



NEWSLETTER SEPTEMBER 2017

Schoenfeld Consulting

HEADLINE FURNITURE NEWS

U.S EPA formaldehyde regulation.

The proposed effective date of this national regulation(40 CFR 770) has been delayed again.The scheduled date is now proposed to be changed from December 12,2017 until December 12, 2018.However,If adverse comments are received from stakeholders during the new comment period then this new proposed date might be changed again.

This has been the history of this federal law for emissions of formaldehyde from furniture made with composite woods (plywood, MDF or particle board). Numerous delays and changes in the language of this national law have been issued. Under TSCA Title VI 40 CFR 770, the new emissions rule includes furniture that is sold, supplied, offered for sale, manufactured or imported into the United States.

The pre-labeling prohibition that restricted labeling of furniture items before the effective or “manufactured by” date has now been removed. The labeling of regulated products before the effective date originally on December 12, 2017 is now extended so that labeling

can be performed at any time prior to the new compliance date of December, 12 2018, provided that all aspects of TSCA 40 CFR 770 are complied with including emission levels, labeling, laminated products, chain of custody documentation, record keeping, import certification and the use of third party certifiers.

During this extended time the current California CARB #93120 formaldehyde regulation Phase Two emission standards are still in effect and will continue until the new effective date of TSCA 40 CFR 770.

Companies can choose to continue to use the CARB labeling until the December 12, 2018 date or beyond this

date which would create two distinct overlapping labels in case of production and packing issues. This is technically “over labeling” but the basic message of the two regulations is the same concerning formaldehyde emissions from furniture containing composite woods. The labels must appear on the item of furniture on display in the retail store and its backup stock stored in warehouses or being shipped from distributors.

At the factory level (Fabricator) the label must appear on the outside carton and on the furniture item contained inside the carton. Wording and size of the print and placement of the statement must be easily visible and likely to be read by the

Commented [B1]:

consumer.

In a complicated series of publications from the U.S.EPA an explanation statement was released stating that the U.S.EPA... *“intends to issue a direct final rule and a ‘parallel proposed’ rule that would extend the TSCA title VI final rule compliance dates;including the December 12,2017,date for emission standards,recordkeeping,and labeling provisions;and the December 12,2018 date for import certification provisions. Additionally,this direct final rule and parallel proposal would extend the California Air Resources(CARB) Third Party Certifyers(TPC) transitional period under 40 CFR 770.7(d) which is currently set to end on December 12,2017.”*

Hopefully this rather complicated statement from the US EPA will answer any questions and clarify the latest requirements for all stakeholders. Any updates will be covered as we proceed in 2018. Please contact us for any further explanations.

New Insurance program to protect against Prop 65 lawsuits.

California Prop 65 is a regulation that will effect manufacturers worldwide that supply California with finished furniture goods. Currently retailers are being sued by lawyers and concerned “citizen enforcers” for violation of not posting proper warning notices in retail stores, of

the dangerous chemicals that might be contained in furniture items offered for sale in California. The chemicals are listed by the OEHHA agency and include over 850+ dangerous chemicals that might expose consumers to the risks of contracting cancer or reproductive harm. If the retail store is given a 60-day of violation and possible lawsuit they must defend themselves in Alameda Superior Court along with the **manufacturer** of the furniture, also named in the lawsuit.

In August of 2018 the OEHHA (office of Environmental Health Hazard Assessment) agency will further shift the required warning notice from the retail store to the manufacturer because new

“On-Product” warning notices listing one or more chemicals contained in the furniture item(one for each endpoint) and the route of exposure as well as the calculated risk by exposure to these harmful chemicals at certain levels of exposure will be required.

The burden on the suppliers and factories worldwide is to abide by the new warning notices or risk potential lawsuits that can amount to thousands of dollars(lawsuits in 2016 amounted to \$23+ million) and possible enforced substitution to chemicals not on the Prop 65 list of 850+ harmful chemicals.Also restrictions on sale of current inventory, additional fines and legal costs and adverse publicity could occur.

So now a company in New Hampshire “**Safehold** special risk” is offering an insurance plan to mitigate costs associated with defending a Prop 65 lawsuit. However Safehold is only concerned with plasticizers or products that contain Phthalates. Six different chemicals used to soften or modify plastic items in production, plus 13 other chemicals, including; BPA, Formaldehyde, Antimony, Cadmium, Trichloroethylene and others compounds that might be contained in plastics.

Safehold offers their accounts various applications including insurance brokers or directly from manufacturers and retail stores. They offer a diverse set of special risk insurance products with

resources and services for each specific risk.

In order to protect our furniture industry though, manufacturers and retail stores must go beyond the phthalates and demand information upstream from suppliers and formulators via MSDS sheets and other documents and disclosures acknowledging the existence of PROP 65 listed chemicals contained in their furniture items.

This is still a daunting task but now is the time to start the conversation with upstream suppliers before the August 2018 regulation becomes effective for proper warnings “on the product”

Listing Chemicals and Ingredients in other industries.

The Unilever brand of personal care items including; Dove, Axe, Degree, Nexxus, Suave and Vaseline has released over 100 products listing their fragrance ingredient information online. The release will provide consumers with names of ingredients above 100 parts per million (0.01%) level. Proctor & Gamble also announced they would release fragrance ingredients in its products above 0.01% in 2019.

