



Products Containing PFAS may Soon Require California Proposition 65 Warnings

Manufacturers, suppliers, retailers, and other entities in supply chains for consumer products sold in California might soon need to provide warnings regarding certain per- and polyfluoroalkyl substances (PFAS) in their products. California's Office of Environmental Health Hazard Assessment (OEHHA) recently announced its intent to further regulate and study certain per- and polyfluoroalkyl substances under California's Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65. Proposition 65 prohibits companies from knowingly exposing California consumers to chemicals "known to cause cancer or reproductive toxicity" (i.e., "listed chemicals") in consumer products without first providing a "clear and reasonable warning." (Although not the focus of this article, Proposition 65 also addresses occupational and environmental exposure to listed chemicals.)

An aggressive Plaintiffs' bar frequently pursues companies selling products in California for failure to provide adequate warnings. Such companies will want to pay close attention to the following developments.

On March 19, 2021, OEHHA published a [notice of intent](#) to list perfluorooctanoic acid (PFOA), known for its non-stick applications, as a carcinogen. PFOA is already a Proposition 65 listed chemical, but only as a potential source of reproductive harm, not as a carcinogen. Clear and reasonable warnings must indicate whether the chemical in question is a carcinogen or a reproductive toxin, thus, a final listing of PFOA as a carcinogen will require changes to company labeling practices. OEHHA's stated basis for this proposed listing is a May 2020 report by the National Toxicology Program on studies of PFOA in rats. OEHHA requests public comment on its notice, to be submitted through the OEHHA [website](#), until May 3, 2021.

On March 26, 2021, OEHHA [announced](#) its decision that OEHHA's Carcinogen Identification Committee will review perfluorooctane sulfonate (PFOS) and its salts and transformation and degradation precursors for possible listing as a carcinogen. Like PFOA, PFOS is already a Proposition 65 listed chemical, but only as a potential source of reproductive harm. It is known for its resistance to stains, grease, soil, and water.

Also on March 26, OEHHA [announced](#) its decision to review perfluorodecanoic acid (PFDA) and its salts, perfluorohexanesulfonic acid (PFHxS) and its salts, perfluorononanoic acid (PFNA) and its salts, and perfluoroundecanoic acid (PFUnDA) and its salts, all as potential reproductive toxins. OEHHA is seeking public comment on both reviews announced March 26, through May 10, 2021.

If the above processes do result in additions to OEHHA's list of chemicals known to cause cancer or reproductive harm, the warning requirement for such chemicals will go into effect 12 months after the final listing.

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