



AHFA Regulatory Update

AHFA Manufacturing Summit
Franklin Furniture Institute
Mississippi State University

Proposition 65

California's Safe Drinking Water and Toxic Enforcement Act of 1986

- Applies to **All PRODUCTS** offered for sale in CA
- Requires **manufacturers** to notify consumers of the ***'presence of chemicals'*** in products and/or in the workplace
- Administered by CA OEHHA

OEHHA Selects Chemicals that are Added to the Prop65 List

- +800 Listed Chemicals
- Many found in commonly used products
- Naturally Occurring
- Listed if OEHHA determines the chemical ***'has been clearly shown to cause cancer, birth defect or other reproductive harm'***

Proposition 65

'Prior to Purchase Warning'

- Businesses must provide a 'clear and reasonable' warning **before** exposure
- Warning can be:
 - A label on the product, packing, store shelf, or signage
 - Regulation doesn't specify where
 - Only that the consumer can likely read and understand it prior to purchase

The Warning Statement

WARNING

This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm

Proposition 65

- **Litigation Driven** – State Attorney General’s Office
 - Lawsuits may be filed by the Attorney General, district attorneys, consumer advocacy groups, private citizens and law firms
 - Peter Englander/The Chanler Group, John Moore, Laurence Vinocur, Center for Environmental Health, Russell Brimer: are professional plaintiffs who have filed hundreds of Prop65 Notices
 - Chemicals: formaldehyde, TDCPP, DEHP, lead, and lead compounds
 - Products: children’s products – cribs, faux leather, upholstered furniture, outdoor furniture, vinyl furniture
 - Fine - \$2,500/day/violation
 - 104 60 Day Notices/22 Member Companies
 - Options???
 - Settlement structure + plaintiff legal fees/expenses
 - Average 2011 settlement = \$65,000; Total +\$17M
 - Challenge the allegation (costly/time-consuming)

Proposition 65

- Listing is Not a Prohibition
 - Must have *credible scientific evidence* that the chemical in use does not exceed the 'safe harbor' or NSRL
 - If NSRL is not exceeded, exposure is considered 'insignificant'
 - TDCPP NSRL = 5.4 micrograms per day ($\mu\text{g}/\text{day}$)
- Label *is not required* if chemical of concern is below the NSRL

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- **TDCPP**, FR Chemistry and Foam
 - Listed by OEHHA in October 2011; prior to purchase warnings required beginning October 2012
 - 12 month sell through period for legacy inventory and floor samples
 - Not *prospective* in nature
 - Test data required/obtained to file the 60 Day Notice
 - Challenges
 - Controlling the retail environment (floor samples, legacy inventory)
 - ‘Close Out’ specialist and Discount Merchants
 - Labeling the finished product (law label ‘billboard’)
 - Internet Sales/Purchases

Who, What, Where, When and How

- ***'Prior to Purchase Warning'***
 - Use the law label as a ***'Billboard'***
 - Potentially Not considered 'prior to exposure' – ***not visible*** to the consumer prior to purchase
 - A label on the 'front door' not at the ***'point of purchase'***
 - Self labeling ; labeling the box; on product labels
- **Work with Your *CA Retail Footprint***
 - Communicating their responsibility
 - Pier 1, TJMaxx, RC Willey, Khol's, Wall-Mart, Target, Babys-R-US and others are listed in the 60 Day Notices
 - Floor samples, legacy inventory, visible signage @ the point of purchase
 - Labeling the finished product @ the point of purchase

Who, What, Where, When and How

- 3 Types of Exposures; 3 'Methods of Transmission'
 - The Warning Label (Section 25603.1): a warning label on the product; shelf labeling; **'any other system that provides clear and reasonable warnings'**
 - Warning @ the front door might not be considered 'clear and reasonable' @ the point of purchase
 - Occupational (Section 25604.1): a product label or a warning sign in the workplace or a warning to the exposed persons
 - Warehouse, stockrooms, cross docks
 - Recommend **labeling the box**
 - Environmental (Section 25606): warning sign in the affected area (the front door or public space); mailing to affected occupants; delivered through **public media**

Proposition 65

- Additional Challenges on the Horizon
 - Intent to List BPA (Bisphenol-A)
 - OEHHA Notice to add BPA to the Prop65 Chemicals of Concerns List
 - 2/25/13 End of Public Comment Period
 - Same 'Path' as TDCPP
 - Why is this an issue?
 - Chemical base for coatings used on synthetic laminates
 - Powder Coatings, UV coatings, inks
 - Emerging chemistry for alternatives
 - Will trigger same 'prior to purchase warning' as TDCPP

Upholstered Furniture Flammability

- Proposed Changes to TB-117
 - Appropriately addresses smolder ignition, the leading cause of upholstered furniture fires.
 - Balances the burden of risk between cover fabrics and filling materials with no bias against any individual component.
 - Does not prohibit the use of FR chemicals or other components but allows flexibility based on consumer preferences and available technology.

Upholstered Furniture Flammability

- Mandates a proven and effective approach to smolder ignition (ASTM/UFAC) thereby increasing the level of compliance.
- Allows for the continued evaluation of small open flame risk.
- Provides a 'drop in solution' with minimal economic effect.
- Allows the use of protective barriers with fabrics that fail.

Challenges with the Proposed Revision

- Several added modifications to the established ASTM method:
 - Changes the historical precision and bias statement
 - Alters the established ‘referee method’
 - Will require a substantial interlaboratory study to reset the precision and bias statement
- The need for a COM exemption.
- The need to establish a regulatory ‘fence’ around qualifying alternate cigarettes

Current Activity & Approach

- Legislative & Regulatory
 - Bicameral letter asking CPSC to adopt final draft of TB-117 once approved
 - Senator Hagan (D-NC) as primary sponsor with Senators Klobuchar, Durbin, Boxer and Congresswoman Matsui
 - Working on TSCA reform
 - Working with EPA DfE Program
- State Initiatives: NY

Current Activity & Approach

- Industry Comments to the BHFTI
 - Broad Stakeholder Participation and Support
 - Small Open Flame/Barrier Study
 - BHFTI Plant Tours
- Green Science Policy Institute and Grate Lakes PBDE Reduction Project
- CPSC
 - Meeting with Commissioner Adler
 - Upholstered Furniture Fire Safety Technology Meeting
 - Adler Plant Tours

Small Open-Flame Barriers – Upholstered Furniture

- Fiber batting barriers designed for mattresses cannot be used
 - Most widely used mattress batting is based on rayon fiber blends
 - Rayon does not crimp like polyester – inappropriate for furniture
- Fabric inner-liners are too costly
 - Material costs are high and would affect salability of finished products
 - Existing inner-liner fabrics require cut-and-sew fabrication, adding extra labor cost (offshore resourcing – loss of US jobs)
- Cotton batting requires heavy FR treatment
- May not be appropriate to the risk of furniture ignition
 - Today's furniture designs may provide reduced fuel load
 - UL corner tests are not representative of actual furniture or usable barrier technologies

Formaldehyde

- CARB
 - Proposed Changes ‘on hold’
 - Harmonize with EPA rule
 - Public Workshops post EPA Review
- EPA
 - 2 Part Rule has been reviewed by OMB
 - EPA has over 86 questions of clarification
 - April???
 - Time Line Reset

Questions?????

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