With Revlon, SC Johnson and other

personal care companies and some major home product producers, the release of this once protected proprietary information is now becoming available.

Manufacturers using any Prop 65 chemicals in furniture should become aware of this trend by large mega suppliers of consumer products.

In addition there are descriptions of these ingredients to help consumers understand their purpose and benefits.

There can be a positive message in the disclosure of chemicals in furniture not always a negative advertising message if crafted in an honest transparent message to consumers. Using alternative chemicals as substitutions

might not be so expensive when economies of scale in the supply chain are considered, in fact in some cases costs could decelerate.

Other large retailers including Walmart, Target, BestBuy, Costco, and CVS are all announcing new chemical policies this year to address chemicals in their supply chain .

Safer Chemicals, an NGO, reports on their list of major companies revealing chemicals used in their products, that most are improving over last years list of eleven companies and that new results will be releases in November now with over 30 companies to be ranked, on the basis of information released on chemicals in their products. Mr. Mike

Schade of Safer Chemicals noted that “no company wants to be at the bottom of the list” so he hopes to create competition between these leading retailers to help adopt comprehensive safer chemical policies and informing consumers before they decide to purchase.

THE CPSC

A \$5.7 million dollar civil penalty has been issued on September 6, 2017 to a U.S. company in settlement of a violation of federal law. The company knowingly sold and distributed approximately 2,800 recalled products from 33 separate voluntary corrective actions from August 2012 to November 2016. The company is

now required to install a new program that will ensure compliance to the Consumer Product Safety Act. The CPSC charged the company's procedures which failed to accurately identify, quarantine and prevent the sale of recalled goods.

Flame Retardants in Furniture

In many states and municipalities the use of flame retardant chemicals is being restricted by state and local laws. The CPSC is reviewing a petition under the rulemaking of the Federal Hazardous Substance Act to restrict the use of organohalogen based flame

retardants used in upholstered furniture. Other categories, include; children's products, toys, child care items, mattresses, mattress pads and some electrical devices. Petitioners assert that a total ban is required to protect consumers from these inherently toxic organohalogen flame retardant chemicals.

The CPSC will hold a meeting on September 17 to gather additional comments from stakeholders.

The California OEHHA (Office of Environmental Health Hazard Assessment) has announced that it intends to list pentabromodiphenyl ethers to the Prop 65 list of harmful chemicals after public comments are

reviewed. This chemical is still in use as a flame retardant in some smaller producers, even though most major upholstery manufacturers have voluntarily phased out this chemical in 2004. In Maine as covered in last month's newsletter has restricted the use of certain flame retardant chemicals by (HP138) a law to be enforced in January of 2019. Other types of furniture by small manufacturers worldwide containing flame retardants is being banned, in particular children's furniture and upholstered car seats, 80% of which still contain certain dangerous flame retardant chemicals. These chemicals are now being eliminated slowly as consumers and concerned groups are

exposing their use to public scrutiny.

The U.S. Department of Commerce

The role of commerce department is to attempt to level the playing field in trade with China and other offending nations who are unfairly subsidizing their exports into the U.S. by the use of; grants, loans, equity infusions, tax breaks and production inputs. The Commerce Dept. then subjects these exporters to “countervailing duties” aimed at directly countering these subsidies.

In 2016 the United States collected \$1.5 billion in duties on \$14 billion of

imported goods found to be underpriced or subsidized by foreign governments. The category of Chinese Bedroom furniture and plywood exports and recently on September 12, 2017 the investigation of tool chests and metal cabinets from China have received government subsidies from 17.32 % to 32.07%. Therefore the U.S. Dept. of Commerce together with the US International Trade Commission (ITC) will announce a final injury determination and issue a Countervailing Duty (CVD) order on November 22, 2017. Then U.S. Customs will collect cash

deposits from importers of tool chests and cabinets from China when passing through customs to even the costs with U.S.Manufacturers.

OEHHA has released new labeling for Furniture manufacturers worldwide.

On August 23,2017 and again on September 6,2017 the California Office of Environmental Health Hazard Assessment(OEHHA) has now issued the latest new revisions to the language of the warning notices for Furniture items required for compliance to the Prop 65 “clear and

reasonable warning notices” placed on the furniture item and on the carton containing the item.

These changes to the California regulation will effect manufacturers worldwide since it is the responsibility of the factory to install the warning notice before it is shipped to retailers or distributors in California.

These changes are minor but very important. For instance the warning statement now changes from “will cause” cancer to “may cause” cancer. Lawyers and stakeholders including chambers of commerce, industry

groups, environmental and safety advocates have made objections to OEHHA's language in some bitterly discussed comment period responses over the past two years. These hotly discussed comments and responses seem never ending with OEHHA making slight changes over and over. The results are making some stakeholders partly satisfied at best and most still in opposition as we approach the deadline of August 2018.

We can expect to see this exchange continue in a process that is arduous and compromising, since the whole

basis of the effectiveness of Prop 65 to serve and protect consumers in California is still not generally convincing in the minds of the general public.

Best Regards,
Robert Schoenfeld

Schoenfeld Consulting
FurnitureLaws&Regulations
schoenfeldrobert@comcast.net
415-290-4144