



SPECIALTY STEEL AND CALIFORNIA PROPOSITION 65

Stainless and other specialty steels¹ do not present a risk to human health from exposure to chemicals listed under California’s “Proposition 65.” While the determination of whether to provide a Prop 65 warning is product-specific and the responsibility of each individual company, the available data show that there is minimal potential for release of (and exposure to) listed metals from specialty steel under normal conditions of consumer² use in amounts that would require a Prop 65 warning. In addition, there is important precedent from previous Prop 65 actions establishing that stainless and specialty steels do not require a warning.

Nickel and Chromium in Specialty Steels Do Not Warrant Prop 65 Warnings

The key metals of interest for Prop 65 purposes with regard to specialty steels are nickel and chromium, as well as possible minute amounts of residual lead. Chromium is only listed under Prop 65 in hexavalent form, which is not found in stainless or other specialty steels in measurable quantities. Any potential exposure to chromium in specialty steel products, therefore, would not be to a Prop 65-relevant form. Lead may be present in specialty steel at trace levels as an impurity. SSINA is not aware of data showing potential leaching or exposure to lead in any meaningful quantities from the handling of stainless or other specialty steels.

Nickel is the primary Prop 65 substance of relevance for specialty steel. California’s Office of Environmental Health Hazard Assessment (OEHHA) has recognized explicitly that the Prop 65 cancer listing for nickel compounds does not include “nickel alloys” such as stainless and other specialty steels.³ Importantly, the Prop 65 regulations provide that nickel and nickel compounds present no significant risk of cancer by the route of ingestion.⁴ Nickel metal and nickel compounds were listed based largely on occupational inhalation exposures. For specialty steel products, inhalation is not a relevant route of exposure under normal foreseeable conditions of use. With respect to dermal exposure, the most likely route of contact for people handling specialty steel products, the science that supports the exclusion for ingested nickel (based on lack of absorption in the intestines) suggests that dermal absorption should not present a significant risk. Specialty steel also does not contain soluble nickel compounds, which have been listed as developmental

¹ Stainless steel is a group of corrosion resistant steels containing at least 10.5% chromium and may contain other alloying elements, including nickel and other metals. Specialty steel includes stainless steel and other alloy steels that contain one or more alloying elements, such as chromium, copper, manganese, molybdenum, nickel, silicon, titanium, tungsten, and vanadium.

² This statement addresses the need (or lack thereof) to provide Prop 65 warnings for specialty steel in consumer products. Occupational exposures to metals that may be released during the processing of specialty steel in the workplace, such as nickel, hexavalent chromium, and possibly lead, should be addressed through a company’s OSHA Hazard Communication program.

³ See <https://oehha.ca.gov/proposition-65/cnr/chemical-listed-effective-may-7-2004-known-state-california-cause-cancer-nickel>.

⁴ 27 C.C.R. §25707(b).



and reproductive toxins under Prop 65 (a listing which OEHHA specifically declined to extend to metallic nickel and insoluble nickel compounds).⁵

Prop 65 Precedent for Not Providing Warnings for Stainless Steel

In the late 1990s and early 2000s, there was a series of plaintiff enforcement actions targeting potential exposure to nickel and other listed metals in stainless steel and other steel alloys, primarily in the context of medical implants, dental appliances, and jewelry. Reports indicate that defendants were able, in a number of cases, to demonstrate in court that Prop 65 warnings were not required for stainless steel.⁶ Most importantly, in 2004 the California Attorney General brought a case against dozens of major retailers concerning exposures to nickel, chromium, and lead in jewelry and body piercings that was resolved in 2006 through a consent judgment.⁷ The consent judgment establishes various classes of components based on their metal content and prescribes standards for components that may appear in jewelry, body piercings, and certain children's products. "Stainless and surgical steels" are identified as "Class 1 components" and may be used without restriction or the need for a Prop 65 warning. To reach this conclusion, the state Attorney General must have determined that metal release rates from stainless steel and any potential dermal exposure and ingestion would not pose a significant risk requiring a warning under Prop 65.

The 2006 consent judgment was a seminal moment and few, if any, subsequent actions have been brought involving stainless or other specialty steels. While not binding on future plaintiffs or for other products, because jewelry and body piercings involve relatively extreme exposure scenarios, with intimate and long-duration contact, the findings that support the 2006 consent judgment send a clear signal that other stainless and specialty steel products involving less extreme exposure conditions also would not require a Prop 65 warning.

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For the foregoing reasons, SSINA believes that Prop 65 warnings are not required for stainless and other specialty steels under typical use scenarios. The available science and Prop 65 enforcement action precedent show that any potential exposures are minimal and do not rise to the level that would require a warning. While each company must make their own determination regarding the need to provide a Prop 65 warning based on their individual circumstances and product details, and some companies may choose to do so out of an abundance of caution, the

⁵ See <https://oehha.ca.gov/proposition-65/crn/chemicals-listed-effective-october-26-2018-known-state-california-cause>.

⁶ As is typical with Prop 65, in other cases defendants chose to settle rather than go through the time and expense of litigation.

⁷ *People vs Burlington Coat Factory, et al.* (Case No. RG 04-162075) (Consent Judgment dated Feb. 21, 2006) (available at <http://ag.ca.gov/prop65/pdfs/peoplevburlington.pdf>).



science strongly supports a conclusion that specialty steel presents no significant risk and a Prop 65 warning is not required.

If you have any questions or would like additional information, please contact Joseph Green, counsel to SSINA, at 202.342.8849 or JGreen@KelleyDrye.com.