



October 27, 2014

Via 'CalSafer' Web Portal

California Department of Toxic Substance Control
Safer Products and Workplaces Program
P.O. Box 806
Sacramento, CA 95812-0806

Re: **Joint Industry Comments on the Departments 'Draft Priority Product Work Plan'**

These comments have been developed on behalf of the US home furnishings industry (the industry coalition) by the American Home Furnishings Alliance (AHFA), the California Furniture Manufacturers Association (CFMA), the Upholstered Furniture Action Council (UFAC), the National Council of Textile Organizations (NCTO), the North American Home Furnishings Association (NAHFA), and the Polyurethane Foam Association (PFA).

These organizations represent manufacturers, retailers, and suppliers of residential and contract furnishings; including upholstered furniture, wood furniture, home office, and decorative accessories. Member companies participate in a highly competitive market characterized by ever-changing style preferences, margin pressures, and the tendency of consumers to postpone 'big-ticket purchases' if their perception of value and function are not satisfied.

We have reviewed the proposed draft priority product work plan (the plan) and offer the following general comments.

The Statutory and Regulatory Framework

The Department of Toxic Substance Control (DTSC) has broad discretion to identify product categories and choose specific products from the categories identified in the plan in conjunction with chemicals found on the ***Candidate Chemicals List*** (<http://www.dtsc.ca.gov/SCP/ChemList.cfm>). However, this authority is limited. The authorizing statute provides in relevant part:

(b) This article does not authorize the department to supersede the regulatory authority of any other department or agency.

(c) The department shall not duplicate or adopt conflicting regulations for product categories already regulated or subject to pending regulation consistent with the purpose of this article¹

The work plan in Section 4.2.2 identifies office furniture and furnishings as a ***'Product Category of Interest'***. The work plan will specifically focus on furnishings treated with flame retardant chemicals and stain resistant chemicals. As stated in the work plan, DTSC ***'does not intend to consider chemicals other than flame retardants or perfluorinated compounds'***² during the evaluation of the product category. Table 3³ of the work plan contains a limited list of potential candidate chemicals and their functional use.

Upholstered furniture manufacturers use fabric and resilient filling materials (e.g. polyurethane foam and various types of synthetic and natural fiber) as component parts in the construction of finished goods. These materials are directly regulated by the Bureau of Home Furnishings and Thermal Insulation⁴ (hereinafter the Bureau), the Office of Environmental Health Hazard Assessment⁵ (hereinafter OEHHA), the Department of Toxic Substance Control (hereinafter DTSC) and therefore, should be eliminated or exempted from the DTSC listing.

Regulatory History

The industry coalition has been actively engaged with the Bureau, OEHHA and the California state legislature⁶ regarding regulatory requirements related to the use of flame retardant chemicals in upholstered furniture.

Last year, OEHHA listed several chlorinated Flame retardant chemicals utilized by the industry to meet the flammability requirements of TB-117. Proposition 65 (herein after Prop65) was first promulgated in 1986 with the express purpose:

'... to protect California citizens and the State's drinking water sources from chemicals known to cause cancer, birth defects or other reproductive harm, and to inform citizens about exposures to such chemicals ...'

Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, has grown to include approximately 800 chemicals since it was first published in 1987. The list contains a wide range of naturally occurring and synthetic chemicals that are known to cause

¹ Health and Safety Code §25257.1(b)&(c)

² California Department of Toxic Substance Control, Safer Consumer Products Draft Priority Work Plan, pg.12, September 2014.

³ IBID, pg.13

⁴ Technical Bulletin 117-2013

⁵ California Proposition 65

⁶ SB 1019

cancer or birth defects or other reproductive harm. These chemicals include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. Listed chemicals may also be used in manufacturing and construction, or they may be byproducts of chemical processes, such as motor vehicle exhaust.

A chemical can be listed if either of two independent committees of scientists and health professionals finds that the chemical has been clearly shown to cause cancer or birth defects or other reproductive harm. These two committees, the **Carcinogen Identification Committee** (CIC) and the **Developmental and Reproductive Toxicant Identification Committee** (DART), are part of OEHHA's Science Advisory Board. The committee members are appointed by the Governor and are designated as the 'State's Qualified Experts' for evaluating chemicals under Proposition 65. When determining whether a chemical should be placed on the list, the committees work to base their decisions on the most current scientific information available. OEHHA staff scientists compile relevant scientific evidence on various chemicals for the committees to review. The committees also consider comments from the public before making their decisions.

