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**’
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‘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
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• **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???</p>
  • Settlement structure + plaintiff legal fees/expenses
  • Average 2011 settlement = $65,000; Total +$17M
  • Challenge the allegation (costly/time-consuming)
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• 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 (μg/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, Khols, 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**
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• 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

4/4/2013

AHFA Manufacturing Summit
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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