

MORE CHANGES UNDER CONSIDERATION FOR PROP. 65 SHORT-FORM WARNINGS

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The California agency that administers Proposition 65 is considering further revisions to the regulations governing the use and format of the short-form warning.

As we previously reported, California's Office of Environmental Health Hazard Assessment (OEHHA), has proposed modifications to the short-form warning regulations that would, among other things, require listing at least one chemical for which the warning is being provided, and clarify that the short-form warning can be used on food and beverage products.

After the close of the public comment period, which was extended to January 2024, OEHHA has issued a notice that it is considering three additional modifications to the regulations:

First, OEHHA proposes increasing the time for implementation of the revised wording for short-form warnings from two years to three years. During that period, the current version of the short-form warning (that doesn't specify any particular chemical) would still be considered by OEHHA to be "clear and reasonable."

Second, OEHHA proposes adding a provision that for products sold only over the internet, a warning can be provided online, either on the product display page or through a clearly marked hyperlink using the words "WARNING," "CA WARNING," or "CALIFORNIA WARNING," or an otherwise prominently displayed warning provided prior to purchase that the consumer does not have to search for in the general contents of the website. This modification is significant in that it would remove the current requirement for products sold online to have both a warning on the website as well as on the product itself.

And third, OEHHA has proposed a new provision that would provide internet retailers a 60-day grace period during the three-year implementation period. This grace period would give internet retailers 60 days to provide updated warning language on websites after receiving a 60-day notice.

OEHHA is still considering public comment on these proposed modifications. As stated above, once the final regulations are adopted, there would be a three-year implementation period. We are

continuing to follow this issue, and will provide a further update once the final regulations are adopted.

For questions or more information, contact the authors listed.

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