


## California Regulators Seek to Limit Use of Short-Form Proposition 65 Warnings


On January 8, 2021, California's Office of Environmental Health Hazard Assessment (OEHHA) [announced proposed regulations](#) that would significantly affect how businesses may use short-form Proposition 65 warnings. Proposition 65, California's Safe Drinking Water and Toxic Enforcement Act of 1986, mandates that businesses that sell consumer products—including food—notify Californians about certain chemicals that are in those products.

When short-form warnings were first introduced in 2016, many businesses chose to use these truncated warnings on their product labels and websites. Currently, OEHHA provides two versions of model Proposition 65 warning labels: a *long-form* warning and a *short-form* warning. The key difference between these two categories is that the long-form warning requires that the business specifically name at least one Proposition 65 chemical that could result in exposure from the product's use; by contrast, the short-form warning requires only a statement of the potential health hazard.

For example, a long-form warning for a product containing a chemical listed as a carcinogen would read:

 **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](http://www.P65Warnings.ca.gov).

At present, a short-form warning, on the other hand, can read simply:

 **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Now, however, OEHHA is seeking to dramatically restrict the use of short-form warnings by proposing various changes, including:

- Only allowing use of the short-form warning on products with five square inches or less of label space; *and*
- Only allowing use of the short-form warning on products where the package shape or size cannot accommodate the full-length warning; *and*
- The entire warning is printed in a type size no smaller than the largest type size used for other consumer information on the product, but in no case no smaller than six-point type.

The content of the short-form warning would also be expanded to include: (1) the name of at least one chemical, and (2) the terms "risk" and "exposure" (e.g., "WARNING: Cancer Risk From Diisononyl Phthalate (DINP) Exposure—[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)).

OEHHA is also seeking to eliminate use of short-form warnings for internet and catalog warnings.

OEHHA has included a "sell-through" provision with the amendments, whereby the new regulations would not apply to products manufactured prior to the effective date of the regulations.

Written comments responding to the proposed regulations are due by March 8, 2021. After the close of the comment period, regulators will 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.

© 2021 Perkins Coie LLP

## **Authors**



### **Jasmine Wetherell**

Partner

[JWetherell@perkinscoie.com](mailto:JWetherell@perkinscoie.com) [310.788.3294](tel:310.788.3294)



### **Kristine E. Kruger**

Senior Counsel

[KKruger@perkinscoie.com](mailto:KKruger@perkinscoie.com) [206.359.3111](tel:206.359.3111)



## **Thomas (Tommy) Tobin**

Counsel

[TTobin@perkinscoie.com](mailto:TTobin@perkinscoie.com) [206.359.3157](tel:206.359.3157)

### **Explore more in**

[Cannabis Law](#) [Food & Beverage](#) [Advertising, Marketing & Promotions](#)

### **Related insights**

Update

## **FERC Meeting Agenda Summaries for October 2024**

Update

## **New White House Requirements for Government Procurement of AI Technologies: Key Considerations for Contractors**