

## Proposition 65 Update

On January 8, 2021, California's Office of Environmental Health Hazard Assessment (OEHHA) announced proposed Proposition 65 rulemaking that would limit use of the short-form version of the safe harbor warning.

Proposition 65 requires labelling for any product that contains one or more ingredients found on the California list of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity. See <https://oehha.ca.gov/proposition-65/proposition-65-list>.

Since it became an option in 2016, manufacturers have gravitated toward the short-form warning permitted by the statute, which does not require the disclosure of any specific chemical name(s) in the warning.

The California Office of Environmental Health Hazard Assessment (OEHHA) is seeking to limit the use of short-form warnings by proposing various changes, including:

- Only allowing the short-form warning (a) on products with 5 square inches or less of "label space" (which is not defined) and (b) when the standard warning will not fit.
- Prohibiting the short-form warning for internet and catalog sales (even if the short-form warning is provided on the product itself in compliance with the regulations).
- Requiring that the name of at least one chemical per relevant toxicity endpoint (cancer and reproductive harm) be included in the short-form warning; and
- Including the words "Risk" and "Exposure" in the warning.

If this change is adopted, the new short-form warning text for a product containing a listed carcinogen would be:

Cancer Risk From [Name of one or more chemicals known to cause cancer] Exposure - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Likewise, the new short-form warning text for a product containing a listed reproductive toxicant would be:

Risk of Reproductive Harm From [Name of one or more chemicals known to cause reproductive toxicity] Exposure - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Under the proposed revised rule, businesses that now use the standard short-form warning may need to conduct chemical testing on products or contact material or component suppliers to identify specific listed chemicals to be in compliance.

In addition to requiring more transparency concerning the identity of chemicals in the warning, OEHHA intends the proposed changes to dissuade businesses from over-warning.

**OEHHA is accepting comments on the proposal through March 8, 2021**

Since its enactment in 1986, Proposition 65's citizen suit provision has imposed compliance burdens and legal risk on businesses. The provision permits private parties to bring Proposition 65 lawsuits on behalf

of the California attorney general, provided they give 60 days' notice to the business that is the target of the suit. Private enforcers who prevail in their Proposition 65 lawsuits may recover 25 percent of the civil penalties plus attorneys' fees.

Read the PHTA Bulletin on the CURRENT Prop 65 Requirements [here](#).