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Environmental Law Alert - Major Changes Proposed For California Proposition 65 Warning Requirements

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On Jan. 16, California's Office of Environmental Health Hazard Assessment (OEHHA), which is charged with the enforcement of Proposition 65, issued proposed regulations that, if ultimately adopted, will require substantial changes to warnings on consumer products and at places of business.

Under current regulations a general warning that a product or premises "contains" a chemical known to the state to cause cancer or birth defects is generally sufficient, with the exception of alcoholic beverages. Under the proposed regulations, if a product contains any of twelve different chemicals, the warning would need to specify which of those twelve chemicals the product "can expose you" to. The chemicals that would need to be specifically identified are:

1. Acrylamide
2. Arsenic
3. Benzene
4. Cadmium
5. Carbon Monoxide
6. Chlorinated Tris
7. Formaldehyde
8. Hexavalent Chromium
9. Lead
10. Mercury
11. Methylene Chloride
12. Phthalate(s)

Under the proposed regulations, certain types of products and places of exposure would also require specific warning language that differs from the general language. In addition to the specific warning for alcoholic beverages, the proposed regulations would require a specific warning for food and nutritional supplements, beverages, prescription drugs, furniture, parking facilities, amusement parks, second hand-smoke in designated smoking areas, and petroleum products, among others.

The regulations would also require that the warning provide the web address of an OEHHA maintained website that would provide additional information about the product or warning. OEHHA would be able to request information from manufacturers to place on the website, including information about the level of exposure and the name and contact information for the manufacturer of the product. It remains unclear what, if any, mechanism OEHAA will be able to employ to compel the disclosure of requested information.

The regulations would provide more cover to retailers of products, but

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would ultimately still place liability on the retailer if the retailer knew of the potential exposure, or if the manufacturer is outside of the jurisdiction of the state, among other notable exceptions.

The regulations are currently in the comment period with a public meeting on the proposal to take place on March 25. Public comments must be submitted to OEHHA by April 8. If the regulations are put into effect as proposed, the proposed regulations would provide a two year period to update current warnings to conform to the new requirements.

The text of the proposed regulations can be [found here](#).

For more information, contact the Barnes & Thornburg environmental attorney with whom you work, or one of the following attorneys in the firm's Environmental Law Department: Levi Heath at 310-284-3890 or levi.heath@BTLaw.com; or Michael Scanlon at 317-231-7387 or michael.scanlon@btlaw.com.

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