



Newsletter October 2019

Furniture Laws & Regulations

New State Requirements for Flame Retardant Chemicals

On September 3, 2019 the State of New Hampshire joined a group of 15 other U.S. States and other jurisdictions to regulate the use of flame retardant chemicals used in upholstered furniture, and some juvenile products. The scope of these different new regulations are mostly related to the use of halogenated, nitrogen based, organophosphorous and nanoscale FR chemicals **if used in finished upholstered furniture items.**

This now complicates the needs for regulatory compliance to each of the 15 states with specific variations stated in their new written regulations most with effective dates of January 1,2020.

Generally the restrictions limit the content of flame retardant chemicals to not more than 1000 PPM.

As usual California has been the leader in these new regulations. If your company is compliant to California Senate Bill #2998 then you are protected as long as you follow the below requirements;

1)-A label on each item offered for sale indicating if the upholstered item either (a)Does contain any flame retardant chemicals OR (b)Does Not contain any flame retardant chemicals.By checking the proper box indicated on the label.This is also referred to as Cal-SB-1019.Also

in Section 1374.3 of Title 4 of the California Core of Regulations.

2)-Upon **request** by the California Bureau of Household Goods & Services manufacturers of upholstery sold in California shall provide **“documentation”** establishing the accuracy of the flame retardant statement label within **30 days of the request.**

3)-Violation of the above requirements for proper product labeling and back up documentation of their declaration if requested are liable for fines starting at \$1000 with possible subsequent fines up to \$10,000.

Then if sufficient documentation by testing data is not received, the Bureau could check all products offered for sale in California in the manufacturer's upholstered product line for testing at the Bureau's own California lab.

The States with these new regulations include: Alaska, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New York, Oregon, Rhode Island, Washington, Vermont, Washington DC and the city of San Francisco.

For specific language for each of these States please contact us so we can explain the subtle differences.

This current situation of a confusing mixture of regulations with the same general objectives is certainly in need of a Federal regulation.

Today there is a proposed Federal regulation for Flammability of upholstered furniture and addressing the use of flame retardants used or not used. In the Case of the current California TB-117-2013 flammability regulation it is not required to use any dangerous FR chemicals for compliance since the testing procedure is now

by **smolder ignition** instead of **open flame ignition** testing.

This proposed Federal regulation named **SOFFA** for the “Safer Occupancy Furniture Flammability Act” would make California’s Technical Bulletin TB-117-2013 The new Federal Flammability Standard. SOFFA was introduced in 2016 but the CPSC did not take action, then introduced again in 2017/2018 but congress adjourned in early 2019 again with no action taken. Now in the current Congress SOFFA is being introduced again and the CPSC is scheduled to do more technical reviews in 2020. Hopefully this Federal regulation will be promulgated into United States law.

Conducting Business in California and PROP 65

Latest updated Settlements of lawsuits paid by retail stores and their suppliers/manufacturers worldwide indicate:

In 2016 there were a total of 760 settlements issued by consent judgments in California Alameda Superior Court.

Amount paid \$30 Million with Attorney Fees of \$21 Million(72%) by only 46 individual lawyer groups.

In 2017, 688 settlements in the amount of \$25 million with attorney fees of \$19 million(76%).

In 2018, 828 settlements in the amount of \$35 million, attorney fees \$27 million(77%).

These lawyer groups have been referred to as “bounty hunters” as far back as in 2013 in statements by then Governor Jerry Brown. However regardless of any negative

designations in the media and in other public commentaries this system of lawsuits continues today in 2019 with similar statistics. These lawsuits are generally begin with violations for “**Not posting proper warning notices for Prop 65**”.

Items offered for sale in California retail furniture stores without proper warning notices posted or attached to each item might be checked and purchased by individual concerned citizens who proceed to take legal action by the issuance of 60-day notices of a coming lawsuit by informing the state Attorney General’s Office, the enforcement agency of Prop 65 violatons,where the 60-day notice is issued to the violating parties in the supply chain..

How to protect your retail business and your suppliers worldwide?

Since a lawsuit issued for violation of Prop 65 requirements names the furniture retailer and their source supplier/manufacturer as defendants there are certain precautions to prepare a defense if a 60-day notice is issued detailing a coming lawsuit to protect all involved.

Here is a review of the steps necessary to have a proper defense:

1)-Businesses are required to provide a “clear and reasonable” warning notice before knowingly and intentionally exposing anyone to a listed dangerous chemical, unless the business can show that the anticipated exposure level will not pose a significant risk of cancer or is significantly below exposure levels observed to cause birth

defects or other reproductive harm. The required proper warning notice can be given in the following ways:

2)- Warning Labeling attached to the furniture item offered for sale.

3)- Posting warning signs in the retail store in conspicuous places for consumers to read before they intend to purchase.

4)- Additional signage in the retail store at entrances and at sales counters.

5)- These warning notices must have the exact language, example as follows:

YELLOW TRIANGLE SYMBOL followed by "WARNING This product may exposes you to chemicals including (name of chemical) known by

the State of California to cause cancer and/or reproductive harm”.

6)-Use SAFE HARBOR evidence from test reports.

So if it is determined that the chemical in your furniture item is under the “Safe Harbor” level of exposure **than no warning notice is required.**

Safe harbor levels are determined by OEHHA(California Office of Environmental Health Hazard Assessment) on their list of over 300 chemicals with safe harbor exposure levels.

Unfortunately there are over 900 dangerous chemicals on the complete Prop 65 list,so to check the exposure risk of any one particular chemical a quantitative risk assessment is required to be performed by use of Toxicology at a certified lab,an expensive undertaking.

Of the 900 chemicals listed as dangerous which ones might be contain in furniture items?