Tris(1,3-dichloro-2propyl)phosphate⁷ (TDCPP), was a commonly used FR chemical in upholstered furniture until it was listed as a chemical of concern in 2011⁸. DTSC regulates many flame retardant chemicals in the California Bio-monitoring program⁹ and has listed them as designated chemicals. Designated chemicals consist of those substances that are included in the Centers for Disease Control and Prevention's (CDC's) bio-monitoring studies and additional chemicals that are recommended by the Scientific Guidance Panel (SGP) for Bio-monitoring California. Designated chemicals are the pool of chemicals from which the SGP can recommend priority chemicals for bio-monitoring.

There is an extensive list of brominated and chlorinated flame retardant chemicals designated for monitoring. This list is also identified in SB 1019 which modifies the existing finished product labeling requirements for TB-117-2013 requiring manufacturers of products sold or offered for sale to identify if their upholstered products contain Flame retardant chemicals.

'This bill would require a manufacturer of covered products, as defined, to indicate whether or not the product contains added flame retardant chemicals, as defined, by including a specified statement on that label'¹⁰.

⁷ CAS No. 13674-87-8

⁸ OEHHA, Chemical of Concern List, June 2014.

⁹ Section 105440 of the Health and Safety Code

¹⁰ SB 1019, Legislative Counsel's Digest, pg.2 and Section 1(l), pg.5.

The legislative language defines Flame retardant chemicals¹¹ and recognizes the existing California biomonitoring list¹². This list identifies known halogenated flame retardant chemicals typically used in upholstered furniture.

The **California Environmental Contaminate Biomonitoring Program** is designed to:

1. Determine levels of environmental chemicals in a representative sample of Californians.
2. Establish trends in the levels of these chemicals over time.
3. Assess the effectiveness of public health efforts and regulatory programs to decrease exposures to specific chemicals.

This is a multiagency program in collaboration with the California Department of Public Health (CDPH), the Office of Environmental Health Hazard Assessment (OEHHA), and the Department of Toxic Substances Control (DTSC). The program is designed to identify and target specific chemicals for monitoring and provide robust scientific peer review. Candidate chemicals are screened and selection to the 'Designated Chemicals List' is based on potential exposure, toxicity, and public health importance. Once a chemical is listed, it is designated a 'priority chemical' using the following criteria:

1. Degree of potential exposure.
2. Likelihood of a chemical being a carcinogen or toxicant.
3. The limits of laboratory detection for the chemical.

One key consideration in recommending a priority chemical is its public health importance in California. This could include for example, whether higher exposures to the chemical might be expected in California compared to the rest of the US. The California biomonitoring program has established an extensive list of chemicals with the ability to measure a significant number of chemicals in Californians which is supported by a vast collection of scientific publications. Clearly this program is used effectively to regulate, control and monitor flame retardants in California.

Proposed Scope

The draft work plan outlines in general terms the approaches used by the DTSC to identify and select the seven product categories, it provides limited detail on how the identified products and chemical classes were selected. In many cases, the identified product-chemical identifications appear to rely on outdated information and data.

It is unclear how the plan's general descriptions of priority products and chemicals provide a **'higher level of predictability'** or **'clear market signals'** for stakeholders, as

¹¹ §19094 Section 2(a)(3)

¹² 'Designated chemicals' pursuant to Section 105440 of the Health and Safety Code.

suggested. In fact, the opposite is true, the draft plan may create greater uncertainty about the safety of the identified ‘candidate priority products’ in the minds of manufacturers, retailers, and the consumer based on recent public comments by staff, DTSC appears intent to broadly affect the market through implementation of the Safer Consumer Products (SCP) regulation, makes the deficiencies of the plan disconcerting.¹³

The industry coalition is greatly concerned with the oblique indictment of entire classes of chemical compounds cited in the document (e.g. brominated or chlorinated organic compounds, halogenated compounds, organophosphates). It is clear the failure of the department to differentiate the acknowledged ‘bad actors’ with broad chemical classifications fails to take into consideration the vastly different physical and chemical differences in the characteristics of the chemicals identified in the grossly overstated classes described in the work plan. The approach is redolent of the broad brush ‘anti-chemical legislative initiatives’ that prompted the promulgation of California’s Green Chemistry laws in 2008.

The draft clearly telegraphs DTSC’s intent to rely heavily on publically available scientific literature in evaluating candidate chemicals. Such reliance potentially excludes critical information from chemical manufacturers and their supply chain that, for legitimate commercial reasons, may not be in the public domain. It also discounts the wealth of data developed by chemical manufacturers in response to regulatory requirements imposed by EPA, REACH¹⁴ and other regulatory agencies throughout the world. Although not public in nature, the studies conducted by the actual chemical manufacturers are often more extensive than those in the public domain.

