



LEGISLATIVE INITIATIVES TO BAN PBDEs

In the period between 2003-2005 several states (8) have enacted laws prohibiting the manufacture and distribution of products containing more than a specified amount of pentaBDE (most limits being 0.1% by mass); laws which are scheduled to go into effect on various dates from 1/1/06 to mid-2008. Other states are considering or can be expected to consider enactment of similar laws.

Some of these laws expressly exempt recyclables or products made of recycled materials that contain pentaBDE; and others have been construed by responsible government officials to exempt such materials. Still other laws are silent on their application to recycling. Virtually all of the enacted laws exempt used products from their application.

Bonded carpet cushion manufactured from penta-containing post-industrial scrap and post-consumer scrap will contain pentaBDE in excess of what these laws would permit unless they are exempt from the prohibitions. As of 2005, pentaBDE is no longer in the flexible polyurethane foam being produced or in the post-industrial scrap from that production; and, as a consequence, the bonded cushion now being manufactured will have significantly lower levels of pentaBDE than in prior years. Based upon recent tests it is thought that such post-consumer take-up foam cushion as is presently being collected for recycling into new bonded cushion has, on average, a total penta technical mixture level of 0.313% by weight, i.e., very close to but above the levels generally permitted by the state laws being enacted.

The Carpet Cushion Council is actively engaged in a program to identify legislative activity aimed at prohibiting the sale of penta-containing products, construing the variations in these laws and proposed laws, and, where recycling is not expressly exempt, contacting the primary sponsors of the legislation urging legislators to include exemptions in their bills for recyclables and recycled products. In some states decisions on whether to exempt recycled products may need to be delegated authority to administer

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the bans. The Carpet Cushion Council will be identifying such situations and involving itself in the process of obtaining appropriate relief.

These approaches to legislators and administrators involve use of a written statement, prepared by the Carpet Cushion Council, which provides support for the position that take-up scrap foam cushion and new bonded cushion should be exempt from the pentaBDE bans. The statement sets forth the industry objectives, summarizes the state legislative activity to date, and points to versions of the enacted laws viewed most favorably by the industry. It describes the importance of bonded cushion in the separate carpet cushion industry (86% of all domestic production) and in its role in the recycling of foam scrap, and provides facts and figures on the quantities of post-industrial and post-consumer scrap used annually (1.0 - 1.1 billion pounds) in the production of new bonded cushion (850 million square yards).

The statement describes the complete replacement of pentaBDE by other FRs in the production of flexible polyurethane foam, and describes the very low pentaBDE levels in take-up scrap foam cushion currently being replaced with new cushion. Finally, the statement summarizes the anticipated injury to the recycling industry, retailers and distributors of carpet cushion, to the manufacturers of bonded carpet cushion were recycling of take-up cushion to be precluded; and the anticipated injury to the general public if land-filling of these recyclables (an additional 300-400 million pounds) is required or if these recyclable materials are, instead, disposed of improperly.

Copies of the Council's statement are available from the Carpet Cushion Council; and, in due course, will be posted on the Council's web site. www.carpetcushion.org

The position being taken by the Council, in each instance, is that states enacting legislation making it a prohibited act to manufacture, process, sell or distribute in commerce a product containing pentaBDE should provide that the prohibitions do not apply to a product for which the sole source of pentaBDE is from a material that is recycled.

The goal is to maintain the collection and recycling of post-consumer take-up foam carpet cushion and the continued manufacture and sale of end-products produced using recycled take-up foam carpet cushion materials.

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