



## **CURRENT LEGISLATIVE & REGULATORY ISSUES**

### **BOILER RULE**

In 2004, the Environmental Protection Agency (EPA) issued a final rule to substantially reduce emissions of toxic air pollutants from industrial, commercial and institutional boilers. AHFA worked with the EPA and other stakeholders over a period of several years to ensure that the rule, known as Boiler MACT, used a common-sense approach that exempted smaller, solid fuel, wood-fired boilers such as those used throughout much of the domestic furniture manufacturing industry. These boilers combust a clean, renewable energy source (wood) that is a by-product of the manufacturing process. The emissions from these boilers pose no significant human health risk nor have any significant impact on the environment.

Unfortunately, this rule was vacated by the DC Circuit Court on June 8, 2007. A proposed new rule was released on April 29, 2010, that lumps our small, fire tube boilers in with larger boilers at different types of manufacturing facilities to create a single category of emission sources for evaluation.

If passed, domestic manufacturing operations would be faced with implementing costly emission controls for a limited environmental benefit – or they could switch to fossil fuels and landfill or otherwise dispose of the wood byproduct that they currently combust.

### **AHFA Position**

**What remains of the domestic wood furniture manufacturing industry is under assault by a “perfect storm” of negative factors ranging from the housing crisis, to skyrocketing health care costs to a host of new regulatory standards that continue chiseling away at operating margins. Implementation of the current rule without an exemption for the firetube boilers used in our industry would result in another wave of plant closures and job losses.**

### **AHFA Action**

AHFA is working with Senators Kay Hagan (R-NC), Jim Webb (D-VA) and Mark Warner (D-VA), along with Rep. Rick Boucher (D-VA) on approaching EPA to consider two specific revisions:

- 1) Develop a low moisture biomass subcategory for dry wood fuel and for the firetube boilers common in our industry. These subcategories would properly characterize these unique boilers.
- 2) Consistent with the Clean Air Act and common sense, allow facilities to demonstrate that certain threshold pollutants, such as manganese and hydrogen chloride do not present a public health threat. By making a health-based compliance alternative an integral part of the proposed new rule, the EPA will take a reasonable approach that considers both economics and the environment.

(June 2010)

## **CARD CHECK**

The Employee Free Choice Act (H.R. 1409, S. 560) would have dramatically altered the process for workplace unionization. A key change would have been to increase the use of “card check” voting at the expense of secret ballot elections. A second provision in the bill would have given federal arbitrators power to impose contract terms on companies that failed to reach negotiated agreements with their unions within tight timelines.

EFCA was a top priority of organized labor, which contributed a great deal of money and manpower to the election of President Obama and the Democratic majorities in the House and Senate. However, given the concessions to unions during the healthcare negotiations and the less favorable outlook for Democrats in the midterm elections, Senate passage is doubtful. Adverse election results may very well put a permanent end to EFCA in 2010.

However, the National Labor Relations Board may still move to enact some of the regulations proposed within EFCA. Last year, President Obama nominated Craig Becker, former SEIU/AFL-CIO executive, to the NLRB. The nomination was sent back to the White House by Sen. John McCain at the end of 2009. President Obama made a recess appointment of Becker to the NLRB, and he was sworn in on April 5, 2010.

Also, last year President Obama appointed Linda Puchala to the National Mediation Board, which has the power to make changes to the process by which unions are formed and the power they wield. Puchala, former head of the Flight Attendants' Union, pushed hard for a new provision that allows changes to unions and their formation by a simple majority from a common vote. In the past, voting was tabulated based on the total number of members in the union. Members absent were essentially counted as voting “no.” Now only the votes of those in attendance are counted.

