

Proposition 65's Imminent Enforcement Date for THC: Is Your Cannabis Business Ready?

Proposition 65 warning requirements announced last year are set to be enforced starting January 3, 2021; if your business is selling cannabis products in California, now is the time to ensure that your labeling complies with state requirements.

Last year, California's Office of Environmental Health Hazard Assessment (OEHHA) [added](#) tetrahydrocannabinol, better known as "THC," to the list of chemicals requiring specific labeling for retail sale in California. Better known as Proposition 65, California's Safe Drinking Water and Toxic Enforcement Act of 1986, requires businesses selling consumer products—including food and cannabis goods—to notify Californians about certain chemicals that are in those products. THC is the cannabinoid most associated with a marijuana-related "high."

What Does This Mean for Businesses?

Given that OEHHA has imposed Proposition 65 warning requirements without designating a safe harbor level, any detectable amount of THC in a consumer product would generally trigger the need for a Proposition 65 warning.

Pursuant to the 2018 Farm Bill, cannabidiol (CBD) may contain up to 0.3% THC on a dry weight basis. Without any safe harbor levels set for THC, CBD products containing detectable THC would generally require a Proposition 65 warning, unless the business can demonstrate to OEHHA that the anticipated exposure level will not pose a significant risk of reproductive harm.

Violations of Proposition 65 can result in substantial litigation and enforcement exposure, as actions under the law may be brought by private parties and/or the California attorney general. The statute authorizes statutory penalties of \$2,500 per violation per day, which can create significant risks for those not in compliance with the warning requirements.

Enforcement for THC-related Proposition 65 warnings begins on January 3, 2021. The time is now to confirm that products containing THC have appropriate labeling to comply with Proposition 65 labeling mandates.

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