

On August 8, 2022, the California Office of Environmental Health Hazard Assessment (OEHHA) approved tailored Prop 65 safe harbor warnings for THC and marijuana smoke. While the regulations became effective on October 1, 2022, there was a one-year phase-in period and unlimited sell-through provision for products manufactured and labeled with compliant warnings before October 1, 2023. Therefore, in a few short weeks on October 1, 2023, that grace period ends, and these products will need to be labeled with a compliant warning thereafter.

The new tailored Prop 65 warning requirements provide “non-mandatory, specific safe harbor exposure warning methods of transmission and content for retail products that can expose consumers to cannabis (marijuana) smoke or delta-9-THC via inhalation, ingestion, or dermal application, and for environmental exposures...”

However, there are a few important items to note:

The regulations cover both environmental exposures and consumer product exposures.

This means that cannabis lounges or any designated cannabis smoking areas may require specialized environmental exposure warnings.

The regulations include tailored consumer product warnings for inhalation of marijuana smoke or products with THC intended to be smoked, and separate tailored warnings for THC that is (1) ingested; (2) vaped or dabbed; and (3) dermally applied.

Therefore, it will be important to determine use / route of exposure of the product before determining which label may apply. Currently, there is no guidance from OEHHA on labeling products that may have multiple uses (e.g., ones that may be ingested and dermally applied), so it will be critical to assess the business and legal risks related to particular label(s), along with the primary use of the product.

A cannabis product that provided a general safe harbor warning and was manufactured prior to October 1, 2023, will be deemed clear and reasonable regardless of when the product is sold to a consumer.

While it is important for manufacturers to maintain information on the date of manufacture, it is also important that this information is shared throughout the supply chain to distributors, retailers, etc. in the event a lawsuit for failure to warn is brought by a Prop 65 plaintiff.

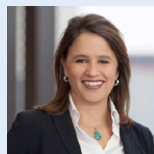
Short-form warnings may not be compliant.

In addition, while not explicit in the regulations, in its [Final Statement of Reasons](#), OEHHA stated that it “disagrees . . . that the short form warning is a sufficient warning for cannabis and delta-9-THC products” and “determined that the short-form warning method . . . does not provide the level of specificity needed for cannabis (marijuana) smoke and delta-9-THC exposures.” Based on this statement by OEHHA, along with the fact that the short-form warning requirements may be amended, use of a short-form warning for marijuana smoke and THC products may not be compliant.

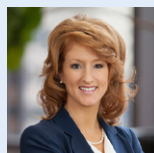
Considerations for labeling cannabis products with a specialized warning under Prop 65 raises many unique business concerns. If your cannabis company has not already carefully reviewed its Prop 65 compliance program in light of these new amendments, it is best to do so now before the grace period ends on October 1, 2023. Companies should consider seeking out legal advice on any labeling updates necessary for selling into the California market.

Squire Patton Boggs tracks the latest developments in this area and can assist with any questions regarding Prop 65 requirements.

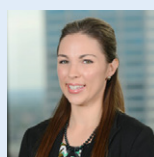
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