Distributor**

**Distributor-to-Distributor or Distributor-to-Retailer.** If you are a distributor who sells to other distributors or retailers that supply products that may end up in California, you must pass along all the

necessary compliance information, instructions, and advise them of their responsibility to make sure the retailers have, or have access to, the necessary compliance information, instructions, and materials. This includes passing on instructions (as further described below) that the retailer should post the suggested warning sign at the retail outlet where the products being offered for sale are displayed so that it is likely to be seen and read by consumers purchasing the products.

If you have customers that order products via the internet, catalog, or by phone, you are similarly required to provide the necessary compliance information, instructions explaining their Prop 65 obligations prior to purchase.

### **Warning Methods**

By August 30, 2018, Prop 65 warnings must be 1) either on the product or its packaging, 2) on an in-store sign, label, or tag that associates the warning with the specific product, or 3) be provided via any electronic device or process that automatically provides the warning prior to or during the purchase without requiring the purchaser to seek out the warning. Additional steps must be taken with respect to ecommerce warnings for online sales and catalog warnings for mail/phone order sales.

### **In-Store Sales**

An in-store, point-of-sale warning may be needed for certain of our products which, due to their size, cannot practically be labeled individually. Additionally, if any distributor or the retailer decides to remove product that is already individually packaged and labeled to repackage, sell in bulk or in lesser quantities, they will need to provide a warning at the point-of-sale. The distributor must either relabel the product or provide the retailer with the appropriate labels, signage and warning language. The warning sign must be posted at the store where the products are displayed so that it is likely to be seen and read by consumers prior to purchase.

If non-Prop 65 signs are provided in languages other than English, then these Prop 65 signs should be translated into those languages. Please see <https://www.p65warnings.ca.gov/sample-warnings-and-translations-businesses> for translations.

### **Online and Catalog Sales**

Distributors and retailers are vulnerable to a Proposition 65 claim if you sell a covered product without an online or catalog warning—even if there is a compliant warning label on the product. Additionally, if

any distributor or retailer decides to remove product that is already individually packaged and labeled to repack, sell in bulk or in lesser quantities through online or catalog sales, the distributor or retailer will need to provide online or catalog warnings for the repackaged products. See additional details below for providing warnings for online and catalog sales.

### **Online Sales**

A product sold online must include a product-specific warning on your website so that the customer sees it prior to purchase. The online warnings may be provided: (1) on the product's display page, (2) via a single hyperlink using the word "⚠️ WARNING" on the product display page near the product and linking it to the appropriate warning, (3) displayed, with a connection to the product, to the consumer before the purchase is completed (such as having the warning appear in the virtual shopping cart next to the product), or (4) having a pop-up warning appear when the purchaser enters a CA zip code before the purchase is completed, if the product(s) to which the warning applies is clear. A warning for an internet purchase is not "prominently displayed" if the warning requires the purchaser to seek out the warning.

### **Catalog Sales**

A warning provided in a catalog must be "clearly associated" with the item being purchased. Having a warning symbol referring the customer to another page has been deemed inadequate by the State of California. We recommend that the entire warning be placed on the product display page, close to the product.

NTE appreciates the opportunity to do business with you. Again, we apologize for any inconvenience that the California Prop 65 requirements may impose on your business, but compliance is mandatory. Thank you again for your timely assistance in this matter.