

**PROPOSITION 65
CLEAR AND REASONABLE WARNINGS
QUESTIONS AND ANSWERS FOR BUSINESSES:
INTERNET AND CATALOG WARNINGS**



**Office of Environmental Health Hazard Assessment
California Environmental Protection Agency**

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Internet and Catalog Warnings

This document was developed by the Office of Environmental Health Hazard Assessment (OEHHA) to provide information for businesses regarding Proposition 65¹ safe harbor consumer product exposure warnings provided on the internet and in catalogs. For additional information regarding other provisions of the Article 6 Clear and Reasonable Warnings regulations, see “Questions and Answers for Businesses”, available at: https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa.pdf.

Q1: Must warnings be provided for internet purchases? Must a product sold over the internet also have a warning on the product to meet the safe harbor requirements?

A1: If the business wishes to provide a “safe harbor” warning that is deemed to comply with Proposition 65, the business would have to provide warnings for purchases made over the internet following the methods in Title 27, Cal. Code of Regs., [section 25602\(b\)](#).² Warnings would have to be provided to the purchaser prior to completing the internet purchase, and a warning would also have to be provided on or with the product via any one of the four methods for consumer products warnings in [Section 25602](#), subsections (a)(1)-(4).

For a website warning, if a label is used for a product warning, a business may opt to provide a hyperlink to the warning or a picture of the warning label used on the product. In addition, if the short-form warning described in [Section 25603\(b\)](#) is provided on the product label, the website warning may use the same warning content.

Q2: Must warnings be provided for catalog purchases? Must a product sold through a catalog also have a warning on the product to meet the safe harbor requirements?

A2: To provide a “safe harbor” warning that is deemed to comply with Proposition 65, warnings would have to be provided in catalogs following the method in [Section 25602\(c\)](#). A warning also would have to be provided on or with the product via any one of the four methods for consumer products in [Section 25602](#), subsections (a)(1)-(4). If the short-form warning described in [Section 25603\(b\)](#) is provided on the product label, the catalog warning may use the same content.

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65, codified at Health and Safety Code section 25249.5 *et seq.*

² All further references are to sections of Title 27 of the California Code of Regulations unless otherwise stated.

Q3: For internet purchases, is a warning or hyperlink to a warning also an “electronic device or process” described in Section 25602(a)(2) so that no other warning method is required?

A3: No. To comply with the safe harbor provision for internet purchases, a business would need to use one of the methods in [Section 25602](#), subsections (a)(1)-(4) and provide a separate warning prior to the completion of the purchase of the item as described in [Section 25602\(b\)](#). As an example, a business could provide a warning label on the product and post a photograph of that warning label on the website so that the purchaser sees the warning on the website prior to completing the purchase. The electronic device or process referred to in [Section 25602](#), subsection (a)(2) is a method for providing a warning at a retail store through a scanner/kiosk, barcode reader or other electronic device. It does not refer to an internet website.

Q4: Rather than displaying the entire consumer product warning on the product display page of a catalog or webpage, can a business place the warning symbol next to the product and use it as a reference to a full consumer product warning provided elsewhere in the catalog or website?

A4: No. A warning symbol provided near a product in a catalog or on a webpage separate from the text of a consumer product warning which is located elsewhere in the catalog or on the website is unlikely to ensure that the warning is “clearly associated” with the item being purchased and instead requires the purchaser to seek out the warning. This approach would not meet the safe harbor requirements in the regulations. An alternative is to provide either a short-form warning on the product page, a clearly marked hyperlink to the warning text, or a pop-up warning that appears when the purchaser puts in a California zip code.

Q5: What is a “catalog”?

A5: The word “catalog” is not defined in the regulation. The generally understood definition of catalog should be used (see for example <http://www.dictionary.com/browse/catalog>: “a list or record, as of items for sale or courses at a university, systematically arranged and often including descriptive material.”)

Q6: Who should provide an internet warning?

