

Proposition 65: OEHHA Modifies Proposed Changes to “Short-Form” Warnings

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On December 13, 2021, the California Office of Environmental Health Hazard Assessment (OEHHA) issued a [notice proposing modifications](#) to the revisions it first proposed on January 8, 2021, to its Proposition 65 (Prop 65) Article 6 “clear and reasonable warnings” regulations for “short-form” warnings (Notice). More information regarding the January 8, 2021, proposal is available on our [blog](#). OEHHA is requesting comments on its Notice and the modifications to the proposed regulatory text to be submitted no later than **January 14, 2022**.

OEHHA’s regulations ([Section 25603\(b\)](#)) provide an option for a “short-form” warning as an acceptable alternative to the revised requirements for consumer product exposure warnings. This option requires the hazard symbol, the word “warning” in capital letters and bold print -- **WARNING** -- and a reference to OEHHA’s website, but importantly does not require a company to name a listed chemical within the text of the warning. OEHHA’s January 8, 2021, proposed revisions would significantly curtail the circumstances when the short-form warning could be used, including requirements that labels be smaller than a certain size, and eliminating the short-form warning option for Internet and catalog warnings. If the criteria can be satisfied, OEHHA further proposed to modify the short-form warning language to require inclusion of a Prop 65 listed substance.

In written comments and during a March 11, 2021, hearing, industry argued that OEHHA’s proposal is unwarranted and its concerns with the current warning requirements unfounded. Industry also expressed frustration with the expected significant resources and costs that implementation of these changes would inspire. This frustration is particularly acute considering the considerable resources and costs derivative of satisfying the warning requirements issued just three years ago.

In its Notice, OEHHA sets forth modified regulatory text. OEHHA remains committed to limiting the use of the short-form warning to small products that cannot accommodate the full warning, but has proposed one modification regarding the size of the label. In particular, while OEHHA’s January 8, 2021, proposal stated that the total surface area of the product available for labeling must be five square inches or less, OEHHA is now proposing ([Section 25602\(a\)\(4\)\(A\)](#)) to increase the maximum surface area of the label to 12 square inches. In its Notice, OEHHA states that after considering the comments submitted on its proposal, OEHHA has determined that a 12-square-inch limit would accommodate the concerns raised by industry, “while still limiting use of the short-form warnings to packages with limited available label space for consumer product information that would not easily


accommodate the full warning.”

OEHHA also is now proposing to rescind its proposed prohibition against using the short-form warning online and in catalogs. Instead, OEHHA proposes to revert to the original regulatory language that allows use of the short-form warning on websites and in catalogs when the short-form warning is provided on a consumer product. Regarding this change, OEHHA states:

Several commenters stated that the proposed elimination of the short form warning option for internet websites and in catalogs could result in varying warning language for the same products. OEHHA also concluded that the proposed limitation could increase product retailer responsibility, rather than allowing them to rely on the warnings on the product label or those provided to them by product manufacturers or others in the chain of commerce. or chemical manufacturers. OEHHA therefore returned to the original language. This provides consistency along the supply/distribution chain and conforms to the existing regulations in Section 25600.2.

With regard to the short-form warning language, OEHHA is proposing the following additional changes:

- Instead of only permitting the word “WARNING” in capital letters and bold print, OEHHA is proposing to add two options: “**CA WARNING**” or “**CALIFORNIA WARNING.**” OEHHA states this proposal is to “allow businesses to make clear that the warning is being given pursuant to California law.”
- OEHHA is providing an additional warning option that it states “more directly addresses exposure to carcinogens or reproductive toxicants.” For example, for an exposure to a listed carcinogen, the warning language that OEHHA proposed on January 8, 2021, would be:

 **WARNING:** Cancer Risk From [NAME OF ONE OR MORE CHEMICALS KNOWN TO CAUSE CANCER] Exposure -- www.P65Warnings.ca.gov

The two options proposed by OEHHA in its Notice are:

 **WARNING [OR CA WARNING OR CALIFORNIA WARNING]:** Cancer risk from exposure to [NAME OF ONE OR MORE CHEMICALS KNOWN TO CAUSE CANCER]
-- www.P65Warnings.ca.gov

or

 **WARNING [OR CA WARNING OR CALIFORNIA WARNING]:** Exposes you to [NAME OF ONE OR MORE CHEMICALS KNOWN TO CAUSE CANCER], a carcinogen
-- www.P65Warnings.ca.gov

OEHHA also has proposed to remove from several sections the word “product” from the proposed term “product label.” This change was in response to some comments that the phrase “product label” in the initial proposal was undefined and confusing. The existing term “label” remains, and OEHHA notes it had no intention of changing the meaning of that term.

Commentary

The proposed modifications are an improvement from OEHHA's initial proposal, but do not address two of the most prominent issues raised by industry in its comments. First, OEHHA has not modified its proposal regarding the requirement to include a Prop 65 listed substance on the short-form warning, and second, OEHHA has not provided any additional time within which to implement these changes. Instead, all of these proposed amendments would be operative one year after the effective date of the amendments, with a "sell-through" provision for consumer products manufactured prior to the effective date that are in compliance with the prior warning requirements. These label changes will create significant burdens to determine if the short-form warning can be used, and if so, necessary language changes. Industry should assess whether these amendments, if issued in final, would affect their current compliance efforts with warning requirements.

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