

April 7, 2015

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Subject: Public Comment – P65 Warning Regulation

The Business and Institutional Furniture Manufacturers Association (BIFMA) is the not-for-profit trade association for business and institutional furniture manufacturers. Since 1973, BIFMA has been the voice of the commercial furniture industry and currently has over 250 member companies. Member companies provide approximately 110,000 manufacturing jobs throughout the U.S. and represent over a \$20 billion segment of the North American economy.

Our industry's service to our customers – providing healthy, comfortable, and productive workspaces – rests on an infrastructure of engineering and materials standards. These standards, founded on centuries of craft and enhanced by ever-advancing science, embody the best of our knowledge on safety, ergonomics, and sustainability.

It is our understanding that OEHHA is seeking public comment by April 8, 2015 regarding proposals to California Proposition 65 as presented in the recent OEHHA workshop. On behalf of the membership of BIFMA, we want to thank you for the opportunity to comment on the proposals.

Members of BIFMA offer the following comments:

Proposed Section 25600.1 Definitions

Without clear expectations, the following requirements regarding Affected Areas, Environmental Exposure and Occupational Exposure cannot be determined. Without guidance for product loading rates, room volume and air change, and similar parameters within a space, it is not possible to reasonably calculate exposure. Similarly, unless minimum exposure levels/thresholds are given, it cannot be determined if the area requires warning / labeling. These concepts are beyond the control of individual manufacturers. **Area warnings are simply not practical.** Please assure that exposure calculations are based on individual product exposures; multiple product (or product type) exposure determinations are not possible, especially when the products cross multiple manufacturers. The proposed legislation does not adequately address these issues and makes proving compliance to the requirements virtually impossible. Further, without clarity, these new requirements will increase the likelihood that most manufacturers will be forced to apply blanket warnings to all products to avoid litigation; this would dilute the effectiveness and true purpose of the Prop 65 regulation.

Affected Areas - The term “reasonably calculated” in the definition is vague. In order for the regulation to be effective, it should recognize national and international consensus standards for calculating exposure.

Environmental Exposure - The definition does not provide guidance on how to calculate additive or detrimental exposure of one additional product at the point of purchase. It is unclear as to how this level of environmental exposure relates back to the original intent of protecting the public from cancer and/or reproductive harm. This lack of clarity is the basis for the large number of ill-founded citizen challenges under the current Prop 65 regulations. The proposed language with its increased lack of clarity can be expected to exacerbate this situation.

Occupational Exposure – The definition does not provide guidance on how to calculate additive or detrimental exposure of one additional product at the point of purchase. It is unclear as to how this level of occupational exposure relates back to the original intent of protecting the public from cancer and/or reproductive harm. This lack of clarity is the basis for the large number of ill-founded citizen challenges under the current Prop 65 regulations. Additionally, Occupational Exposure is covered under Federal OSHA guidance.

Agency Website Article 2, Section 25205

At the public workshop of March 25, 2015 it was stated in the slide presentation that “Any person may provide the lead agency with information to be considered for posting on the website.” BIFMA is concerned that if OEHHA permits website information to be provided by various stakeholders, it may prove to be inaccurate. BIFMA believes this could lead to unnecessary legal challenges. Additionally, inputs may be from a variety of sources from a global marketplace, and have inappropriate ramifications for Californians downloading such information.

Economic Ramifications

At the public workshop of March 25, 2015 an economic consultant shared that he expects the economic impact of the proposed changes to Prop 65 will cost the state of California \$500,000,000 to \$900,000,000 in the first year alone. BIFMA believes the economic impact to our industry will be severe, however, it is the opinion of BIFMA that the cost of compliance with these revisions cannot be calculated given the vague definitions and potential supply chain impacts required to meet the revised regulation. We believe significant costs will be incurred for unique labels (12 listed chemicals), website requirements, larger labels, added languages, considerations for additional exposures, and additional litigation. Manufacturer’s of furniture products supplied to the commercial market offer a complicated combination of product offerings including numerous covering, material and finish options. To determine the 12 ingredients that would be listed on individual carton or product labels would be a monumental task. Also, many products do not provide a good area for placement of a label that would stay attached, or would create aesthetic issues for the end user.

Unintended Consequence?

The proposed revisions to Proposition 65 defining “occupational exposure” when combined with California’s Hazard Communication Standard’s definition of “Article” appears to create a requirement that every item, material, component, etc., in a workplace now be required to have a compliant Safety Data Sheet as a means of documenting the hazard assessment process used to determine whether or not

a Proposition 65 Warning is needed. This is based on **§5194. Hazard Communication (c) Definitions**, Article:

“A manufactured item: (1) Which is formed to a specific shape or design during manufacture; (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (3) ***which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use or in a reasonably foreseeable emergency resulting from workplace operations.***“

While BIFMA does not argue the utility of such a requirement, we believe the zero exposure threshold is not knowable without equally clear definitions of “...normal conditions of use...” and “...reasonably foreseeable emergency...” In addition, BIFMA is concerned that national and international supply chains are ill prepared to support such an effort; therefore, the time and cost of complying with the proposed revisions is also not knowable at present but is likely to be staggeringly high.

We appreciate your consideration of our comments. Should you proceed with the proposals, we appreciate being involved as a stakeholder to offer additional input on our industry’s experiences in this area and our concerns.

Please contact us with any questions.

Sincerely,



Brad Miller
Director of Government Affairs



David Panning
Director of Technical Services