

CALIFORNIA PROPOSES CHANGES TO SHORT-FORM PROP. 65 WARNING

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The short form of the California Proposition 65 warning that appears on numerous consumer products may look different in the future. California's Office of Environmental Health Hazard Assessment (OEHHA) has proposed several significant changes to the language and permitted uses of the short-form warning.

Use Limited to Small Packages

When OEHHA issued the warning regulations that took effect in August 2018, it provided an option for a short form warning, intending that it be used on products too small to accommodate the longer warning. However, the final regulatory language did not specify that the warning could only be used on small packages, resulting in its use on everything from pens to refrigerator boxes.

In response, on January 8, 2021, OEHHA proposed a regulation that provides that the warning can only be used where the following three conditions are met:

- The total surface area of the packaging is five square inches or less;
- The package shape or size cannot accommodate the full-length warning; and
- The warning is printed in a type size no smaller than the largest type size used for other consumer information, but in no case smaller than 6-point type.

Use Permitted on Food Products

The proposed regulation clarifies a point of debate by confirming that the short form can be used on food products – so long as it's set apart in a box just like the long form warning.

Use Prohibited for Internet and Catalog Warnings

OEHHA is also proposing to eliminate the option to use the short form for Internet and catalog warnings. Currently, the short-form warning can be used online and in catalogs if used on the product packaging. OEHHA proposes to change that, and would require the longer version online

and in catalogs even where the short form is used on the product itself. OEHHA's reasoning, which is likely to be controversial, is that "[b]ecause there are generally fewer space limitations on a webpage or in a catalog, use of a short-form warning is not appropriate in those contexts."

Specific Chemicals Must Be Identified

Perhaps the most significant change is the requirement that the short form warning include at least one chemical for each endpoint. Under the current regulations, short form warnings do not have to list any specific chemicals in order to be compliant. The proposed regulation would change that, by requiring that the short-form warning include at least one chemical for which the warning is being provided, in the following form:.

⚠ **WARNING:** Cancer Risk From [CHEMICAL] Exposure - www.P65Warnings.ca.gov

⚠ **WARNING:** Risk of Reproductive Harm From [CHEMICAL] Exposure - www.P65Warnings.ca.gov

⚠ **WARNING:** Risk of Cancer and Reproductive Harm From [CHEMICAL] Exposure
- www.P65Warnings.ca.gov

Public Comment

OEHHA is accepting public comment on the proposed regulation through March 8, so impacted industries and businesses should consider providing comments to the extent that they have concerns about any of the proposed revisions. OEHHA is proposing that the amendment take effect a year after adoption.

For more information, contact the authors or anyone on our [California Proposition 65 team](#).

RELATED CAPABILITIES

- Retail & Consumer Products

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