

WARNING: California Prop 65 Enforcement of THC Listing from CBD Products Became Effective January 3, 2021

Article By:

Danelle Gagliardi

As of January 3, 2021, the one-year grace period to comply with the California Prop 65 Clear and Reasonable Warning requirements for delta-9-tetrahydrocannabinol (known as THC) came to a close and the enforcement period has now begun. OEHHA, the enforcing agency for Prop 65, [added THC](#) to the Prop 65 chemicals list last year on January 3, 2020. It is listed as a chemical known to cause reproductive harm.

As many in the CBD-industry are likely aware, [Cannabis \(Marijuana\) Smoke](#) was added to the Prop 65 chemicals list as a carcinogen in 2009 and enforcement of the Clear and Reasonable Warning requirements began thereafter. However, in January 2020, it was also [classified as a reproductive toxin](#). Enforcement of the Clear and Reasonable Warning requirements specifically for reproductive toxicity from CBD (Marijuana) Smoke began on January 3, 2021 as well.

Currently, there are no safe harbor levels for THC and CBD (Marijuana) Smoke. Therefore, *any* detectable amount of THC (or Cannabis / Marijuana Smoke) in a product may require a Prop 65 warning. For THC in particular, this applies notwithstanding the fact that [federal law](#) does not regulate CBD products that contain 0.3% or less THC by dry weight (i.e., cannabis containing less than 0.3% THC is considered to be “[hemp](#)” as opposed to “marijuana” according to [7 U.S.C. § 1639o\(1\)](#)). Therefore, for products that result in any exposure to THC, a Prop 65 warning for reproductive harm may still be required, and now for Cannabis (Marijuana) Smoke products, an additional warning for reproductive harm (on top of cancer) may be required.

Ultimately, CBD suppliers, manufacturers, and distributors are responsible under Prop 65 for determining whether their products cause any exposure to THC in order to comply with the Clear and Reasonable Warning requirements. Retailers will also need to apply any warning labels provided by manufacturers and distributors to products and/or post any warnings on their websites.

Now that the effective date for THC compliance under Prop 65 is here, citizen-plaintiff groups will likely begin filing notices of violation for failure to warn for THC-products. It will be critical for CBD and cannabis companies to evaluate their products for Prop 65 compliance and have a defensible position if it is determined a Prop 65 warning is not required.

National Law Review, Volumess XI, Number 12

Source URL:<https://natlawreview.com/article/warning-california-prop-65-enforcement-thc-listing-cbd-products-became-effective>