

Proposition 65: OEHHA Proposes Additional Changes to “Short-Form” Warning Option

Article By:

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On June 14, 2024, the California Office of Environmental Health Hazard Assessment (OEHHA) issued a notice proposing additional changes to its Proposition 65 (Prop 65) Article 6 “clear and reasonable warnings” regulations for “short-form” warnings ([Notice](#)).

The changes proposed now are to the proposed regulations that OEHHA issued on October 27, 2023. The history of these amendments, dating back to January 2021, are set forth in our memorandum available [here](#). Written comments on the proposed changes were due no later than June 28, 2024.

Proposed Modifications

OEHHA has modified three of the proposed regulatory requirements. OEHHA states these modifications are being proposed in response to comments submitted in writing and during the December 13, 2023, hearing regarding OEHHA’s October 27, 2023, proposal. OEHHA also states the modifications are to “improve clarity.”

First, OEHHA proposes to increase the time for implementation of the revised short-form warning content from two years to three years. The effective date of these regulations was a significant issue for industry, and many concerns were raised regarding the insufficient timeframe provided for companies affected by these amendments to implement the changes.

Second, OEHHA proposes to revert to the original regulation text for most of the Internet and catalog warning content. The changes proposed in October 2023 set forth requirements for when a short-form warning is permissible for Internet and catalog purchases. Specifically, OEHHA sought to provide options for providing warnings on the Internet and in catalogs to the purchaser: (1) prior to purchase; and (2) upon delivery. OEHHA has now removed proposed regulatory language so that a warning would no longer be required when the product is delivered. These changes appear to be in response to industry comments that OEHHA’s proposal potentially requiring multiple warnings was burdensome and unnecessary.

Third, OEHHA proposes a new provision that would provide Internet retailers a 60-day grace period, commencing from the date they receive a warning or written notice that a product will have new

warning content, to update their online short-form warnings during the three-year implementation period. In particular, the proposed regulation states:

For internet purchases made before [Office of Administrative Law to insert date that is three years after the effective date of the 2023 amendments], a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or displaying the new warning online until 60 calendar days after the retailer receives a warning or a written notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with Section 25603(c) with content compliant with Section 25603(b).

This proposal responds to industry comments regarding the infeasibility for online retailers to comply immediately with a supplier's notification of new warning requirements.

Commentary

No changes have been proposed to the new short-form warning text as set forth in proposed Section 25603 and discussed in detail in our prior [memorandum](#). This means OEHHA has stayed steadfast in its desire to change virtually all aspects of the short-form warning. The circumstances for when the short-form warning can be used will be more limited. When a company can use the short-form warning, the warning text will no longer be that "short" and instead will require language including but not limited to the requirement to list a Prop 65 substance.

The additional year provided for companies to come into compliance is helpful, but may still be considered inadequate for many companies, particularly small businesses, that will need to spend the time and resources modifying warnings on labels and elsewhere. Online retailers also now have some relief for when they will need to implement warning changes as provided by their suppliers. These modifications do not, unfortunately, address the multitude of other comments and criticisms of the proposal generally and the near elimination of the short-form warning option.

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