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Changes to California Proposition 65 Short-Form Warnings

The California law known as Proposition 65 is well known nationwide to many consumer product and food companies for its product warning requirements and aggressive enforcement by private parties. Starting with products manufactured or labeled on or after January 1, 2028, Prop. 65 will require revised warning language. This article identifies some of the key strategy decisions companies must make in responding to the new requirements.

Refresher on Proposition 65

Prop. 65 is the reason California parking lots have signs warning they are carcinogenic. It requires carcinogen and reproductive toxicant warnings on a wide variety of consumer products and in various exposure scenarios (e.g., parking lots). Prop. 65 broadly impacts companies nationwide and beyond. Even small companies with less than 10 employees are impacted by Prop. 65 despite an explicit carveout for such companies. Although the text of the law might suggest warnings are only required in very limited situations, warnings are practically necessary in far broader situations because of the way the law is enforced. Private parties are authorized to enforce Prop. 65 and a cottage industry of plaintiff's attorneys has resulted, with thousands of settlements (often in the range of $25k-50k each) finalized each year. Some small companies have even stopped selling into California due to the risks and economics of Prop. 65.

Recent Amendments

In 2024, California adopted amendments to the regulations implementing Prop. 65. The amendments went into effect on January 1, 2025, but they provide a three-year phase-in period, such that the key changes are first required for products

manufactured and/or labeled on or after January 1, 2028. The amendments mostly ratchet up the requirements on businesses, but do ease select requirements.

The most notable change addresses the wording of the on-product "short-form warning," which has long been viewed by business as preferable to the "long-form warning" due to its brevity and lack of chemical identification. Those benefits are now largely removed because the revised short-form warning language must identify at least one specific chemical giving rise to the risk of cancer, reproductive harm, or both. This new requirement forces regulated businesses to consider strategy questions regarding:

- How to identify listed chemicals in products (possibly including testing), which presents heightened challenges for large and diverse SKU portfolios
- Evaluating chemical presence in relation to Prop. 65's Safe Harbor levels
- Whether to disclose more than one chemical
- Selecting which chemical(s) to disclose to inform consumers and satisfy Prop. 65 while minimizing impacts on sales

In addition the revised short-form warning identifying a certain chemical, its wording is made more explicit. For example, two of the new acceptable warning statements are: "Risk of cancer and reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov." OR "Can expose you to [name of chemical], a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov." (Both of those options must be preceded by the warning triangle and language.) Companies should consider how those different formats may impact sales.

One welcome change is that, after the triangle symbol, companies may now use "**CA WARNING**" or "**CALIFORNIA WARNING**", instead of just "**WARNING**". This optionality applies to both the short-form and long-form warnings. These alternatives are likely to have differing impacts on product sales (especially outside of California).

Another welcome change is the removal of the requirement that the warning font be at least as large as the largest font used for other on-product consumer information. This change provides relief to companies that print consumer information on their products in very large font, however, the new standard calls for the Prop. 65 warning to be "prominently displayed," which presents ambiguity and necessitates strategic decision-making.

The 2024 amendments ushered in select additional changes, such as addressing mechanics of internet and catalog warnings, specific warning language for motor vehicle and marine vessel parts, and more.

Key Date

The new short-form warning, the focus of this article, is required for products manufactured and/or labeled on or after January 1, 2028, and companies are free to start using the new warning now if they desire to. This compliance date implicates questions of risk tolerance and how to establish manufacture and label date to ward off enforcement. Meeting the January 2028 date will require significant work in advance to select and implement appropriate warnings, properly notify downstream distributors and retailers, and prepare for the next wave of Prop. 65 enforcement.

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