


California Regulators Propose Tailored Proposition 65 Warnings for Cannabis Products

On March 19, 2021, California's Office of Environmental Health Hazard Assessment (OEHHA) [announced proposed regulations](#) that would significantly affect the warning requirements for products that cause exposure to cannabis smoke and/or delta-9-tetrahydrocannabinol (THC). In short, the rulemaking provides guidance for businesses to combine the warnings for cancer and developmental toxicity caused by cannabis smoke and THC into a single safe harbor warning and proposes a new safe harbor warning language for exposures to THC.

Proposition 65, California's Safe Drinking Water and Toxic Enforcement Act of 1986, mandates that businesses that sell consumer products—including food and cannabis products—notify Californians about certain chemicals in those products. THC is the cannabinoid, one of the diverse chemical compounds in cannabis plants, responsible for the psychoactive effect produced by cannabis commonly associated with a "high."


Current Warnings

Currently, products that cause exposure to cannabis smoke and/or THC, like most other consumer products, are permitted to use standard Proposition 65 warning safe harbor language like the one below:

 **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 and birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov.


Proposed Changes for Products Causing Exposure to THC and Cannabis Smoke

The proposed regulations would require products that cause exposure to cannabis smoke and/or THC to use a tailored warning that emphasizes the potential harm when such exposures occur during pregnancy. Under these new regulations, the safe harbor warning language might read:

 **WARNING:** Smoking cannabis increases your cancer risk and, during pregnancy, exposes your child to delta-9-THC and other chemicals that can affect your child's birth weight, behavior, and learning ability.

OEHHA has also proposed tailored language for different types of cannabis products (e.g., edibles, lotions, vapes, and dab products). Each type of product has slightly different warning language.


For example, for edible THC products, the warning would have to clarify that the THC exposure happens through consumption:

 **WARNING:** Consuming this product during pregnancy exposes your child to delta-9-THC, which can affect your child's behavior and learning ability. For more information, go to www.P65Warnings.ca.gov/cannabis.

Businesses that permit customers to smoke on their premises would also need to use similar tailored warning language for their premises' warning signs.

What's Next

Written comments responding to the proposed regulations are due by May 18, 2021. After the close of the comment period, regulators will hold a public hearing and issue final regulations. Based on the proposed regulations' timeline, these tailored warnings would come into effect one year after these final regulations are promulgated.

The proposed changes to cannabis product warning labels come on the heels of [another significant proposal](#) from California regulators. OEHHA has also proposed an amendment that would no longer allow products that cause exposure to listed substances to use short-form warnings (e.g.,  **WARNING: Cancer and Reproductive Harm** - www.P65Warnings.ca.gov). If adopted, this change would also apply to products causing exposure to cannabis smoke and/or THC.

These proposed regulations, taken together, indicate that the Proposition 65 landscape may see significant changes in the coming months. Given that Proposition 65 may pose significant litigation risks, interested companies may wish to review their compliance with Proposition 65's requirements and keep abreast of further developments as the agency considers comments received over the coming months.

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