A6: Consistent with the Act, OEHHA’s new regulations place primary responsibility for providing warnings on product manufacturers, producers, packagers, importers, suppliers or distributors. For consumer product exposures, businesses in the above categories must either provide a warning on the product, or provide notice and warning materials, including warning language for products sold on the internet, to “the authorized agent” for a retail seller and receive an acknowledgment that the notice and materials were received. The retail seller is responsible for placement and maintenance of the warning materials, including warnings for products sold over the internet that

he/she receives from the product manufacturer, producer, packager, importer, supplier or distributor. Businesses should carefully review the new requirements ([Section 25600.2](#)).

Q7: What are the requirements for a safe harbor internet warning?

A7: In order to provide a safe harbor warning for a product sold on the internet, the warning must be provided using one of the methods described in [Section 25602](#), subsections (a)(1)-(4). A warning must also be provided on the product display page, or by otherwise prominently displaying the warning to the purchaser so that it is clearly associated with the product before the purchase is completed ([Section 25602\(b\)](#)). A retailer can use the same warning language on his/her website as the warning provided on or with the product, or provide a photograph of the product warning as long as the warning complies with the safe harbor content requirements and the warning is readable and legible in the photograph provided on the website.

Q8: As a manufacturer we may be unaware if our goods/products will be sold over the internet. What is our duty to warn for products sold online?

A8: A manufacturer is required to provide a warning either on the product or by providing a notice and warning materials to the producer, packager, importer, supplier, distributor or retail seller, thus discharging its regulatory responsibility ([Section 25600.2](#)). Where a manufacturer provides warning materials, these must include information for internet warnings ([Section 25600.2](#), subsection (b)(3)). Each business in the chain of commerce who receives such materials is required to pass along the warning information to the business to which it sells the product, so that ultimately the consumer receives a compliant warning.

Q9: If a consumer receives the warning prior to exposure via a warning label on the product, why is an additional warning required on the website when products are sold via the internet? Is this safe harbor requirement consistent with the statutory requirement that warnings must be provided *prior to exposure* to a listed chemical?

A9: As part of the safe harbor warning provisions, OEHHA established warning methods and content that are deemed “clear and reasonable” for purposes of Proposition 65. If a business decides to take advantage of the safe harbor provisions of the regulations, it must follow these requirements.

Providing consumers with information about a potential exposure to a Proposition 65 listed chemical at a point when it is easiest for them to make a decision about purchasing the product furthers the purposes of the statute by allowing consumers to make better-informed purchasing decisions. At a brick-and-mortar retail store, a purchaser seeing a Proposition 65 warning for a product can make a decision at that time whether to purchase the product. In contrast, if a website does not provide a warning for the product, the purchaser would not see the warning until after the product

is purchased and delivered. This hinders the purchaser's ability to make informed decisions about whether or not to purchase the product. Further, the purchaser would need to incur additional time and expense to return the product after seeing the warning, should they decide not to keep the product.

Q10: Are out-of-state internet retailers exempt from Proposition 65?

A10: No. Proposition 65 applies to all businesses with 10 or more employees that cause exposures in California to listed chemicals in their products. A retail seller may comply with the safe harbor regulations by providing the warning only to persons who reside in California. Some online retail sellers do so by providing the warning as a pop-up when the purchaser enters a California zip code. This process would comply with the requirements of the regulation to "otherwise prominently displaying the warning to the purchaser prior to completing the purchase". There are products that are sold outside California that carry Proposition 65 warnings because the product manufacturer or retail seller has determined that it is infeasible to only provide warnings to California purchasers. However, nothing in the regulations requires the manufacturers or internet retail sellers to provide warnings outside California.

Q11: Am I required to comply with the safe harbor provisions of the regulation?

A11: No. The safe harbor provisions specify warning methods and content that OEHHA deems to comply with Proposition 65 requirements for clear and reasonable warnings. A business is free to use alternative warning methods and content for products sold over the internet and in catalogs that are clear and reasonable. However, the business would need to be prepared to defend the warning if a plaintiff challenges the sufficiency of the warning.