



## REGULATORY AGENCY ACTION

ers of guide, signal, or service dogs to register with the Department of Consumer Affairs (DCA); these registered trainers would be permitted to authorize other personnel to train the dogs. DCA would be required to establish and maintain a registry of these persons and issue registration certificates. This two-year bill is still pending in the Assembly Human Services Committee.

**SB 756 (Marks)**, as introduced March 6, would change the composition of the Board by providing that one member shall be the Director of the Department of Rehabilitation or his/her representative, one shall be a veterinarian, one shall be a member of the general public, and the remaining members shall be blind persons who use guide dogs. This two-year bill is still pending in the Senate Business and Professions Committee.

### FUTURE MEETINGS:

To be announced.

### BUREAU OF HOME FURNISHINGS AND THERMAL INSULATION

Chief: Gordon Damant  
(916) 920-6951

The Bureau of Home Furnishings and Thermal Insulation (BHF) is charged with regulating the home furnishings and insulation industries in California. As a division of the state Department of Consumer Affairs (DCA), the Bureau's mandate is to ensure that these industries provide safe, properly labeled products which comply with state standards. Additionally, the Bureau is to protect consumers from fraudulent, misleading, and deceptive trade practices by members of the home furnishings, insulation, and dry cleaning industries. The Bureau is established in Business and Professions Code section 19000 *et seq.*

The Bureau establishes rules regarding furniture and bedding labeling and sanitation. To enforce its regulations, which are codified in Division 3, Title 4 of the California Code of Regulations (CCR), the Bureau has access to premises, equipment, materials, and articles of furniture. The Bureau may issue notices of violation, withhold products from sale, and refer cases to the Attorney General or local district attorney's offices for possible civil penalties. The Bureau may also revoke or suspend a licensee's registration for violation of its rules.

The Bureau is also charged with the registration of dry cleaning plants throughout the state. The registration

process includes submission of information regarding the plant's onsite storage, treatment, and disposal of toxic wastes. The Bureau, however, has no enforcement authority regarding this function.

The Bureau is assisted by a thirteen-member Advisory Board consisting of seven public members and six industry representatives.

### MAJOR PROJECTS:

#### *Furniture Flammability Standards.*

On May 16, BHF submitted its proposed regulatory changes to sections 1374 and 1374.3, Title 4 of the CCR, to DCA for approval. The proposed revisions, known as Technical Bulletin No. 133, would establish higher flammability standards for furniture in public occupancy buildings. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 80; Vol. 11, No. 2 (Spring 1991) p. 78; and Vol. 11, No. 1 (Winter 1991) p. 64 for background information.) DCA Director Jim Conran approved the changes in July, and the package was submitted to the Office of Administrative Law (OAL) on August 2.

OAL rejected the proposed amendments on September 3, citing problems with the necessity and clarity standards and the procedural requirements of the Administrative Procedure Act, Government Code section 11340 *et seq.* OAL stated that the necessity standard in Government Code section 11349.1(a)(3) was not satisfied because the rulemaking file lacked substantial evidence supporting the specific test criteria articulated in the initial and final statement of reasons. According to OAL, although the Bureau demonstrated general necessity for a higher technical standard for seating furniture in public occupancies, it did not articulate necessity for the specific test criteria chosen.

Further, OAL found that the clarity standard in Government Code section 11349.1(a)(3) was not met because the building codes referred to in the Bulletin did not contain an edition or publication date. OAL noted that the failure to include those dates "means the directly affected public will not know which version of which code defines the various types of 'public occupancies' regulated. . . ." The failure to include those references may also create "an impermissible prospective incorporation by reference of any future changes to that code." In addition, OAL found that BHF's use of the term "seating furniture" is unclear in Technical Bulletin No. 133. The Bureau has specific authority for establishing fire retardancy standards for "upholstered" and

"reupholstered" furniture pursuant to Business and Professions Code section 19161. These terms are not used in Technical Bulletin No. 133 and are apparently replaced with the term "seating furniture," which is not defined in statute or regulation. According to OAL, this could lead to confusion as to the definition of "seating furniture," and could also be the source of potential consistency problems.

Finally, OAL found that the rulemaking file does not include all data and documents relied on, as required by Government Code section 11347.3(a)(7), nor did it include copies of all 15-day changes, as required by Government Code section 11347.3(a)(10). BHF has 120 days to respond to OAL's concerns.

**Approval of Proposed License Fee Increase.** On May 17, the Bureau submitted its proposed regulatory changes to section 1107, Title 4 of the CCR, to OAL for approval; the changes increase BHF license fees to the maximum levels authorized by law. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 80; Vol. 11, No. 2 (Spring 1991) p. 78; and Vol. 11, No. 1 (Winter 1991) pp. 64-65 for background information.) On June 6, OAL approved the proposed amendments; the new fees went into effect August 1 for all new and renewal licenses. In its review of the fee increase, DCA's budget office estimated that the changes will provide BHF with \$233,000 in additional revenue during 1991-92.

**Need for Additional Generation of Revenue.** Despite the recent fee increase, DCA's budget office estimates that BHF will again experience cash flow problems in fiscal year 1992-93 and a deficit in 1993-94 unless steps are taken to avoid the potential problem. At the September 10 Advisory Board meeting, four separate remedies were proposed. The first remedy is the reduction of BHF programs and expenditures. The next possibility involves generating additional revenue from present sources. This would include efforts to reduce unlicensed activity and increase the assessments for inspection and laboratory testing costs now imposed on firms whose products are analyzed by BHF's laboratory and found to be in violation of California law. The DCA Director's office has also considered the possibility of obtaining citation powers for BHF inspectors, allowing them to issue citations and fines onsite for discovered violations. If implemented, this would replace BHF's current system of issuing a notice of violation. Finally, BHF might raise its licensing fees once again. Since the



newly-adopted regulatory amendment raises fees to the maximum levels allowed by law, BHF must obtain a statutory change before it may increase its fees further.