### **AHFA Position**

**Chances for further progress of EFCA are slim, especially in the upcoming election year. The new voting provision adopted by the National Mediation Board allows for more flexibility – and ultimately could mean more changes in unionized industries.**

### **AHFA Action**

Following education of the membership on this important issue, AHFA launched a campaign of face-to-face meetings with key lawmakers in 2009. Although the issue quickly moved to a back burner as the health care debate heated up in 2010, EFCA stimulated top industry executives and brought several onto to Capitol Hill for the first time in years. As a result, a wide cross-section of legislators is better informed about furniture industry concerns.

(June 2010)

## CLIMATE CHANGE

On May 12, 2010, Senators John Kerry (D-MA) and Joe Lieberman (IN-CT) introduced the American Power Act to provide incentives for the domestic production of clean energy technology and achieve reductions in pollution. Major provisions in the bill include:

- Reduction in carbon dioxide and other heat-trapping greenhouse gasses by 17 percent below 2005 levels by 2020 and more than 80 percent by 2050.
- A “hard price collar” on carbon emissions for large polluters such as coal-fired power plants between \$12 and \$25 per ton of carbon emissions, depending on market prices. Restrictions would not take effect until 2013 for power plants and transportation fuels, and 2016 for manufacturers.
- Incentives of up to \$2 billion per year for companies that develop so-called clean coal technologies, including methods to capture and store carbon emissions.
- Increased funding for nuclear loan guarantees to \$54 billion, the same amount President Obama has proposed. It also calls on the Nuclear Regulatory Commission to speed the licensing process for new plants.
- A 10 percent tax credit for certain nuclear power construction expenses, tax-exempt bonds for public-private partnerships for advanced nuclear power facilities and grants in place of tax credits for some nuclear expenses.

Several factors are working against Kerry and Lieberman in their determination to move this legislation forward. First is the renewed attention to immigration reform, thanks to the controversy surrounding Arizona’s new law. Their efforts are further complicated by election-year politics and ongoing fears about exacerbating the still struggling U.S. economy.

### **AHFA Position**

**AHFA is concerned about provisions that could result in higher production costs for domestic producers, which could drive more production to countries with lower environmental standards.**

### **Action**

The Alliance and its members continue efforts to educate elected officials about the potential impacts of climate legislation on the ability to keep manufacturing jobs in their states and districts.

(June 2010)

## **CONSUMER PRODUCT SAFETY IMPROVEMENT ACT**

In August 2008, President Bush signed the *Consumer Product Safety Improvement Act* (CPSIA). The law, which grants the Consumer Product Safety Commission additional powers and funding to police unsafe products, was developed in response to widespread recalls of children's toys and jewelry containing lead. It radically changes the way that consumer products are manufactured, particularly children's products.

### **AHFA Position**

**While this legislation was touted as a “toy bill,” it essentially impacts every product used by a child, including furniture, regardless of risk. AHFA agrees with the basic premise of CPSIA, which is to protect children from injury posed by consumer products. However, some of the provisions of the Act have created havoc in the marketplace at a time when the economy can least afford it – and without contributing to increased safety for children. Specifically, CPSIA presents three key obstacles for furniture manufacturers. These are at the center of AHFA staff attention at this time. Each is detailed below.**

**Lead.** Section 101 of the CPSIA bans any accessible part of a children's product that contains lead in excess of 300 parts per million (ppm) as of August 2009 and 100 ppm as of August 2011. The ban is retroactive to all products in inventory at both the retail and wholesale level. This provision essentially makes children's beds and chests illegal due to the metal screws and nails that hold them together.

This same provision reduces the level of lead allowed in paint and surface coatings of all household furniture – not just youth furniture – from 600 ppm to 90 ppm. This, too, was retroactive, causing manufacturers to destroy noncompliant inventory and to pull back products from retail inventories to avoid criminal penalties.

Although wood has been determined not to contain lead, the resin used in the manufacture of composite wood product has not received such a determination.

### **AHFA Action**

AHFA is in the midst of a lengthy, cumbersome and expensive process of requesting an exemption for composite wood.

