



AT THE TABLE

JUNE 2010

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

This is the second edition of At the Table, a quarterly newsletter designed to keep the AHFA membership engaged in the aggressive efforts taking place on their behalf on a wide range of regulatory and legislative issues. As the third quarter of 2010 begins, several issues are at the top of AHFA's agenda...

CPSIA Issues Continue Brewing for Furniture Industry

Last December, Consumer Product Safety Commissioner Anne Northup reminded her fellow commissioners of these words, spoken by Supreme Court Justice Louis Brandeis:

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."

This sentiment describes the problems with the Consumer Product Safety Improvement Act "perfectly," according to Northup.

AHFA has been among the industry organizations expending considerable time and effort to bring a greater measure of understanding to the law. Our industry has been severely impacted by the unintended and unforeseen consequences of the legislation, and AHFA has presented potential relief measures directly to the CPSC, as well as to key legislators considering amendments to the law. Three specific provisions are at the center of AHFA's efforts.

The Consumer Product Safety Improvement Act radically changed the way that consumer products can be manufactured, particularly children's products. Three specific provisions are at the center of AHFA staff attention at this time:

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. Therefore, 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. Yes, AHFA has actually had to dedicate staff time to arguing that the presence of lead in metal screws and bolts – which children do not chew, lick or ingest – is necessary to insure that their beds do not collapse.

Finally, AHFA has recommended that the lead rule NOT be retroactive so that the stream of commerce would not be 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 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. A May 23 “60 Minutes” segment on phthalates now has this group of chemicals on the tips of more tongues. 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.** Again, AHFA is proposing that inaccessible plastic parts be exempted and that the ban *not* be retroactive to products already in the marketplace.

Online Safety Database Concerns Industry

The CPSC voted 3-2 in April to create a new Internet database of consumer safety information at www.SaferProducts.gov. The searchable consumer product safety incident database was required as part of CPSIA. The project, which is scheduled to launch in March 2011, involves a major technological upgrade for the CPSC and will cost an estimated \$20 million.

The CPSC website, www.cpsc.gov, currently offers updates on product recalls, but the new database will provide consumers with additional information. CPSC issued a notice of proposed rulemaking for SaferProducts.gov in May. Public comments are due July 23.

SaferProducts.gov is intended to provide the CPSC and the public with new tools to report, analyze and respond to consumer products that pose potential hazards. The goal is earlier detection of product safety hazards and quicker public notices of those hazards.

At the core of SaferProducts.gov will be two main tools: one that allows users to easily and quickly post the details of a product safety-related incident and one that allows users to easily and quickly search for previous incidents.

Incident data that is submitted will be subject to CPSC review to verify its authenticity. Data or reports found to be materially inaccurate will not be published. If verified, incident reports will be published by CPSC to the public within 10 business days of receipt. An industry portal will allow manufacturers and retailers to comment on incident reports submitted via the public portal.

Some manufacturers have expressed concern that the site will provide information to the public that is not accurate or that might even be malicious. By the time such information is retracted, the damage to a company's reputation and sales could be irreparable.

Watch for an AHFA-sponsored webinar soon to help member companies navigate these murky waters.

Formaldehyde Update

Senate Bill 1660, the Formaldehyde Standards for Composite Wood Products Act, has passed mark-up by the Environment and Public Works Subcommittee and has been placed on the senate schedule for a final vote, once the House finalizes its version of the bill.

The corresponding House Bill, 4805, also now awaits a vote. The House Subcommittee on Commerce, Trade and Consumer Protection held a public hearing on the measure on March 18, setting the stage for its consideration by the House Energy and Commerce Committee. AHFA participated in the public hearing as one of four witnesses. In addition to Andy Counts, AHFA CEO, the other witnesses included James Jones, deputy assistant administrator for EPA's Office of Prevention, Pesticides and Toxic Substances; Don Ryan, representing the Sierra Club and the National Center for Healthy Housing; and Dr. Mel Anderson of the Hamner Institutes, who also represented the Formaldehyde Council.

Counts supported the bill and urged a 36-month sell-through for finished products. He further recommended that there be no requirement for finished product testing.

Along with other key stakeholders, AHFA worked with minority staff from the committee to adequately address and find compromises to several concerns, including the lack of federal pre-emption in the bill and the adequacy of existing scientific studies on formaldehyde and cancer. The subcommittee discharged the bill on May 26, and a vote by the full House is expected in June.

Toxic Substance Control Act Reform

On April 15, 2010, Representatives Bobby L. Rush (D-IL) and Henry Waxman (D-CA) released a discussion draft of the Toxic Chemicals Safety Act of 2010. This followed introduction of the Senate "Safe Chemicals Act" in March.

Both bills seek to overhaul the 34-year-old Toxic Substances Control Act to ensure that the public and the environment are protected from risks of chemical exposure. The U.S.

Government Accountability Office suggests there are so many loopholes in the 1976 legislation that federal regulators have been unable to use its provisions to protect the public from dangerous chemicals in everyday products. The proposed updates would establish a more prescriptive regulatory structure that would ensure any chemical that enters commerce has been evaluated for risk.

Of major concern to our industry is the focus on flame retardants. This reform bill could potentially eliminate the use of certain brominated and halogenated flame retardants. The House Energy and Commerce Subcommittee on Oversight and Investigations cancelled a hearing scheduled for May that would have examined the use of flame retardant chemicals in various consumer products. AHFA's CEO Andy Counts has been in touch with committee staff on this issue and will continue monitoring its progress.

The Boiler Rule ... Round II

Boilers in the furniture industry combust kiln-dried wood fuel generated by the furniture manufacturing process. It burns cleanly with a high heat value. AHFA worked with the Environmental Protection Agency and other stakeholders to develop a Boiler MACT rule that used a common-sense approach, exempting these small boilers from costly control requirements. 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, the new rule would encourage a new wave of movement to overseas production. Any domestic operations that remained would be faced with implementing costly emission controls for a limited environmental benefit or to switch to fossil fuels and landfill or otherwise dispose of the wood byproduct that they currently combust.

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.