

Proposed Regulatory Changes to Safe Harbor Warning Provisions

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All consumer products and food products sold or distributed into the State of California may soon be subject to new scrutiny for chemical exposure warnings

Revisions to a critical environmental law regarding warnings for chemicals in consumer products and food products will again change the way companies evaluate and label products they distribute or sell into California.

The Proposed Regulatory change is open for public comment until March 8, 2021.

These new warning regulations fall under California's Safe Drinking Water and Toxic Enforcement Act of 1986, referred to as Proposition 65. While the California's Office of Environmental Health Hazard Assessment (OEHHA) facilitates the addition of new chemicals to the State's list of carcinogens and reproductive toxicants (there are over 950 chemicals on the list), anyone in the State can sue for enforcement under Proposition 65. In order to manage the significant financial and business operation risks of non-compliance, the proposed regulatory changes provide new "Safe Harbor" warning content and methods of transmission that could significantly alter the warnings that companies are currently providing or are considering for their food and consumer products sold or distributed into California.

Companies that do business in California are encouraged to evaluate their operating procedures and product labeling compliance protocols immediately to consider participating in the public comment process. New warning language transmission covers all modes of purchase and distribution, including online/internet purchases as well as direct-import and drop-ship delivery.

The significant changes to Proposition 65's warning requirements warrant knowledge of the chemical constituents of all products sold or distributed into the State of California. As a corollary, one new method of warning requires the identification of at least one chemical found on the Proposition 65 list of chemicals if it is present in a product such that exposure may exceed a certain threshold level. The Proposition 65 chemical list includes a wide range of chemicals including lead, cadmium, acrylamide and certain plasticizers referred to as "phthalates." The new proposed regulatory changes provide for a one-year phase-in period after revisions are enacted.

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