

California Adopts Changes to Prop 65 Chemical Warning Labels

Businesses selling and manufacturing products in California should prepare now to provide even more detail regarding certain identified chemicals on their product warning labels in compliance with changes to Proposition 65. Although these new requirements do not go into effect until August 30, 2018, failure to prepare for the new regulations will expose businesses to potential citizen suits given Proposition 65's provisions for attorneys' fees. However, businesses that comply with the new regulations can effectively guard themselves from these citizen suits under the safe harbor warning provisions of Proposition 65. Until the effective date, businesses may choose to comply with the new requirements, but are not required to do so. Any products manufactured prior to the effective date will be considered compliant if they meet the old warning requirements, even after the new warning requirements are implemented.

What Changed?

Earlier this year, the California Office of Environmental Health Hazard Assessment (OEHHA) adopted new amendments to the clear and reasonable warning requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65.

Under the new warning requirements, businesses that sell and manufacture products in California will have to provide even more detail in their product warnings than before. Under the old warning requirements, businesses were only required to generally warn consumers that a product contained chemicals known to cause cancer, birth defects, or other reproductive harm. However, among other changes, Proposition 65 warning regulations now require that warnings specifically identify a chemical by name and specify whether the chemical is a carcinogen and/or reproductive toxicant.

Some of the significant changes in the new warning requirements include:

- Identifying a specific chemical in the warning label;
- On-product labels featuring a hyperlink to the Proposition 65 website, hosted by the OEHHA;
- Specific warning requirements regarding the appearance, size, language, and

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location of the warning;

- Non-English language warnings where other warnings are provided in a language other than English;
- Additional and revised warnings for specific products such as food, alcoholic beverages, dental care, prescription drugs, diesel engines, and others; and
- Internet and catalog product warnings.

What Should Businesses Do Now?

Although the new requirements are not effective until August 2018, businesses selling or manufacturing products in California should consider the impact of the new regulations on their current products and develop a compliance strategy to satisfy the new requirements. Businesses should also keep detailed records regarding product manufacturing dates to avoid unwarranted claims of outdated warnings. This is particularly important for businesses choosing to continue using current labels under the current Proposition 65 warning requirements until the August 2018 effective date of the amended regulations.

If you have any questions or would like more information on how these new warning requirements could affect your business, please contact your Reinhart attorney or any member of Reinhart's [Commercial and Competition Law Group](#).

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