



# AT THE TABLE

AUGUST 2011

Quarterly news from legislative and regulatory forums where AHFA is “at the table,” serving as the voice of the home furnishings industry.

Just as record temperatures were scorching the nation in July, AHFA was turning up the heat on its key legislative and regulatory initiatives.

## AHFA Helps Win Revisions to CPSIA

With bipartisan support, the House and Senate on August 1 passed the Enhancing CPSC Authority and Discretion Act of 2011, a bill that softens the Consumer Product Safety Information Act (CPSIA).

The legislation by Rep. Mary Bono Mack (R-CA), chair of the Subcommittee on Commerce, Manufacturing and Trade, focuses on several problematic provisions of the CPSIA that have been seen as impeding economic recovery and job growth.

Two previous attempts to amend the onerous CPSIA, both led by Rep. Henry Waxman (D-CA), failed.

**The key change for children’s furniture manufacturers is the elimination of the retroactive 100 parts per million lead limit scheduled to go into effect August 14.**

The new, lower lead limit is now prospective, impacting only products manufactured *after* the August 14 effective date. As a result, children’s products that complied with the earlier 300 parts per million limit when they were manufactured are not obsolete and can be sold.

The Act also removes lead limits for used children’s products and provides an exemption so the Consumer Product Safety Commission (CPSC) can establish higher lead limits for products or component parts that cannot meet the applicable limit if the lead content serves a purpose or is deemed not practical to remove, and exposure to the product or component will not cause a measurable increase in blood-lead levels.

Additional changes include:

- **Third-party testing.** The requirement for third-party testing is modified to include testing exemptions for small batch manufacturers. Also, the CPSC is required to seek public comment on ways to reduce the burden and cost of testing.
- **CPSC Consumer Database.** The controversial [www.SaferProducts.gov](http://www.SaferProducts.gov) public database of complaints was modified only slightly. When the CPSC receives notice from a manufacturer that a “report of harm” is materially inaccurate, the agency will have five additional days to investigate that claim *before* the report can be published. The Commission also is directed to ask consumers for the model or serial number or a photograph of the consumer product involved in a report of harm if the consumer omitted this information in the original report.

However, the Commission must still publish the report on the 15<sup>th</sup> business day after it has been received, even if there is no model or serial number.

- **Tracking labels.** The CPSC now has the authority to exclude specific products or classes of products from the tracking label requirement if the Commission determines that the requirement is not practical for those products.

AHFA has been “at the table” throughout the debate on proposed revisions to the law. Last October, AHFA hosted Commissioner Anne Northup at the High Point Market, giving her the opportunity to hear firsthand from manufacturers. Consequently, when Northup testified before Bono Mack’s committee in February this year, furniture industry examples figured prominently in her arguments in favor of modifications to the law.

In April, AHFA staff and member company representatives met with Gib Mullen, chief counsel to Mack’s subcommittee, to describe the primary challenges created by CPSIA for furniture manufacturers.

The expense of third-party testing – particularly for products or components that pose no real risk – and concerns surrounding [www.SaferProducts.gov](http://www.SaferProducts.gov), were among the specific issues the AHFA group discussed with Mullen.

These same concerns were shared with CPSC Chairman Inez Tenenbaum earlier in April when AHFA hosted her for several factory and showroom visits during the spring High Point Market.

Following passage of the Act, Bono-Mack commented, “For thousands of American businesses, which strive to be responsible... CPSIA has taken an inordinate amount of their time trying to understand how each new regulation and standard will affect them. Unfortunately, many have gone out of business, attributing their demise to the burdens of compliance.” The new legislation reduces the burdens on business while maintaining strong protections for children, she said.

## **Formaldehyde Rules Wreak Havoc**

The California formaldehyde emission standard – which implements the lowest formaldehyde limits in the world – has largely faded from industry headlines. But this rule is far from dormant in its impact on AHFA member companies.

Quality issues continue springing up from the use of ultra-low formaldehyde and no-added formaldehyde resins. Like tough summer weeds, these quality issues have no easy or quick fixes.

**On August 23, AHFA will attend a California Air Resources Board (CARB) workshop in Sacramento to participate in a discussion of the challenges emerging as companies attempt to meet the stringent phase II limits in the CARB formaldehyde standard.**

“We’ve reached a point of diminishing returns,” explains AHFA’s Bill Perdue. “The ultra-low and no-added formaldehyde resins don’t bond as strongly, so we’re getting performance problems.”

