

California Announces Public Hearing on Proposal to Allow Pesticide Labels to Use “NOTICE” or “ATTENTION” Instead of “WARNING” for Prop 65

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Article in Brief

The California agency that oversees Proposition 65 is holding a hearing on June 21, 2018, to discuss the agency’s proposal to allow pesticides otherwise required to carry Proposition 65 warning requirements to use signal words other than “WARNING.” This proposal, if carried through, would help relieve a potential conflict between the Proposition 65 requirements and federal pesticide law. Pesticide manufacturers and distributors should take note.

California’s revised Proposition 65 (Prop 65) safe harbor warning regulations, adopted in 2016, will take effect on August 30, 2018. The new regulations, issued by the Office of Environmental Health Hazard Assessment (OEHHA), will bring substantial changes to the safe harbor warning language that businesses can use on consumer products, including pesticides.

OEHHA recently released a proposed rule, and has now scheduled a public hearing, to address a longstanding conflict between federal pesticide labeling regulations and Prop 65 safe harbor warnings requirements, which dictate the use of the word “WARNING.” Under EPA’s pesticide regulations, the word “WARNING” is a signal word that denotes a particular toxicity category for a product. EPA does not allow pesticide registrants to use the word “warning” on their product labeling unless that word is otherwise required by EPA—even if OEHHA’s safe harbor warning requires the product to say

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"WARNING."

As a result, pesticide manufacturers and registrants have faced a dilemma with respect to compliance with both the Prop 65 warning requirements and federal pesticide law. Specifically, a pesticide manufacturer/registrant would risk violating EPA's rules (and enforcement under the Federal Insecticide Fungicide and Rodenticide Act for selling a mislabeled product) by adhering to OEHHA's safe harbor warning. Pesticide registrants have long sought clarification from EPA and OEHHA on this issue.

Now it appears that OEHHA is taking the opportunity of the new regulations going into effect to attempt to resolve this issue with pesticide labels.

The Proposal

The proposal would allow manufacturers to use the words "NOTICE" or "ATTENTION" in place of the word "WARNING" on EPA-regulated pesticide labels that also must comply with Prop 65.

The proposed rule would add the following provision to 27 CCR § 25603, Consumer Product Exposure Warnings - Content:

(d) Notwithstanding subsection (a)(2) or (b)(2), where a warning for a consumer product exposure or occupational exposure from use of a pesticide is provided on a product label, and the pesticide label is regulated by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, Title 40 Code of Federal Regulations, Part 156; and by the California Department of Pesticide Regulation under Food and Agricultural Code section 14005, and Cal. Code of Regs., title 3, section 6242; the word "**ATTENTION**" or "**NOTICE**" in capital letters and bold type may be substituted for the word "**WARNING**".

Hearing and Comment Deadline

Based on public feedback to date, OEHHA will host a public hearing on June 21 at 10:00 a.m. PT. The main subject expected from industry groups is whether this rule goes far enough to fix the competing obligations from EPA and OEHHA. This hearing will provide an important opportunity for pesticide manufacturers and other stakeholders to provide their feedback to OEHHA staff and to engage in a constructive conversation if other approaches would be more effective.

OEHHA also has extended the deadline for written comments until July 5 at 5:00 p.m. PT.

More information about the proposal is available at <https://oehha.ca.gov/proposition-65/crnrr/proposed-amendments-article-6-clear-and-reasonable-warnings-section-25603>.

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