

What's New with OEHHA's Updated Short and Long Form Warnings

September 23, 2024

Moderated by:
David Edwards
Acting Director/Chief Deputy
Director
OEHHA
David.Edwards@oehha.ca.gov

J. Robert Maxwell
ROGERS JOSEPH
O'DONNELL
311 California Street, 10th Fl
San Francisco, CA 94104
415.956.2828
jmaxwell@rjo.com

Greg Berlin
ALSTON & BIRD
350 South Grand Avenue,
51st Floor
Los Angeles, CA 90071
213.576.1045
Greg.berlin@alston.com

Laralei Paras
SEVEN HILLS
4 Embarcadero Center, Suite
1400
San Francisco, CA 94111
415.279.2212
laralei@sevenhillsllp.com

ROGERS | JOSEPH | O'DONNELL

James Robert Maxwell / Partner / Direct Dial: 415.365.5376

Background

- Proposition 65 statute does not define “clear and reasonable warning” so it is defined in OEHHA’s implementing regulations
- In 2016, OEHHA proposed revised safe harbor language that provides safe harbor warnings that are deemed “clear and reasonable.” Effective in 2018.
- OEHHA is in the midst of rulemaking to amend the “short-form” safe harbor warnings
- What follows is a summary of the proposed “clear and reasonable warning” language amendments with a particular focus on the new short-form safe harbor warning content requirements

2018 Short-Form Warnings

 **WARNING:** Cancer - www.P65Warnings.ca.gov.

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

Proposed Revised Short-Form Warning Language Set Forth in Section 25603(b)

(A) For exposures to listed carcinogens, the words:

1. “Cancer risk from exposure to [name of chemical]. See www.P65Warnings.ca.gov.”; or
2. “Can expose you to [name of chemical], a carcinogen. See www.P65Warnings.ca.gov.”

(B) For exposures to listed reproductive toxicants, the words:

1. “Risk of reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov.”; or
2. “Can expose you to [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov.”

Proposed Revised Short-Form Warning Language Continued




(C) For exposures to both listed carcinogens and reproductive toxicants, the words:

1. “Risk of cancer from exposure to [name of chemical] and reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov.”; or
2. “Can expose you to [name of chemical], a carcinogen, and [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov.”

(D) For exposure to a chemical that is listed as both a carcinogen and a reproductive toxicant, the words:

1. “Risk of cancer and reproductive harm from exposure to [name of chemical]. See www.P65Warnings.ca.gov.”; or
2. “Can expose you to [name of chemical], a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov.”

Proposed Revised Short-Form Warning Language Continued

- Both full-length and revised short-form warnings can now be prefaced with:
 -  **WARNING:**
 -  **CA WARNING:**
 -  **CALIFORNIA WARNING:**
- (CCR §25603(a))

Implementation Dates for the Proposed Short-Form Warning Language

- Businesses who use the current short-form warning for safe harbor protection have up to three years to change to the proposed new short-form warnings to keep safe harbor protection.
- Products that are manufactured and labeled during those three years can use the prior short-form warnings regardless of when they are sold. (proposed CCR §25603(c))

Stated Reasons for Short-Form Warning Amendments

- New warnings seek to provide information to consumers by identifying listed chemical(s)
- Overuse of short-form warning regardless of product or package size
- Reduce unnecessary prophylactic warnings that can mislead consumers

(Initial Statement of Reasons p. 6)

Links to Proposed Amended Regulatory Text and Supporting Material

- Link to amended regulatory text:
<https://oehha.ca.gov/media/downloads/crn/regtext061324.pdf>
- Links to supporting regulatory material:
 - Initial Statement of Reason:
<https://oehha.ca.gov/media/downloads/crn/isornprmshortformamendments102723.pdf>
 - Modification to Proposed Amendments to Regulations Clear and Reasonable Warnings, Safe Harbor Methods and Content: <https://oehha.ca.gov/proposition-65/crn/modification-proposed-amendments-regulations-clear-and-reasonable-warnings-safe>
 - Notice of Modification to Text of Proposed Regulation Title 27, California Code of Regulations: <https://oehha.ca.gov/media/downloads/crn/notice061324.pdf>
 - Notice of Proposed Rulemaking:
<https://oehha.ca.gov/media/downloads/crn/nprmacrylamide040524.pdf>

Discussion/Questions

ROGERS | JOSEPH | O'DONNELL

James Robert Maxwell / Partner / Direct Dial: 415.365.5376