AHFA has further recommended that Congress pass an amendment to CPSIA narrowing the scope of the section on lead so that it focuses on those products that pose a real risk of injury to children. In some cases, the presence of lead is necessary to preserve the structural integrity of a product, as is the case with metal screws and bolts in a child's bed.

Finally, AHFA has recommended that the lead rule NOT be retroactive so that the stream of commerce is not disrupted.

**Testing and certification.** CPSIA requires all products that are subject to any mandatory standard or regulation be accompanied by something called a “Certificate of Conformity” issued by the manufacturer based either on a test of each product or on a “reasonable testing program.”

Children's products must also be tested by a third-party lab recognized by the CPSC. This creates a disadvantage for smaller manufacturers who cannot spread the cost of testing over

millions of products and creates a competitive disadvantage to U.S.-based companies who must use U.S.-based testing facilities that are more expensive than foreign-based testing facilities.

**AHFA Action.**

AHFA has proposed a three-part remedy to relieve the testing burden of CPSIA without in any way compromising its intended purpose to protect children. First, an early version of the bill defined children's products as those intended for age 7 and younger. The final version upped the age to 12. But manufacturers cannot possibly know if a parent is buying a twin bed for a child who is 12 or a guest bedroom or a college apartment. Therefore, the only way bedroom furniture manufacturers can be sure they are complying with the law is to have all their products tested by third party, CPSC-recognized labs. Lowering the age limit in the definition of children's products would not eliminate this problem, but it could help manufacturers segregate the targeted products better and, thereby, reduce the costs of compliance.

Second, the requirement for testing and certification could be limited to children's products rather than applying to everything a manufacturer makes.

Finally, the CPSC could permit alternative test methods for lead screening. Currently, the CPSIA requires a chemical test, which must be done in a laboratory setting. But the CPSC itself has been using radio frequency technology to test for lead – an alternative that is considerably less expensive than laboratory testing.

**Phthalates.** Phthalates are suddenly in the news. A May 23, 2010, "60 Minutes" segment on phthalates and a CNN report on toxic chemicals in early June has raised the visibility of this group of chemicals among consumers. Section 108 of the CPSIA bans three specific phthalates from children's products on a permanent basis and bans three others in toys and child care articles on an interim basis.

For the furniture industry, this means that the plastic parts on cribs, toddler beds and mattresses cannot contain any phthalates.

**AHFA Action.**

Again, AHFA is working with legislators to propose common sense remedies. AHFA has proposed that inaccessible plastic parts be exempted from the ban and that it not be retroactive to products already in the marketplace.

AHFA offers educational materials, webinars and guidance documents on its website, as well as the expertise of staff, to help member companies design appropriate compliance monitoring and documentation systems for CPSIA.

(June 2010)

## **FLAMMABILITY**

Any further progress on a standard for upholstered furniture flammability is not likely to occur this year due to technical issues that are being currently studied by the National Institute of Standards and Technology (NIST). These issues surround the development of a standard cigarette and standard foam.

In late 2007, the U.S. Consumer Product Safety Commission (CPSC) voted 2-0 to issue a proposed rule on upholstered furniture flammability. For the first time in the 16-year history of the project, the Commissioners endorsed a tight focus on ignition of furniture by dropped cigarettes – which account for over 90 percent of furniture fires.

Previous staff proposals would have also required furniture to resist small open flame sources such as lighters, matches and candles. However, currently available methods of complying with an open flame standard require the use of flame retardant chemicals that are increasingly considered a risk to public health. There is growing evidence that these chemicals are accumulating in human bodies and adversely affecting the hormonal and neurological development of children.

In California – which still maintains the most stringent flammability standard in the country – the legislature has been asked to suspend work on new flammability standards until a cross-functional group of experts can weigh the exposure to fire injuries and death *in conjunction with* the chemical exposure risks of fire retardant chemicals for all products. Nevertheless, furniture manufacturers must still comply with the existing flammability standard.

