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Proposition 65 Warning Regulations Revised, Including Widely-Used Short-Form Warning

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California's Office of Environmental Health Hazard Assessment ("OEHHA") has revised the regulations on "Safe Harbor" warning language effective January 1, 2025. While a business is not required to use these Safe Harbor warnings on products that require a warning under Proposition 65, if they do use them, they are deemed by law to have met the requirement for a "Clear and Reasonable Warning." Therefore, most businesses use these warnings to avoid enforcement actions by the private citizens and plaintiffs' attorneys who have created a boutique legal industry pursuing and settling these enforcement actions.

Foremost among the amendments to the Safe Harbor warning regulations are changes in the popular "Short-Form" warning. The revised regulations now require that the warning include the name of one chemical for each toxicological endpoint triggering the warning requirement (e.g., cancer and/or reproductive harm.) Previously, the regulations did not require the chemical name. Other significant changes include: (1) allowing the words "CA WARNING" or "CALIFORNIA WARNING" to replace the traditional "WARNING"; and (2) requiring the use one of two new alternatives for warning language. For a chemical on the Prop 65 list as a carcinogen, the new alternative forms of the warning would look like this:

⚠️ WARNING: Risk of cancer from exposure to [name of chemical]. See www.P65Warnings.ca.gov

or

⚠️ WARNING: Can expose you to [name of chemical], a carcinogen. See www.P65Warnings.ca.gov

The regulations include variants for chemicals that are on the Proposition 65 list as reproductive toxicants, chemicals listed both as a carcinogen and as a reproductive toxicant, and for situations where more than one chemical, each with different toxicological endpoints, are present. Note that using either "CA WARNING" or "CALIFORNIA WARNING" is optional, and continuing to use just "WARNING" will still meet the Safe Harbor requirements.

Significantly, the amended regulation does not restrict the use of the Short-Form warning based on package size, as prior proposed amendments attempted to do. Also, the requirement that the warning for internet sales match the warning on the product remains, although now internet retailers will have 60 days to update their website after they are informed the warning on the product has changed.

Notably, although the amended regulations took effect on January 1, 2025, the existing short-form warning may be used for products manufactured and labeled prior to January 1, 2028, even if they are



sold after that date. This gives manufacturers three years to update the warnings, presumably as other changes are made to packaging and labeling.

In addition, the amended regulations add new Safe Harbor warnings for exposures that occur during purchase, handling, or installation of parts for passenger vehicles or off-highway motor vehicles and parts for recreational marine vessels. These new warnings can be provided by a sign placed at the retail point of sale or at the display of such parts but the language is specific and may not be varied. Moreover, these two new situation-specific point-of-sale warnings do not cover exposures from packaged service chemicals, tires, parts containing asbestos, carpeting, upholstery including fillings and coverings, textiles, or fabrics. If any of these sorts of products require a warning, the point-of-sale warnings will not give Safe Harbor protection and the traditional methods of transmitting the safe harbor warnings to consumers must be followed.



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