

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 assist businesses in locating and understanding relevant provisions in the [Article 6 Clear and Reasonable Warnings regulations](#). This document specifically addresses 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”](#), which is also available on the Proposition 65 Warnings Website.

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

A1: For consumer product purchases made over the internet, 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 following the methods in Title 27, Cal. Code of Regs., [Section 25602](#), subsections (a) and (b).² Specifically, the business would have to provide a warning on or with the product via any one of the four methods for consumer products warnings in [Section 25602](#), subsections (a)(1)-(4). Under subsection (b), the business would *also* need to provide a warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the internet purchase .

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 photograph of the warning label used on the product (See page 89 of the [Final Statement of Reasons \(FSOR\)](#) for these regulations). 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 for catalog purchases, a warning 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). Under [Section 25602\(c\)](#) warnings would *also* have to be provided in the catalog in a manner that clearly associates it with

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.

the item being purchased. If the short-form warning described in [Section 25603](#) (b) is provided on the product label, the catalog warning may use the same content.

Q3: For internet purchases, is a warning or hyperlink to a warning on the product website the only warning method required?

A3: No. To comply with the safe harbor provision for internet purchases, a business would need to use one of the methods described in [Section 25602](#), subsections (a)(1)-(4) and *also* provide an internet warning prior to the completion of the purchase of the item, as described in [Section 25602](#)(b).³⁴ 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 ([FSOR, p. 89](#)).

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: A warning provided in a catalog must be “clearly associated” with the item being purchased [[Section 25602](#)(c)]. A warning for an internet purchase is not “prominently displayed” if the warning requires the purchaser to seek out the warning [[Section 25602](#)(b)]. Additionally, [Section 25602](#)(c), which is applicable to all safe harbor consumer product exposure warnings, provides that safe harbor consumer product exposure warnings must be prominently displayed on the “label”, “labeling”, or “sign”, and must be displayed with such conspicuousness as compared with other words, statements, designs or devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use. An alternative approach for internet warnings could be 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 ([FSOR, p. 90](#)).

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

³ See *also*, Notice of Non-Substantive Changes Article 6: Clear and Reasonable Warnings, available at <https://oehha.ca.gov/proposition-65/cnr/notice-non-substantive-changes-article-6-clear-and-reasonable-warnings>.

⁴ On p. 77 of the [FSOR](#) OEHHHA noted: “For these reasons, OEHHHA has established safe harbor warning methods for internet and catalog sales wherein a warning *must be provided on the webpage or in the catalog as well as on the product* (emphasis added); and on p.38 OEHHHA noted “...[n]o additional notice is required for labeled products, except where they may be sold over the internet...”

<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.”)[[FSOR, p. 93](#)].

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 [[Section 25600.2\(a\)](#)]. 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 [[Section 25600.2\(a\)-\(c\)](#)]. The retail seller is responsible for placement and maintenance of the warning materials, including providing warnings for products sold over the internet that he/she receives from the product manufacturer, producer, packager, importer, supplier or distributor [[Section 25600.2\(d\)](#)]. Businesses should carefully review the new requirements.

Q7: 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?

A7: A manufacturer is required to provide a warning either on the product or by providing a notice that includes warning materials to the producer, packager, importer, supplier, distributor or retail seller, [[Section 25600.2\(a\)](#)]. Where a manufacturer provides warning materials, these must include information for internet warnings [[Section 25600.2\(b\)\(3\)](#)]. Each business in the chain of commerce that receives such materials is required to pass along the warning information it receives, so that ultimately the consumer receives a compliant warning.

Q8: 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?

A8: As OEHHA noted in the [FSOR](#) for the 2016 Article 6 rulemaking:

“When the voters passed Proposition 65 thirty years ago, the specific issue of warning methods and content for purchases over the internet was not contemplated. OEHHA, as the lead agency, has determined that providing a warning to a person who makes a purchase via the internet only after purchasing the product online and potentially exposing the person upon delivery of the product, is inconsistent with the purposes of the Act. Additionally, a person would then have to choose between keeping an item that exposes them to a listed chemical, or repackaging and returning the item while potentially incurring shipping costs and/or restocking fees depending on the return policy of the online seller. To alleviate the burden on businesses, OEHHA has modified the text to

permit the online or catalog warning to use the same content as the on-product warning” [[FSOR, p.190](#)].

Q9: Are out-of-state internet retailers exempt from Proposition 65?

A9: 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 who currently provide an internet warning do so by providing the warning as a pop-up when the purchaser enters a California zip code. This is an example of a way to prominently display “the warning to the purchaser prior to completing the purchase” as required by the regulation [[Section 25602\(b\)](#)]. 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 law or regulations requires businesses to provide warnings outside California.

Q10: Am I required to comply with the safe harbor provisions of the regulation?

A10: No. The safe harbor provisions specify warning methods and content that OEHHA deems to comply with Proposition 65 requirements for clear and reasonable warnings [[H&S Code Section 25249.6](#)]. 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 [[Section 25600\(f\)](#)]. However, the business would need to be prepared to defend the warning if a plaintiff alleges it is not “clear and reasonable”.