With specific regard to flame retardants, the draft Work Plan list calls out flame retardant chemicals in three of the seven product categories – building products; household and office furniture and furnishings; and clothing. In fact, it is clear that flame retardants are included because of their potential use in home furnishings in order to meet the various test methods prescribed in several mandatory and voluntary flammability standards¹⁵.

Flammability Standards

As the Department knows, changes to the flammability requirements for residential furniture sold in California¹⁶ focused on the primary source of ignition, cigarette ignition. The TB-117-2013 test method provides an opportunity for manufactures to eliminate the use of Flame retardant chemicals in their finished products. As stated by Governor Brown, the changes

¹³ Introductory comments of Dr. Meredith Williams at the September 25th, 2014 Public Workshop outlining the September 2014 Work Plan

¹⁴ REACH – the Registration, Evaluation, Authorization, and Restriction of Chemicals regulation of the European Union.

¹⁵ TB-117-2013, TB-133, NFPA 260, ASTM E-1353 and BS 5852.

¹⁶ Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (BEARHFTI), ‘**Technical Bulletin 117-2013; Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture**’ (http://bearhfti.ca.gov/about_us/tb117_2013.pdf.)

to TB-117 were intended to discourage the use of flame retardants in upholstered furniture¹⁷. Additionally, the passage of SB 1019 creates an additional incentive to discontinue the use of flame retardants in furniture by requiring that all furniture sold in the state be labeled to indicate the presence of any 'added flame retardant chemicals' in the finished upholstered furniture.

It is clear, the collective impact of these regulatory changes provide 'disincentives' that may discourage future investment in research and development of 'emerging technologies' that could significantly advance the policy objectives of fire safety. Therefore, it is difficult to see what, if any, additional insight can result from DTSC's review of this application under the Safer Consumer Products regulation. In this light, the industry coalition request that the Department drop household, office furniture and furnishings from the work plan. There is already enough regulatory incentive urging manufacturers to discontinue the use of flame retardants without creating a 'new' regulatory burden that is redundant and duplicative.

Additional Comment Period is Needed

The industry coalition requests that the comment period be extended allowing for additional time to provide input after the Department has reviewed the comments provided during the initial comment period and has had the opportunity to eliminate products from the draft work plan. There is great uncertainty surrounding the scope of products under consideration. The examples identified by the Department were not conclusive. It should be noted that staff stated at the workshop that:

'Examples could be removed or new samples added to the three-year cycle.'

This is also acknowledged in the draft work plan:

'[t]here are some product categories ... that are too broad to provide the clarity and specificity required for identifying the types of products DTSC will evaluate further'¹⁸.

Although this comment period referred to the scope of 'GPC' categories, these categories are too broad and ambiguous. Clarity is required to develop a meaningful regulatory concept. It is critical that DTSC review all comments and provide the needed clarity in order for stakeholders to provide meaningful additional comments in the regulatory development process.

¹⁷ Press release, Governor Brown Directs State Agencies to Revise Flammability Standards, June 18, 2012 (<http://gov.ca.gov/news.php?id=17598>).

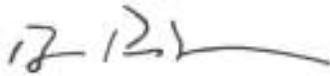
¹⁸ Work Plan, pg.7

Summary and Conclusion

The Health and Safety Code includes a common-sense approach to avoid wasteful duplication of effort by the Department and regulatory burden on the affected industries when a product is already regulated for the same purpose by other state or federal regulatory authorities. That is precisely the case at hand with flame retardant chemicals in **household and office furniture and furnishings**. There are many well established, pending¹⁹ and new regulatory requirements that are successfully moving the industry away from incorporating Flame retardant chemicals in their finished upholstered products. These regulatory initiatives apply equally to domestic and imported products.

With these effective regulations in place or emerging, household and office furniture and furnishings should be exempted and removed from consideration in the draft work plan. The industry coalition requests the Department to make their decisions on exemption in cases of regulatory duplication quickly to avoid undue burdens. The statutory provisions prohibit supersession or duplication of regulation was premised on the principle of avoiding undue burden on and the expense of both the Department and the affected industries. Delaying these decisions to a later time will necessitate a costly and unproductive journey.

Respectfully submitted on behalf of the industry coalition by,



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¹⁹ CPSC, the Bureau, NFPA and the European Union are all currently working to develop, improve or modify various flammability test methods that will impact the industries use of flame retardant chemicals in upholstered goods.