But the federal government may beat California to the punch. The Toxic Chemicals Safety Act of 2010 proposes to restrict or eliminate the use of certain flame retardants – including those widely used to meet California’s standard. Furthermore, this legislation potentially would require the Environmental Protection Agency (EPA) to evaluate every chemical product created for commerce to make sure it is safe before it is allowed on the market – which would dramatically slow the process of bringing new flammability solutions to the marketplace to replace those deemed unsafe.

### **AHFA Position**

**AHFA continues to support a flexible, reasonable national standard that preempts conflicting state standards and provides complying manufacturers with protection against lawsuits. AHFA will oppose “solutions” that negatively impact product comfort and performance or require cost-prohibitive changes in the materials used in upholstered furniture construction.**

### **Action**

AHFA staff has invested extensive time and resources over the last decade to ensure that any regulation provides meaningful safety benefits while preserving the design, comfort and affordability of upholstered furniture. AHFA has testified before CPSC and the U.S. Congress, spearheaded research into the toxicity of flame retardants, and educated federal officials about the fire science and economic realities behind this complex issue. A sensible federal regulation will benefit upholstery producers by avoiding a patchwork of state rules.

(June 2010)

## **FORMALDEHYDE**

The home furnishings industry faces formaldehyde issues on two fronts: (1) the California Air Resources Board (CARB) Rule; (2) a proposed federal formaldehyde rule (HR 4805 and S 1660 – nearly identical bills).

The effective date of the CARB Rule has passed and the compliance timeline has started, triggering the provisions of the rule's sell-through periods. The compliance date for Phase 1 is December 31, 2010. By that date, any composite wood products used as component parts for finished goods must meet the established emission requirements.

As this rule matures, the supply of compliant board is increasing both domestically and off-shore. Resin technologies are emerging and additional third party certifiers are being approved. While there have been steady incremental achievements, compliance challenges remain. Field screening is untested. Deconstructive testing has not been validated. Issues involving "reasonable prudent precaution" and "strict liability" have not been resolved.

Meanwhile, federal legislation that essentially adopts the California standard as a national standard continues moving forward. Both the Senate (S1660) and the House (HR 4805) versions have moved out of committee negotiations and await a full vote.

### **AHFA Position**

**Several CARB enforcement questions remain unanswered and could have a major impact on the home furnishings industry. Implementation of CARB requirements on a national level will only compound these issues.**

### **Action**

AHFA continues to work directly with the California Air Resources Board staff to outline and define enforcement methods and to validate deconstructive testing. AHFA gave public comment on the proposed federal formaldehyde rule in March 2010, once again recommended adequate compliance timelines and sell-through provisions. Unlike in California, where non-compliant inventories could be moved to other markets, there is no pragmatic solution to non-compliant inventories within the national marketplace. Due to the unprecedented economic conditions of the last few years, inventory levels remain high. AHFA has requested a sell-through period of 36 months for finished goods following the compliance deadline for composite wood products.

AHFA further recommended that the regulation not contain any provisions for the testing of finished goods, such as furniture or cabinets. If raw board component parts are properly regulated, downstream users of these products will only use or resell these safe products.

AHFA has an extensive repository of webinars and guidance documents to help member companies develop effective compliance strategies for the existing CARB rule and will develop similar materials for any federal regulation that may be forthcoming.

(June 2010)

## HEALTH CARE

On March 23, 2010, President Obama signed into law his landmark health care overhaul. By May 12, insurance companies were already taking action toward complying with the reform by allowing dependents of policy holders to remain active on their parents' plans until age 26. Other key measures taking effect in 2010 include:

- *New help for some uninsured.* People with a medical condition that has left them uninsurable may be able to enroll in a new federally subsidized program.
- *Medicare.* Medicare beneficiaries who hit the so-called "doughnut hole" in the program's drug plan will receive a \$250 rebate this year. Next year their cost of drugs in the coverage gap will go down by 50 percent. Preventive care, including some types of cancer screening, will be free of co-payments or deductibles starting this year.
- *Insurance regulation.* Existing insurance plans will be barred from imposing lifetime caps on coverage. Restrictions also are placed on annual coverage limits. Insurers can no longer cancel insurance retroactively for reasons other than outright fraud.
- *Small business tax credit.* The first phase of the small business tax credit for qualified small employers (no more than 25 employees) for contributions to purchase health insurance is initiated. The credit is up to 35 percent of the employer's contribution to provide health insurance for employees.

