

Summary of Amendments to Short-form Warnings under California Proposition 65 – Effective January 1, 2025 with Three-Year Grace Period

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After what has amounted to a multi-year rulemaking process, the California Office of Environmental Health Hazard Assessment (OEHHA) finalized amendments to the short-form warnings under Proposition 65 on December 6, 2024. The amendments ([outlined in full here](#)) require that short-form warnings include at least one chemical name, along with other options for safe harbor warning. There is also a specialized short-form warning for food. Specific long-form warnings were also added for Passenger, or Off-Highway Motor Vehicle Parts and Recreational Marine Vessel Parts. While the amendments become effective on January 1, 2025, OEHHA has provided businesses that currently rely on the existing short-form warnings three years (until January 1, 2028) to transition to the new short-form content.

The original short-form safe harbor warnings promulgated as part of the 2018 overhaul of Proposition 65's "clear and reasonable" warning requirements were fairly straightforward. If a warning label could fit on a product or its immediate packaging, a warning involving, for example, a chemical known to cause cancer, could simply state "Warning: Cancer – www.p65warnings.ca.gov" along with the warning symbol.

The new amendments make a few material changes. OEHHA claims that these changes "will make the Proposition 65 short-form warning more informative." Instead of the safe harbor beginning with "WARNING" in bold, OEHHA has now provided options to include either "WARNING," "CA WARNING" or "CALIFORNIA WARNING." In addition, the amendments now require listing at least one chemical in the short-form warning. For example, with a cancer warning, the short-form safe harbor (with the symbol and the words "WARNING," "CA WARNING" or "CALIFORNIA WARNING") must now include the following language:

"Cancer risk from exposure to [name of chemical]. See www.P65Warnings.ca.gov." or

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

If one listed chemical covers both endpoints (i.e., cancer and reproductive toxicity), the language is now more specific:

"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."

If there are multiple chemicals covering both endpoints, the warning is different:

"Risk of cancer from exposure to [name of chemical] 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 [name of chemical], a reproductive toxicant. See www.P65Warnings.ca.gov."

In addition to generalized short-form warnings, these amendments make explicit that short-form warnings may be used to provide safe harbor warnings for food products. The specialized short-form warning for food essentially follows the same pattern as the new generalized short-form warnings, but with a more specific link provided: www.P65Warnings.ca.gov/food.

Finally, OEHHA added specialized (long-form) safe harbor warnings for Passenger, or Off-Highway Motor Vehicle Parts and Recreational Marine Vessel Parts.

As mentioned, OEHHA is providing a three-year grace period for companies already complying with the prior short-form warnings, until January 1, 2028. In addition, the amendments specify that for internet purchases made before January 1, 2028, a retail seller is not responsible for conspicuously posting or displaying the new warning online until 60 calendar days after the retailer receives a warning, or a written notice which updates a compliant short-form warning.

Ultimately, companies that took advantage of the short-form warnings since 2018 will now need to consider changing their labeling strategy and compliance program to adhere to the new amendments. However, the three-year grace period should provide ample opportunity to carefully review the new amendments and seek out legal advice on any labeling updates necessary for selling or distributing products in California.

Squire Patton Boggs will continue to monitor the latest developments in this area and can assist clients with any questions regarding the Prop 65 short-form amendments.

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