



November 17, 2014

**Via Email to:** [P65Public.comments@oehha.ca.gov](mailto:P65Public.comments@oehha.ca.gov)

**Monet Vela**

Office of Environmental Health Hazard Assessment  
P. O. Box 4010  
Sacramento, California 95812-4010

Re: **Title 27, California Code of Regulations, Article 6 – September 23, 2014 ‘Draft Regulation for Discussion Purposes’**

Ms. Vela,

The American Home Furnishings Alliance (“AHFA”) thanks you for the opportunity to submit comments regarding the Office of Environmental Health Hazard Assessment’s (“OEHHA”) Request for Public Participation on Potential Regulatory Actions. AHFA is the largest trade organization serving the home furnishings industry, which AHFA and its predecessor organizations have been doing since 1905. AHFA’s 400 member companies operate numerous domestic wood furniture manufacturing facilities and comprise an extensive global supply chain that provides a wide variety of home furnishings to American consumers. Member companies provide approximately 100,000 manufacturing jobs throughout the U.S. and represent a \$35 billion segment of the nation’s economy. The proposed regulatory actions, should OEHHA ultimately elect to pursue them, will impact AHFA’s member companies’ business in the State of California. The comments below are intended to supplement those submitted concurrently by the California Chamber of Commerce, in whose comments AHFA joins.

**Furniture Product Warnings**

AHFA appreciates OEHHA’s willingness to consider a specific Proposition 65 warning regime for the furniture industry. As drafted, however, the methods of transmission for furniture product warnings would be more onerous and burdensome to implement than the warning obligation placed upon other industries, would not address the unique aspects of the furniture industry that support an industry specific warning regime, and would exacerbate consumer confusion through excessive warnings.

As drafted in Section 25606.1(a)(1)-(3), warnings for consumer products must be placed either on a product’s labeling that is provided directly to the purchaser, or on the shelf-tag or on a shelf sign for the product at each point of display, or via any electronic device or process that

automatically provides the warning to the consumer before or during the purchase. In contrast, warnings for furniture products (set forth in draft Section 25606.5(a)(1)-(3)) must be placed on all of the following: a notice displayed at each public entrance or point of display, ***and*** a notice printed or stamped on the invoice, ***and*** a warning affixed to the furniture product. Requiring each method of transmission to be additive of the others for the furniture industry but alternative to each other for other consumer products, ***places a heavy burden on the furniture industry and removes the flexibility afforded to other industries.***

AHFA suggests that the methods of transmission proscribed by OEHHA for furniture product warnings be stated as alternatives to ensure parity among industries and avoid the imposition of an extraordinary burden upon the furniture industry. It is particularly difficult for the furniture industry to affix unique labels to products for the California market only. AHFA members have reported several instances of consumer confusion regarding Proposition 65 warnings received by individuals outside the state of California. The industry requires a method of transmission for furniture product warnings that does not require on-product warning to avoid causing unnecessary consumer confusion outside the state of California and to afford all industries operating within the state an appropriate degree of flexibility.

Requiring furniture product warnings to be thrice communicated to consumers also may cause consumers to erroneously conflate the number of warnings given with the degree of risk posed by the furniture products, and may cause consumers to erroneously assess the comparative risk of furniture and other consumer products for which only a single warning need be given. This is contrary to OEHHA's stated desire to decrease consumer confusion.

We look forward to discussing specific proposed revisions to draft Section 25606.5 at our upcoming meeting scheduled for ***Thursday, 11/20/14 @ 3:00p.***

### **Retail Sellers – Consumer Product and Food Warnings**

AHFA recognizes the preference in the law for Proposition 65 warnings to be provided by manufacturers instead of retailers to the greatest extent practicable. However, draft Section 25605 would interfere with existing lawful business and contractual relations between manufacturers and retailers and is unnecessary to effectuate the goal of the law. If the agency is inclined to maintain this draft section, the following revisions are offered to align the section with existing law.

First, AHFA appreciates OEHHA's recognition that a manufacturer and retailer enjoy the freedom to contract with one another and may agree to allocate the burdens of Proposition 65 compliance among themselves. However, as drafted, Section 25605 would only recognize "written agreements." All lawful agreements, whether written or unwritten, should be recognized, and the draft regulation should not nullify otherwise lawful oral contracts or implied obligations that are currently recognized by the law.

Second, draft Section 25605(b) implies that on-product warnings are the only compliant method of transmission. Draft Section 25605(b) should incorporate all methods of transmission for product warnings provided for under the draft regulation. Compliance with Proposition 65's warning obligation under one section of the draft regulation should be consistently deemed to be compliance with Proposition 65's warning obligation throughout the draft regulation.

Third, manufacturers must be able to control their compliance with Proposition 65's warning obligation. Under draft Section 25605(b)(4), a manufacturer that otherwise complies with Proposition 65's warning obligation would be deemed out of compliance if the retail seller fails to provide a written acknowledgment of receipt of the notice required under this draft section. A manufacturer must be able to discharge its legal obligations through its own actions. Written proof of receipt in any form should suffice, whether through the retail seller's acknowledgment of receipt, a third-party delivery service's confirmation of delivery, or a declaration of service.

Fourth, the term "authorized agent" is used repeatedly in draft Section 25605 but is undefined and, as a result, differing interpretations could arise that lead to unnecessary litigation and/or interference with parties' contractual rights. AHFA suggests that all references to an authorized agent clarify that such person is anyone so designated by agreement of the parties or a registered agent for service of process.

Fifth, the requirement in draft Section 25605(b)(1) for perpetual renewal of notice to the retailer every 180 days is unnecessary in the absence of any product changes that would alter the terms of the prior notice and is fraught with the potential for harmless human error. Renewal notices should only be required in the event of changed circumstances.

Sixth, draft Section 25605(f), especially as it relates to "any member of the public," conflicts with existing law which protects proprietary business information and the right of parties to contract for anything lawful, including confidentiality. Existing law already provides tools that can be used to obtain the information described in draft Section 25605(f) in a manner that insures due process and the protections of legal rights.

Thank you for considering these comments. I look forward to meeting with you in person on November 20, 2014 for further discussions as we work through these critical issues facing the furniture industry.

Regards,



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