**Budget Change Proposals.** BHF is requesting two budget change proposals (BCP) which would affect Bureau staffing in fiscal year 1992-93. One change would convert the current limited-term Staff Services Analyst position into a permanent position; the second change would create positions for three additional word processing technicians to provide clerical support to the full-scale flammability and analytical/data processing work units. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 81 for background information.) The Bureau had originally requested only one clerical position but amended its request based on the results of a preliminary survey of clerical workload, which indicated the need for at least three additional clerical positions to effectively handle the Bureau's workload. An additional workload study is currently being performed by BHF. The BCPs were reviewed and approved by DCA with nonsubstantial changes incorporated. The BCPs are presently under review by the State and Consumer Services Agency; Agency recommendations and approval are expected shortly. BHF will incorporate Agency recommendations and submit the BCPs to the Department of Finance for review and inclusion in the 1992-93 state budget package. Final approval or rejection of the proposals is not expected before December 1991.

**Updated Inspection Procedures.** Bureau inspectors received and reviewed an updated training and procedure manual at BHF's July 31-August 2 workshop; this is the first major revision to the manual since 1978. The newly-revised manual is structured to accommodate updates and changes in order to keep it current and updated. The Bureau is currently in the process of evaluating all job functions and work flow within the inspection program to identify, examine, and evaluate roles and responsibilities and create a more effective and efficient work flow. To increase efficiency, projects are being undertaken to redesign the current inspection forms for simplicity and to reorganize inspector assignments based on geographical areas to ensure annual inspection of all counties in the state.

**Proposed Revisions to the Insulation Quality Standards.** At its June 11 meeting, the Advisory Board discussed BHF's proposed revisions to the Standards for Insulation Material, which

would update existing standards and expand the present types and forms of insulation. BHF had released draft revisions for informal comments; the informal comment period expired in June. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 80-81 and Vol. 9, No. 2 (Spring 1989) pp. 58-59 for background information.) According to BHF, the final package of proposed regulations will be sent to the Building Standards Commission, instead of OAL, for approval. At this writing, BHF has not published the final version of the proposed revisions for a formal comment period.

**Consumer Outreach.** The Bureau and DCA have both recognized the need for increased consumer outreach and have proposed several methods to accomplish this goal, including conducting speaking engagements with consumer groups; identifying consumer markets to be addressed; developing a video to help consumers understand their role in consumer issues; establishing a proactive approach to obtaining media coverage in the form of feature stories on Bureau and DCA activities; developing a monthly consumer education column to be distributed to print media; and developing a volunteer program to assist the Bureau and DCA with workload and involve the citizens of California in consumer issues. At its September 10 meeting, the Advisory Board discussed the possibility of using volunteers at county fairs to distribute BHF information pamphlets. Chief Damant explained that this issue had been explored with the Los Angeles County Fair and is not feasible, since the Fair would charge \$10,000 for a booth and volunteers would need to be accompanied by a Bureau employee. The Bureau will explore the possibilities of sharing booths with other DCA agencies and utilizing free spaces in furniture marts.

#### LEGISLATION:

**AB 1893 (Lancaster)**, as amended August 19, increases the additional penalty fee for failure to renew a BHF license after January 1, 1992, to 30% of the renewal fee. The bill also provides that a BHF license which is not renewed within one year of its expiration shall be canceled, and sets forth conditions for reinstatement of such a canceled license. This bill was signed by the Governor on October 7 (Chapter 654, Statutes of 1991).

**AB 1749 (Johnson)**, as introduced March 8, would revise to an unspecified amount the penalty fee for failure to timely renew a BHF license prior to its expiration. This bill is pending in the

Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

#### RECENT MEETINGS:

At its September 10 meeting, the Advisory Board discussed proposed revisions to the Home Furnishings Act. Chief Damant recommended revising the Bureau's current accounting system, which combines the reserve funds for the home furnishings program and the thermal insulation program. Business and Professions Code section 19175 requires BHF to ensure that fees taken in for one of the programs is spent on that particular program; the current accounting system does not facilitate this separation of funds. According to BHF, this problem is complicated by the fact that the DCA budget office, the Department of Finance, and the Governor's office, among others, view the joint reserve as funds that could be spent by either program. The Bureau may propose clarifying legislation which would either authorize BHF to maintain separate reserve funds or eliminate the current requirement that revenue from either program be spent on that program.

Other legislative proposals which the Board discussed include raising the maximum fee that may be charged for a Home Furnishings license; amending Business and Professions Code section 19213.1 to raise the maximum amount that may be charged for tests or inspection costs on products that violate applicable statutes or regulations; establishing licensing for wholesalers and retailers of thermal insulation products; establishing new license classifications to cover "non-stocking dealers"; requiring licensees to keep on file the license number of wholesale customers, as well as their resale number, open for inspection or reporting to BHF; requiring licensees to keep vendor license numbers on file, or make some sort of evidence of vendor licensing available to BHF; changing language regarding license display placement to a location "normally frequented by the visiting public" and changing the license display to make it more visible to both the public and inspectors. These suggestions were all briefly considered, but the Advisory Board has not yet taken action on any specific recommendation.

#### FUTURE MEETINGS:

December 10 in Los Angeles.  
March 10 in Sacramento.  
June 9 in San Diego.