Many significant provisions take effect in the year 2014. Some of the changes that will impact member companies include:

- *Insurance regulation.* Insurers can no longer refuse to sell or renew policies due to an individual's health status, nor can they exclude coverage for treatments based on pre-existing health conditions. Also limits the ability of insurance companies to charge higher rates due to health status, gender or other factors. Premiums *can vary* (no more than 3:1) based on age, geography, family size and tobacco use.
- *Health insurance exchanges.* Opens health insurance exchanges in each state to the individual and small group markets. This new venue will enable people to comparison shop for standardized health packages. It facilitates enrollment and administers tax credits.
- *Health care tax credits.* Makes premium tax credits available through the Exchange to help people obtain coverage. Credits are available for people with incomes above Medicaid eligibility and below 400 percent of poverty who are not eligible for or offered other acceptable coverage.
- *Employer responsibility.* Beginning in 2014, the law imposes a non-deductible penalty tax on employers with 50 or more full-time employees for failure to offer full-time employees an opportunity to enroll in minimum essential coverage under an employer-sponsored health plan. The penalty is \$2,000 per full-time employee, excluding 30 employees. Employers who offer coverage but whose employees receive tax credits pay a penalty of \$3,000 for each of these workers.
- *Individual responsibility.* Requires most individuals to obtain health insurance coverage or pay a penalty of \$95 for 2014; \$325 for 2015; \$695 for 2016 (or up to 2.5 percent of income in 2016). Families will pay half the amount for children, up to a cap of \$2,250 per family.

## **AHFA Position**

**Because the major effects of the health care legislation do not take effect until 2014, employers have time to study the issues, review any new regulations and assess their own individual situation in terms of health care costs.**

## **Action**

With the help of AHFA's special counsel for HR issues, Wimberly & Lawson of Atlanta, AHFA will continue to provide timelines for the implementation of the new health care law, as well as commentary to help member companies evaluate the strategic issues surrounding new requirements for employers.

(June 2010)

## **LACEY ACT**

On November 17, 2009, U.S. federal agents raided Gibson Guitar's manufacturing facility in Nashville. Agents seized wood, guitars and documents in the first enforcement action under the amended Lacey Act. The raid was a wake-up call to businesses in a wide range of forest product supply chains – including home furnishings.

The goal of the Lacey Act amendment was to enlist U.S. Customs, the Department of Justice and other authorities in the fight against illegal logging in foreign countries. Passed in May 2008, the measure does three primary things:

- Prohibits all trade in plants and plant products – including furniture, paper and lumber – that are illegally sourced from any U.S. state or foreign country;
- Requires importers to declare the country of origin of harvest and the species name of all plants contained in their products (a provision that is currently being phased in); and
- Establishes penalties for violations of the law, including forfeiture of goods and vessels, fines and jail time.

Declarations for imported particleboard and plywood products were required beginning October 1, 2009. Furniture declarations were required beginning April 1, 2010.