In addition to the structural deficiencies in some composite panels constructed using the new resins, mold is becoming increasingly problematic.

“You’re taking a natural mold inhibitor – formaldehyde – out of the product, and replacing it with a soy-based ingredient with a much higher water content. Add that to an organic material – the saw dust in composite board – and you’re going to get mold.”

In July AHFA staff and member company representatives met with a variety of CARB officials to explain the need to allow the resin technology time to improve, so board manufacturers and the

furniture manufacturers who use their products can meet the new regulations without significant compromises in quality.

AHFA's team also met with members of the CARB enforcement division to discuss potential modifications in the board's enforcement philosophy, which currently penalizes manufacturers even when they have done everything in their power to meet the standard's formaldehyde limits.

Because the federal formaldehyde standard enacted in July 2010 is largely based on the California rule, every compliance challenge debated in California has national significance, Perdue points out. The AHFA executive plans a September meeting with Environmental Protection Agency (EPA) officials to continue providing technical data to assist the agency in its implementation of the federal rule.

The EPA has until January 2013 to put final rules in place to address a variety of issues, including sell-through provisions, third-party testing and certification, auditing rules and reporting for third-party certifiers, chain of custody requirements, labeling and recordkeeping rules, provisions for laminated products, enforcement details and other provisions aside from the actual emission limits set by the standard.

Agency officials are currently wrestling with provisions related to laminated products. The next NPR (Notice of Proposed Rulemaking) is expected to be third party certification, perhaps sometime in January 2012.

## **Boiler Update: A Summer of Discontent**

After years of uncertainty and court battles leaving home furnishings manufacturers in the dark about the potential for costly compliance measures, on June 21 a bipartisan group of eight House members introduced a bill to nullify "Boiler MACT" – the collection of four rules outlining emissions standards for boilers, process heaters and incinerators.

**AHFA has communicated its support for the measure to several members of Congress. The bill directs the EPA to promulgate new rules that would apply the "least burdensome" regulatory alternative available under the Clean Air Act.**

One of the bill's sponsors, Rep. Morgan Griffith (R-VA), described the measure as "a dose of commonsense for an ailing patient."

Specifically, the "EPA Regulatory Relief Act of 2011" would:

- Ensure the Boiler MACT rules are stayed for an adequate and certain period, since the EPA's current administrative stay is being challenged;
- Allow the EPA adequate time to re-propose the rules and get them right, including time for stakeholders to conduct more emissions testing;
- Provide direction and support for the EPA to use the discretion it already has under the Clean Air Act to add flexibility and make the rules achievable;
- Clarify that various materials, such as biomass residuals, are fuels and that certain gases in manufacturing processes do not result in boilers being treated as incinerators; and,
- Give facilities more time to comply with the complex and capital-intensive requirements of the rules.

Leading up to the introduction of the "Regulatory Relief Act," AHFA had anything but relief on this issue. The EPA published the final Boiler MACT rules in March (and published a notice of

reconsideration on the very same day). Between that time and the introduction of the “Relief Act” in late June, AHFA took the following actions:

**April 27.** As part of a large industry coalition, AHFA submitted a request for an administrative stay of the major source boiler rule. On May 18, EPA granted the request by issuing a delay in the effective date until the end of the reconsideration process.

**May 20.** AHFA submitted a Petition for Reconsideration to EPA. Specifically, AHFA asked EPA to establish a subcategory with appropriate emission limits for boilers combusting kiln-dried wood. In addition, AHFA asked EPA for a health-based compliance alternative, similar to the one in the 2004 Boiler MACT.

Also on May 20, AHFA filed a Petition for Review to initiate a litigation challenge to the major source boiler rule in the U.S. Court of Appeals for the D.C. Circuit. This was a protective filing to ensure that AHFA can pursue litigation if the reconsideration process does not yield favorable results.

**June 9.** AHFA met with EPA to discuss the reconsideration process and, in particular, the agency’s response to AHFA’s Petition for Reconsideration. EPA officials responded favorably to AHFA’s proposal for a subcategory of boilers fired by kiln-dried wood. AHFA continues working to provide additional information requested by EPA.

**June 20.** AHFA filed a Motion to Intervene in the litigation cases filed by the Sierra Club on the major source and area source rules. This motion allows AHFA to join EPA in defending the non-objectionable portions of the rules from an attack by the Sierra Club.