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New Prop 65 Clear and Reasonable Warning Requirements

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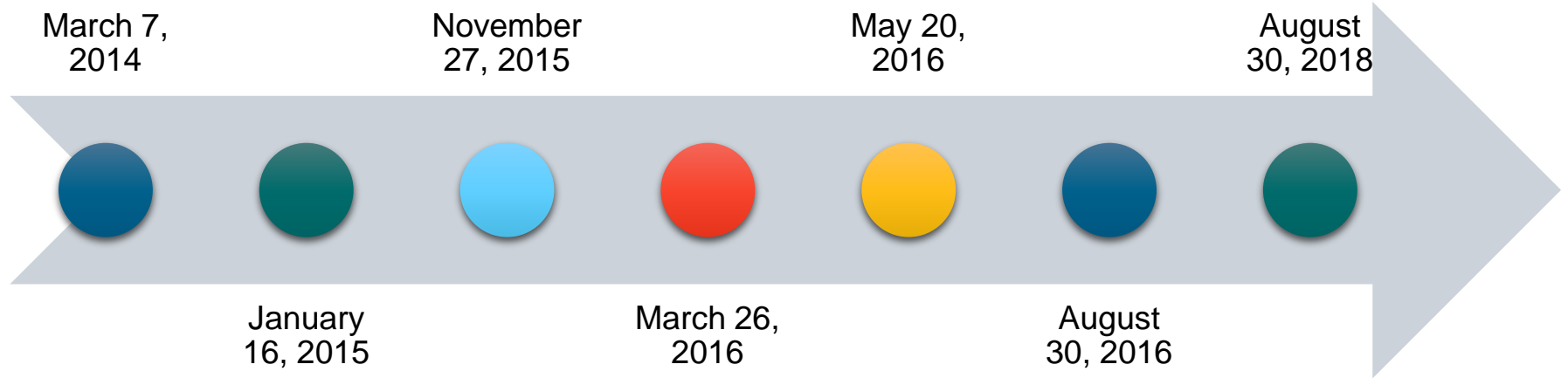
Agenda



OEHHA's Final Statement of Reasons

- “clarifying the relative responsibilities of manufacturers and others in the chain of distribution”
- “making **needed** changes to the current requirements for safe harbor warning”
 - “further the ‘right-to-know’ purposes of the statute and provide more specificity for the content of safe harbor warnings”
- “integrating new technology including the internet, providing more useful information to Californians”
- “providing more compliance assistance for affected businesses”

A Long Road



August 30, 2016 to August 30, 2018 and Beyond

- Sell Through
- Effective Date
- Grandfathering



Subarticle 1
is mandatory

Final Statement of Reasons
Title 27, California Code of Regulations

Proposed Repeal of Article 6 and
Adoption of New Article 6
Regulations for Clear and Reasonable Warnings



California Environmental Protection Agency
Office of Environmental Health Hazard Assessment

Subarticle 2
is “voluntary”

Retailers, Manufacturers, and Distributors ... Whose Warning is It?

- Manufacturer, Producer, Packager, Importer, Supplier or Distributor may:
 - 1) affix a warning label to a product, or
 - 2) provide written notice directly to the authorized agent for a retail seller, or
 - 3) otherwise contract with the retailer ... maybe*



What's in a Notice?

- 1) State that the product(s) may result in an exposure to one or more listed chemicals
- 2) Identify the product(s) by exact name or other specific identifier, e.g., UPC
- 3) Include all necessary warning materials*
 - brick & mortar (labels, labeling, shelf signs, tags)
 - ecommerce (warning language)
- 4) Receive written or electronic confirmation of receipt

But wait, there's more ...

- Notice must be renewed (with written or electronic confirmation of receipt) at least annually
 - “within six months during the first year after the effective date”
- Additional notice is required within 90 days of a new chemical or end point being included in the warning



What's a Retailer to Do?

- A retailer is responsible:
 - for placement and maintenance of warning materials received from upstream
 - for warning on product sold under a brand or trademark owned or licensed by the retailer
 - for knowingly introducing a listed chemical or causing it to be created
 - when obscuring/covering/altering and on product warning
 - when the retailer has “actual knowledge”* of the consumer product exposure and
 - there is no one upstream who is “a person doing business” and has a CA agent for service of process or CA place of business

What Else is a Retailer to Do?

- MUST provide the name and contact information for upstream companies (if available) upon request to:
 - OEHHA
 - the public enforcers, or
 - any private enforcer who serves a 60 day notice letter

IF the requestor provides a description of the product with specificity “in accordance with Article 9, section 25903(b)(2)(D).”

The Right to Contract?

- “Provided that the consumer receives a warning that meets the requirements of [the law] prior to exposure ...”*



New Safe Harbor Warning Regime

- Does not preclude a person from providing a clear and reasonable warning using other content and/or methods
- But what is a clear and reasonable warning?



Clear and Reasonable Warning

- Prominently displayed on a label with such conspicuousness as compared with other words, statements, designs or devices on the label as to render the warning likely to be read and understood by an ordinary individual
- Warning content may contain supplemental information only to identify the source of the exposure or provide information about how to avoid or reduce exposure




Placement of Safe Harbor Furniture Product Warnings

- 1) Warning on law label or manufacturer's label on the product, and
- 2) Notice to consumers about the on-product label either
 - a. Posted at each public entrance on an 8 ½ x 11 sign in 28 pt. font, or
 - b. Stamped on each receipt in 12 pt. font

Content of Safe Harbor Furniture Product Warnings

On product:

 **WARNING:** This product can expose you to chemicals including _____, which is known to the State of California to cause cancer or birth defects or other reproductive harm. For more information go to:
www.P65Warnings.ca.gov/furniture

Posted/Stamped notice:

NOTICE: Some furniture products can expose you to chemicals known to the State of California to cause cancer or birth defects or other reproductive harm. Please check on-product label for warning information.

Mandatory/Voluntary Safe Harbor Warning for Furniture

One chemical for all end points	No hang tags, shelf signs
Disjunctive reference to each end point	Components and replacement parts
Non-consumer facing Prop 65 warning	
No additional on-line requirement	
No foreign language requirement	

Questions?



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