## **AHFA Position**

**AHFA applauds efforts to end illegal logging and other illegal plant trade. The Alliance participated in a broad industry coalition to amend the original version of the amendment to provide forfeiture liability protection for small businesses that have practiced “due diligence” in their supply chain. The bill draws a clear distinction between “innocent” owners in the supply chain who, in good faith, trade in wood products, versus those who knowingly engage in the trade of illegal material.**

## **Action**

Although the amendments to the Lacey Act had the laudable goal of policing illegal logging, they could have been a bureaucratic nightmare for importers of wood products. AHFA worked with Members of Congress and officials of the implementing agencies to make the declaration process as seamless as possible. A sample declaration form and a list of questions to ask suppliers are on the AHFA website (find Lacey Act under STANDARDS). There also is a link to a May 2009 webinar on Lacey Act compliance. (June 2010)

## TOXIC SUBSTANCES CONTROL ACT REFORM

The Toxic Substances Control Act was enacted in 1976 to address the public health risk of chemicals used in commerce. TSCA requires EPA to analyze new chemicals for their safety and authorizes EPA to restrict or ban the use of new or existing chemicals that pose an “unreasonable risk” to public health or the environment.

Thirty years later, the Government Accountability Office issued a report suggesting that there are so many loopholes in the law that federal regulators have been unable to use its provisions to protect the public from dangerous chemicals in everyday products. Only five chemicals that existed when Congress passed the TSCA have ever been restricted by EPA. Currently there are 80,000 chemicals in commercial use and only 200 of them are required to be tested for safety.

Still, it was three years after the GAO’s 2006 report before the House Subcommittee on Commerce, Trade and Consumer Protection held hearings on revisiting the law. Against an expanding backdrop of evidence suggesting bioaccumulative chemicals from everyday products are causing adverse health effects, lawmakers finally acted earlier this year. In March 2010 Sen. Frank Lautenberg (D-NJ) introduced the Safe Chemicals Act of 2010 to address the core failings of TSCA. Representatives Bobby L. Rush (D-IL) and Henry Waxman (D-CA) followed suit in April with the Toxic Chemicals Safety Act of 2010.

Both bills propose to shift the burden of proof of safety to the chemical industry. Manufacturers would be required to develop and submit a minimum data set for each chemical they produce. The EPA would be equipped with increased authority to require additional testing when deemed necessary. The House bill adds these specific provisions:

- Establishes an expedited process for EPA to reduce risk from exposure to chemicals where risks to health and/or the environment have been well documented.
- Requires EPA to modify the way it reviews chemicals that are “persistent” and “bioaccumulative.”
- Establishes a program to specifically study the impact of chemicals on children.
- Creates market incentives for developing safer alternatives to existing chemicals.
- Fast tracks EPA action in certain “hot spot” locations where the public has been exposed to toxic chemicals.

The Senate version would address most of the same issues, and adds the following:

- A requirement to categorize and prioritize chemicals based on their hazard and exposure characteristics.
- A public database to house both chemical information and EPA decisions about specific chemicals. It narrows the conditions under which a company can claim that its data is “confidential.”

Meanwhile, in September 2009, EPA Administrator Lisa Jackson announced that the agency was putting in place its own comprehensive approach to enhancing chemicals management under TSCA. The agency said it would move swiftly to identify chemicals that pose a concern to the public, to evaluate those chemicals, and to initiate appropriate action to address any identified risks.

Three months later, the EPA posted such “action plans” on phthalates, perfluorinated chemicals (PFCs), polybrominated diphenyl ethers (BPDEs) and short-chain chlorinated paraffins. In March, they added an action plan on bisphenol A (BPA).

### **AHFA Position**

**AHFA supports efforts to restrict or eliminate the use of “persistent chemicals” that are highly resistant to degradation in the environment, as well as “bioaccumulative chemicals” that can build up in the food chain and in the human body, when these chemicals are shown to cause adverse health or environmental effects.**

### **Action**

Of major concern to the furniture industry is the focus on flame retardants, as well as on formaldehyde and dioxin emissions from the combustion of wood biomass fuel. Potentially, TSCA reform could eliminate the use of brominated and halogenated flame retardants, ban formaldehyde and eliminate the use of the industry’s wood off-fall as a renewable fuel. AHFA is following both legislative and EPA activity on TSCA reform. The Alliance also is at work an extensive guidance document covering all health/safety regulations in hopes of simplifying compliance for member companies.

(June 2010)