

Insights

CALIFORNIA PROP. 65 REGULATION EXEMPTS CERTAIN COFFEE CHEMICALS FROM CANCER WARNING; STAY IN COFFEE CASE LIFTED

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California's Office of Environmental Health Hazard Assessment ("OEHHA") has finalized a highly anticipated Proposition 65 regulation relating to coffee. The regulation, [California Code of Regulations Section 25704](#), takes effect October 1, 2019. Section 25704 provides: "Exposures to chemicals in coffee, listed on or before March 15, 2019 as known to the state to cause cancer, that are created by and inherent in the processes of roasting coffee beans or brewing coffee do not pose a significant risk of cancer."

As we [previously reported](#), OEHHA issued a notice of proposed rulemaking concerning the regulation in June 2018. The Office of Administrative Law approved adoption of the regulation on June 3, 2019, and OEHHA issued a [Final Statement of Reasons](#) on June 7.

OEHHA's Final Statement of Reasons concludes that "the weight of the evidence from the very large number of studies in the scientific literature does not support an association between the complex mixture of chemicals that is coffee and a significant risk of cancer. ... Therefore, providing warnings for such exposures would not be 'clear and reasonable' or consistent with the purpose of Proposition 65."

The regulation's immediate impact, however, is still uncertain pending further proceedings anticipated in a highly publicized Prop. 65 case against coffee roasters and retailers. Prior to the proposed regulation, in *Council for Education and Research on Toxics v. Starbucks Corp.*, Los Angeles Superior Court Judge Elihu Berle had found that defendants failed to demonstrate that coffee does not pose a significant risk of cancer. However, just before trial was to start on civil penalties and an injunction, in October 2018, the California Court of Appeal granted the defendants' request for a temporary stay of the case until the proposed regulation could be finalized.

Although the proposed regulation would have seemed to put an end to the longstanding question as to whether or not a Prop. 65 cancer warning is required for coffee, in September 2018, the plaintiff in the coffee case filed a separate action directly against OEHHA seeking to have the regulation deemed invalid. The case against OEHHA was initially stayed by Judge Carolyn Kuhl

until the regulation could be finalized, and has now been further stayed in deference to letting Judge Berle determine the validity of the regulation in the original case against the coffee roasters and retailers. On June 5, OEHHA filed a writ petition seeking an order from the Court of Appeal for Judge Kuhl to lift the stay and determine the validity of the regulation. On June 20, the writ petition was denied.

On June 24, the Court of Appeal lifted the stay in the coffee roaster/retailer action. Judge Berle may now consider how best to proceed given the finalization of the regulation and Judge Kuhl's continued stay of the OEHHA action. A status conference is set in the OEHHA action for July 3. A status conference is set in the coffee roaster/retailer action for July 11.

For questions or more information, contact our [California Proposition 65 team](#).

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