

New Labels

August 8, 2018 - HIGH POINT, N.C. - New provisions under California's Proposition 65 regulation - including specific warning language for home furnishing products - take effect August 30.

The American Home Furnishings Alliance (AHFA), which last year offered three webinars on the new provisions and this year presented a day-long workshop explaining the changes in detail, is offering non-member companies a summary of its recent compliance guidance.

In 1986, California voters approved the Safe Drinking Water and Toxic Enforcement Act to address growing concerns about toxic chemicals in consumer products and the environment. Better known as "Prop 65," the law requires the California Office of Environmental Health Hazard Assessment (OEHHA) to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. The list must be updated once a year, and it now contains nearly 900 chemicals.

The law also requires any business with more than 10 employees to provide a "clear and reasonable" warning before causing a California consumer to be exposed to any listed chemical. The law does not regulate the listed chemicals in any way. Rather, its purpose is to educate consumers about the *presence* of listed chemicals, so they can make informed purchase decisions.

However, the original law failed to define what constitutes a "clear and reasonable" warning. OEHHA has been working since 2013 to clarify the concept.

OEHHA's original proposal, released in January 2015, included a list of 12 chemicals that manufacturers would have been required to list by name on the warning label if any of the 12 were present in a product sold in California.

Thanks to opposition from AHFA and other groups, the final amendment adopted in August 2016 dropped the "dirty dozen." But the new provisions still modified the on-product warning label. All Prop 65 warnings now require a "pictogram" of a black triangle with an exclamation point in the center, followed by the word WARNING in all capital, bold face letters. From there, the warning language differs somewhat, depending on the product.

As a result of AHFA's advocacy on behalf of the home furnishings industry, the new provisions include a "safe harbor" warning specifically for furniture products.

"The furniture safe harbor warning differs from other Prop 65 warnings in three ways," explained AHFA Vice President of Regulatory Affairs Bill Perdue. "First, it requires only one listed chemical to be named in the warning." Warnings for other consumer products require two chemicals to be named.

Specifically, the furniture warning must read:

WARNING: This product can expose you to chemicals including [name one or more listed chemicals] which is [are] known to the State of California to cause cancer or birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov/furniture.

Second, OEHHA allows the furniture warning to be "affixed to the furniture in the same manner as other consumer information or warning materials that are provided on the product." Other Prop 65 warnings must be on a separate product label.

“AHFA advised OEHHA that the two primary locations for the Prop 65 warning would be as part of the manufacturer’s label for wood products or on the law label for upholstered products,” Perdue said. “As long as OEHHA’s specific guidance is followed for the design of the warning, the Prop 65 language can be added to these existing compliance labels.”

The third distinction within the furniture safe harbor is the requirement for the Prop 65 warning to appear on in-store signage or a receipt stamp *in addition to* the on-product label. The signs or receipt stamp must be provided by the manufacturer but become the responsibility of the retailer.

“Manufacturers must identify all products for which a Prop 65 warning is needed and then provide a list of those products to their California dealers. Further, they must supply those dealers with Prop 65 warning signs for each public entrance or point of display. Instead of the store signs, the retailer can choose to stamp or print the warning on customer receipts,” Perdue explained. These provisions enable the furniture industry to meet the Prop 65 requirement to warn consumers prior to exposure to a listed chemical.

The warning for store signage or the receipt stamp is as follows:

NOTICE: Some furniture products can expose you to chemicals known to the State of California to cause cancer or birth defects or other reproductive harm. Please check on-product label for warning information.

Retailers who fail to comply with a furniture supplier’s notice to place and maintain in-store warnings will be liable for Prop 65 violations.

The new warning regulations take effect **August 30, 2018**, and apply to products manufactured on or after that date and offered for sale in the State of California.

Furniture companies are not required to take advantage of the furniture “safe harbor.” However, the new warning regulations provide no guidance as to what constitutes a “clear and reasonable warning” for furniture products other than the safe harbor regime. Conversely, companies that fully comply with the specified “safe harbor” cannot be sued for a Prop 65 warning violation.

Companies seeking further guidance on compliance with the new furniture safe harbor are invited to email AHFA Vice President of Communications [Pat Bowling](#) to request AHFA’s compliance summary.