

California Regulators Publish New Amendments to Proposed Rules Limiting Use of Short-Form Proposition 65 Warnings

On December 13, 2021, California's Office of Environmental Health Hazard Assessment (OEHHA) published a [notice of modified text](#) to its proposed short-form Proposition 65 warning regulations. As Perkins Coie previously [detailed](#), OEHHA proposed amendments to its Proposition 65 warning regulations earlier this year that sought to dramatically restrict businesses' use of short-form warnings (the "Proposed Amendments"). Specifically, OEHHA's Proposed Amendments sought to:

- limit the use of short-form warnings to products with five square inches or less of label space;
- eliminate the use of short-form warnings for internet and catalog warnings; and
- significantly lengthen the short-form warning language.

The public comment period was open from January 8, 2021, through March 29, 2021, and garnered over [200 public comments](#), the majority of which urged OEHHA not to adopt the Proposed Amendments. After consideration of the public comments, OEHHA released modified regulatory text on December 13, 2021 (the "Modified Text"). The key modifications are as follows:

- **Increased Label Size Limits.** The maximum label size for short-form warnings was increased from 5 square inches to 12 square inches.
- **Short-Form Permissible on Websites/Catalogs.** Short-form warnings are permissible on websites and catalogs *if* the product itself also uses a short-form warning.
- **New "Signal Words."** Warnings (both long-form and short-form) may use additional "signal words" such as "CA WARNING" or "CALIFORNIA WARNING." For example:

CALIFORNIA 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.

- **Additional Warning Language Variations.** The January 8, 2021, Proposed Amendments expanded the content of short-form warnings to include (1) the name of at least one chemical and (2) the terms "risk" and "exposure." The Modified Text provides additional variations of warning language that would be permissible. For example:

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

CA WARNING: Exposes you to [name of chemical], a reproductive toxicant - www.P65Warnings.ca.gov.

The Modified Text preserves two important provisions introduced in the Proposed Amendments:

- Explicit clarification that short-form warnings may be used on food products (which was previously ambiguous); and
- A "sell-through" provision, whereby the new warning regulations would not apply to products manufactured prior to the effective date of the regulations. Warnings on previously manufactured products will be considered compliant if they follow the 2016 Proposition 65 regulations.

Written comments responding to the proposed regulations are due by January 21, 2022. After the close of the

comment period, regulators will decide whether to issue final regulations. Based on the timeline in the proposed regulations, the limitations on short-form labeling would go into effect one year after these final regulations are promulgated.

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