This question has no simple answer.If we look at the many examples of lawsuit cases filed in California Superior court for furniture items in violation of warning notice labeling, the list does include the following general categories for furniture:

- Flame retardant chemicals(TDCPP,TCEP),
- Phthalates(DEHP,and 12 other phthalates)
- HeavyMetals(Lead,Cadmium,Mercury,Zinc,Ar senic,etc).
- VOC's(Volitile Organic Compounds)Formaldehyde,Methylene chloride, Acetone etc.)

- These above groups account for approximately 24-30 chemicals from the list of over 900. This helps to eliminate many from the list but all of these must be considered in your prepared defense if sued for your improper or absence of labeling to avoid an initial 60-day notice of violation.

It is important to note the Prop 65 requires the manufacturer and upstream supplier of component materials in your finished furniture products to obtain data listing the exact dangerous chemical by “CAS number” and all MSDS sheets applicable, since this chemical name must be in the final language of the proper Prop 65 warning notice. Retail furniture stores must work together with their manufacturing sources to obtain these exact chemical names

since plaintiff lawyers will test your finished item in proper chamber testing at certified labs to reveal exposures to any of these dangerous chemicals at certain exposure levels above the **Safe Harbor levels.**

This is a complicated procedure so for additional advice on each of your company's specific product requirements for full compliance please contact us for individual consultations covering your full supply chain and each individual item of furniture offered for sale in California.

Chinese Wooden Vanities and Cabinets

The investigation by the U.S.Department of Commerce and the ITC into the issuance of AD(additional duties) and CVD(countervailing duties) was originally initiated in March of 2019 by

petitioner's claiming that domestic manufacturers have been materially injured by imports being sold at below fair value.

The petition also claimed that China was illegally dumping wooden cabinets and vanities into the U.S. market by providing large subsidies in the form of discounted land,electricity,raw materials,grants,discounted loans and other export incentives. The United States imported \$4.4 billion of these items in 2018 and domestic producers fear this will risk the loss of substantial American jobs if this continues in 2019 and beyond.The DOC in August of 2019 issued a final determination in favor of proceeding for the domestic furniture industry with a preliminary rate of 229% in added duties.The final determination of both AD and CVD duties will be done in December

of 2019 in conjunction with the ITC(International Trade Commission) ruling by January 30,2020.

Composite Wood Products News

Furniture containing composite wood products(Plywood,MDF,Particle Board) is regulated by two standards;

a)-CARB Phase Two -The California Air Resources Board regulation #93120 for Formaldehyde emissions and,

b)-The U.S.EPA TSCA Title VI 40 CFR 770 also for Formaldehyde emissions

These two regulations have the exact same emission levels standard for formaldehyde.

On August 21,2019 the U.S.EPA issued a final rule on formaldehyde emissions clarifying certain

technical issues to align the TSCA Title VI 770 Federal rule with the California Air Resources Board(CARB) Phase Two ATCM(Airborn Toxic Control Measure) #93120.These technical issues were listed in ten new statements of clarification and new changes by the U.S.EPA.

The complete Formaldehyde Standard for Composite Wood Products Law can be found under 40 CFR Part 770 in the Federal Register.

Please contact us for a discussion of these 10 new provisions and how they might effect your furniture items and to ensure proper labeling for both regulations.

Canadian Formaldehyde Regulations

The new proposed Canadian formaldehyde regulation was posted on June 28,2019 issued by Health Canada to “Limit the emissions of formaldehyde from composite wood panels and finished goods and component parts made from them”.

In comments from interested parties the U.S.CPA(Composite Panel Association) in Leesburg, Virginia raised certain issues with sections of the Canadian draft not aligned with the current U.S.EPA TSCA Title Vi regulation. These include technical, regulatory and quality control topics, including third party certification, labeling requirements, sell through provisions and testing procedures.

In 2016 the CSA(Canadian Standards Association) developed a voluntary standard for formaldehyde

emissions which is effectively the same as the CARB Phase-Two used in California.

After meeting with the CPA, Health Canada stated they would work to align their proposed new regulation with the U.S EPA and would hopefully finalize it after the upcoming federal elections with the new Canadian administration later in 2019.

TRADE WAR CAUSES UNCERTAIN SOURCING

As the tariffs continue to cause companies that have sourced furniture from China to find alternative sources some basic questions abound.

In Vietnam for example the lure of new business for factories in an already booming furniture manufacturing industry is starting to see

expectations outrun reality. With congested roads and ports, increased costs for labor and land and insufficient infrastructure investment causing the supply chain to be interrupted, an impediment to possible continued growth. But to replace China there needs to be huge investments in new ports, warehouses, rail terminals and inland container depots and the development of new national container shipping companies, third party logistics and freight forwarding.

In comments from the Vietnam Maritime Administration the volume of exported goods rose to 18 million TEU of containers up 26% from the previous year. At the DDK Group Mr. Tsai Wen Jui stated that “with the current situation Vietnam cannot meet the demand of wave of new companies if they move in”.

Companies like Crate & Barrel Holdings are planning to invest more in Vietnam as supply chains continue to migrate out of China, but Vietnam is limited as a suitable substitute. So other Countries are now being pursued for furniture manufacturing including India, Thailand, Cambodia, Taiwan, Mexico, Canada, the United States and various European sources. It is a long drawn out process to change the supply chain out of China and the markets will continue to attempt to balance out the tariffs versus establishing new furniture production sources worldwide.

Best Regards,

Robert Schoenfeld

Schoenfeld Consulting is available for advice and personal discussions of all laws and regulations affecting our furniture industry. For more information about the inexpensive monthly fee for advice and research with 24/7 availability please contact us at:

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Furniture Laws & Regulations

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