

PUBLICATION

Changes to California Proposition 65 "Safe Harbor" Warnings to Impact Manufacturers and Internet Retailers

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California's Proposition 65 regulations are changing January 1, 2025. Proposition 65, enacted in November 1986, requires companies to provide clear and reasonable warnings to California consumers regarding exposures to chemicals known to cause cancer, birth defects, or reproductive harm. The regulations provide companies with specific warning methods and content guidelines that provide "safe harbor" protections for companies that choose to use them. These "safe harbor" warnings are deemed to be "clear and reasonable" warnings that meet the requirements of Proposition 65. As detailed below, the new "safe harbor" warnings will require the use of at least one chemical name in short-form warnings but will now also allow product warnings to signal their intended California audience by including "CA WARNING" or "CALIFORNIA WARNING."

Why Are the Regulations Changing?

California's Office of Environmental Health Hazard Assessment (OEHHA) asserts that one of the safe harbor options known as the "short-form" label is being grossly overused, even on consumer products that may not contain one of Proposition 65's [listed chemicals](#). In OEHHA's view, this waters down the effectiveness of the warning.

The standard safe harbor warning for a product containing listed carcinogens reads, "**WARNING:** This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov." In comparison, the current short-form warning simply reads, "**WARNING:** Cancer – www.P65Warnings.ca.gov." OEHHA noted that some businesses provide the short-form warning as a litigation avoidance strategy even if their products may not contain a listed chemical or the chemical is not used in a way that exposes the consumer, which does not serve the intent of providing relevant hazard information to consumers. OEHHA believes that businesses pressed to identify a chemical exposure on their short-form warning will determine that no warning is required for some of their products, making the warnings that remain, more meaningful.

The regulations are also changing in order to: (1) clarify the warning process for online retail sales; (2) clarify short-form food warning options; and (3) introduce new tailored safe harbor warnings for vehicle parts subject to Proposition 65.

New Requirements and Options for Warnings

The new short-form warning label will need to reference at least one of the listed chemicals contained in the product. For example, the short-form warning options for a product containing a listed carcinogen will now read: "**CA WARNING:** Cancer risk from exposure to [name of chemical]. See www.P65Warnings.ca.gov," or "**CALIFORNIA WARNING:** Can expose you to [name of chemical], a carcinogen. See www.P65warnings.ca.gov/w."

OEHHA has also simplified the font point size requirement for all safe harbor warnings. Warnings must "be likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or

use," but are no longer required to match the font size for other consumer information on the product. OEHHA did retain a minimum 6-point font size for all warnings.

OEHHA will now allow the warning to include "CA" or "CALIFORNIA" before the word "WARNING" to help signal where the warning is directed.

OEHHA has also explicitly provided a short-form label option for food products that qualify for safe harbor protections under Proposition 65. For example, the short-form warning options for a food product containing a listed carcinogen include: "**CA WARNING:** Cancer risk from exposure to [name of chemical]". See www.P65Warnings.ca.gov/food," or "**CALIFORNIA WARNING:** Can expose you to [name of chemical], a carcinogen. See www.P65Warnings.ca.gov/food. However, warnings for food exposures to acrylamide do not have short-form options.

Internet Purchases

OEHHA's original proposed amendments to the safe harbor warnings contained a number of new restrictions and requirements for internet retailers, but these proposed changes were ultimately dropped. It will no longer be necessary to include a warning "on or with the product when delivered to the consumer." Internet retailers may still provide short-form warnings, and any warning may still be provided on the product display page, via a hyperlink on the product display page, or otherwise prominently displayed to consumers before they purchase the product. During the three-year implementation period of the new regulations, internet retailers will have 60 days from the date that a product manufacturer provides the retailer with an updated warning to post that updated warning on their website.

Vehicle Parts

Finally, a new vehicle parts safe harbor exposure warning category has been added that will apply to warnings related to parts for passenger vehicles, offroad vehicles, and recreational marine vessels (e.g., pleasure boats and jet skis). Whereas guidelines already exist for vehicles themselves (e.g., warnings regarding vehicle exhaust emissions), the new guidelines pertain to potential exposure when vehicle parts are being installed onto a vehicle being serviced.

The Timing of These Changes

The new regulations go into effect January 1, 2025, and will provide companies with three years to adapt (until January 1, 2028). Products manufactured and labeled prior to January 1, 2028, may use the prior safe harbor warnings, even when those products are sold or transferred after the cutoff date (i.e., an unlimited sell-through period). Companies are always welcome to adopt the new rules sooner, in particular, food manufacturers may want to take advantage of the short-form label that is now explicitly available for food products.

What To Do

If your company is providing short-form Proposition 65 warnings on products, you will want to conform to the new safe harbor warning format, which will require confirming whether or not your product contains a [listed chemical](#).

If you are an internet retailer, you will need to evaluate the products you sell in order to update your website. This will involve working with manufacturers as they conform to the new labeling requirements.

Vehicle parts manufacturers and retailers will need to assess compliance for their products under the revised regulations.

Working collaboratively with our food products and automotive teams, Baker Donelson's Prop 65 lawyers continue to monitor the situation in order to keep our clients informed. If you have any questions regarding the

current situation, please reach out to [Elizabeth Haskins](#) or any member of Baker Donelson's [Environmental, Sustainability, and Product Stewardship Team](#).