

**From:** Lucas Novak [<mailto:lucas.nvk@gmail.com>]  
**Sent:** Tuesday, May 17, 2016 8:23 AM  
**To:** P65Public Comments  
**Subject:** Clear and Reasonable Warnings Regulation

Dear Sir or Madam:

I am an attorney in California with several years experience working on Prop 65 actions. I am writing with concern about the proposed revisions to Section 25600.2, namely, the addition of "a notice and" in subsection (e)(4), along with the various requirements and revisions to subsections 25600.2(b), (c), and (d).

Generally, I'm concerned about how the proposed revisions will allow manufacturers, distributors, and retailers to **avoid reasonable warnings for Internet sales**.

Here's the situation I've noticed already happens much too often (and seems to be a growing common practice as the Internet marketplace expands): The manufacturer or distributor places a Prop 65 warning label directly on the product. They ship it to the retailer who sells it over the Internet. The Internet retailer includes a product description and photos of the product, but no Prop 65 warning (or hyperlink) on the Internet page(s). Thus, the consumer is ultimately unwarned about chemical exposures until she/he actually receives the product in the mail and sees the warning label on the product. The consumer now has no choice but to keep the product (and use it) or go through time-consuming steps to return the product, pay for return shipping (and sometimes a restocking fee), and follow a retailer's specific return procedures to return the product to the retailer. This is not a "reasonable" warning. It also contradicts the language "prior to completing the purchase" in section 25602(b) for Internet sales.

If Prop 65 warning labels are provided on the product by the manufacturer/distributor, the retailer is already put on sufficient notice (just like a consumer would be) and should have the obligation to include these Prop 65 warnings on the Internet. Internet retailers should not be granted an exemption, allowing them to ignore warning labels on the products.

Questions arise related to the language of subsection (e)(3): When the manufacturer/distributor provides a warning label on the product, but the Internet retailer fails to provide that Prop 65 warning on the product webpage, does this mean the retailer "covered" or "obscured" the warning label? Depending on the photos of the product, this could be the case. Or, as subsection (d) in conjunction with (e)(4) appear to convey, is the Internet retailer only responsible for Internet warnings if a manufacturer/distributor complies with the specific requirements of 25600.2(b) **and** (c) (as opposed to a warning label pursuant to subsection (b) only)?

Currently, the proposed regulations may be interpreted to allow manufacturers, distributors, and retailers to provide "unreasonable" warnings related to sales over the Internet. The practical effect is that consumers aren't warned of possible exposures until **after** they've purchased the product, paid for shipping, and received the product in the mail. The time and expense to return the product is often impractical, thus forcing consumers to be exposed to the chemicals by resolving to use the product they already paid for. The practical effect is also that manufacturers,

distributors, and retailers benefit from unreasonable warnings related to Internet sales. As the Internet marketplace displaces brick and mortar retail outlets, this is of great concern.

Thank you for considering my comments.

Regards,

Lucas Novak, Esq.  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069  
T/[323.337.9015](tel:323.337.9015)