

PROPOSITION 65 UPDATE: SHORT FORM WARNINGS MAY GET LONGER

Nov 10, 2023

As a result of changes to the Proposition 65 warning requirements that went into effect in 2018 many businesses have chosen to use the “short-form” warning which does not require the identification of a specific chemical. However, on October 27, 2023, the Office of Environmental Health Hazard Assessment (“OEHHA”) issued a [notice of proposed rulemaking](#) announcing that it is proposing changes to the Prop. 65 warning regulations, set forth in 27 C.F.R. §§ 25601, *et seq.*, which would significantly change the information required in a short-form warning. [A redline version of the proposed amendments is available.](#)

If adopted, short-form warnings will need to identify at least one chemical for which the warning is being provided. The proposed amendments do not, however, include a limitation as to the size of the product or packaging that can use a short-form warning. (Amendments that OEHHA had previously considered would have limited the use of short-form warnings to products with packaging that was no more than 5 inches by 5 inches.)

The proposed amendments would also clarify that the short-form warning can be used on food products, a question that was not expressly addressed in the prior amendments to the regulations.

Importantly, if the proposed amendments are adopted, products manufactured for up to two years after the effective date can still use the prior version of the short-form warning, regardless of when those products are sold.


The following is a more detailed summary of some of the most important changes under consideration, but for businesses that are concerned about any aspect of the proposed rulemaking the public comment period runs through **December 30, 2023**:

AMENDED SHORT-FORM WARNINGS

The warning must specify at least one chemical for which the warning is being provided, using one of the following language versions.


FOR EXPOSURES TO LISTED CARCINOGENS

 **WARNING:** Cancer risk from exposure to [name of chemical]. See www.P65Warnings.ca.gov


 **WARNING:** Can expose you to [name of chemical], a carcinogen. See www.P65Warnings.ca.gov


FOR EXPOSURES TO LISTED REPRODUCTIVE TOXICANTS

 **WARNING:** Risk of reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov


 **WARNING:** Can expose you to [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov

FOR EXPOSURES TO BOTH LISTED CARCINOGENS AND REPRODUCTIVE TOXICANTS

 **WARNING:** Risk of cancer from exposure to [name of chemical] and reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov

 **WARNING:** Can expose you to [name of chemical], a carcinogen, and [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov

FOR EXPOSURES TO A CHEMICAL THAT IS LISTED BOTH AS A CARCINOGENS AND A REPRODUCTIVE TOXICANT

 **WARNING:** Risk of cancer and reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov

 **WARNING:** Can expose you to [name of chemical], a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov

Both long and short-form warnings can be preceded by the language CA WARNING or CALIFORNIA WARNING instead of just WARNING. § 25603(a)(2), (b)(2).

We note that many warnings already use this language.

Currently, the warnings specify that a short-form warning used on products should be in type size no smaller than the largest type size used for other consumer information. The proposed amendments would delete this requirement, but would continue to specify that the type size be no smaller than 6-point type. § 25602(a)(4).

ONLINE WARNINGS

Currently, a warning can be provided on the product display page or through a clearly marked hyperlink using the word **WARNING**. The proposed amendment specifies that the hyperlink can also be titled **CA WARNING** or **CALIFORNIA WARNING**. § 25602(b)(1)(B).

The proposed amendment also specifies that, in addition to providing the warning online prior to purchase, the warning must also be included on or with the product when delivered to the consumer. § 25602(b)(2).

CATALOGS

Currently, if a short-form warning is being provided on the label, the warning in the catalog may use the same content. The proposed amendment removes this provision. § 25602(c)(1).

As with products sold online, the proposed amendment specifies that, in addition to providing a warning in the catalog, the warning must be provided on or with the product when delivered to the consumer. § 25602(c)(2).

For more information, please do not hesitate to contact Merrit Jones, Tom Lee, or your BCLP relationship lawyer.

RELATED PRACTICE AREAS

- PFAS Team
- Environment

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