



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

This document has been electronically
approved and signed.

DATE: March 24, 2021

BALLOT VOTE SHEET

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Mary T. Boyle, Executive Director
Jennifer Sultan, Acting General Counsel

FROM: Daniel Vice, Acting Assistant General Counsel
Hyun S. Kim, Attorney, OGC

SUBJECT: Upholstered Furniture Flammability Standard (TB 117-2013) Direct Final
Rule and Notice of Proposed Rulemaking

BALLOT VOTE DUE: Tuesday, March 30, 2021

On December 27, 2020, Congress signed into law, the COVID -19 Regulatory Relief and Work From Home Safety Act, Pub. L. 116-260 (COVID-19 Act). Section 2101(c) requires that, beginning 180 days after the date of enactment of the COVID-19 Act, Technical Bulletin (TB) 117-2013 shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act. The Office of the General Counsel (OGC) is providing for Commission consideration the attached direct final rule (DFR) and notice of proposed rulemaking (NPR) codifying the statutory language into new 16 CFR part 1640. The draft DFR is effective June 25, 2021, and provides a June 25, 2022 compliance date for labeling requirements. Interested parties have 30 days to submit comments after publication of the DFR to submit comments. A delay in publishing the draft DFR in the *Federal Register*, or the receipt of any significant adverse comment to the DFR, that requires a subsequent rulemaking to address the comments, may result in the withdrawal of the DFR and modification of the effective date in a final rule.

OGC is also providing for Commission consideration, an option in the ballot vote sheet, to address the existing CPSC rulemaking on upholstered furniture. Since TB 117-2013 is now required to be the mandatory federal standard for upholstered furniture under the COVID-19 Act, and because staff previously recommended that the Commission terminate CPSC's NPR issued in 2008, on the *Standard for the Flammability of Residential Upholstered Furniture*, (73 FR 11702 (March 4, 2008)), the Commission could decide to proceed to terminate the 2008 rulemaking and direct staff to draft a termination notice.¹

¹ Staff's briefing packages recommending termination of the NPR are available at:

A. *Federal Register* Notice for Direct Final Rule (DFR)

Please indicate your vote on the following options:

- I. Approve publication of the attached DFR in the *Federal Register*, as drafted.

(Signature)

(Date)

- II. Approve publication of the attached DFR in the *Federal Register*, with changes.
(Please specify.)

(Signature)

(Date)

- III. Do not approve publication of the attached DFR in the *Federal Register*.

(Signature)

(Date)

<https://cpsc.gov/s3fs-public/Upholstered%20Furniture%20Update%202019.pdf?2N122fb0k1aEhoAwhBmFOj0lZpXHYHEI>
(Sept. 25, 2019) and
<https://cpsc.gov/s3fs-public/The%20Feasibility%20Benefits%20and%20Costs%20of%20Adopting%20-TB117-2013%20-%20September%208%202016.pdf> (Sept. 8, 2016)

IV. Take other action. (Please specify.)

(Signature)

(Date)

B. Federal Register Notice for Proposed Rulemaking (NPR)

Please indicate your vote on the following options:

I. Approve publication of the attached NPR in the *Federal Register*, as drafted.

(Signature) (Date)

II. Approve publication of the attached NPR in the *Federal Register*, with changes.
(Please specify.)

(Signature) (Date)

III. Do not approve publication of the attached NPR in the *Federal Register*.

(Signature) (Date)

IV. Take other action. (Please specify.)

(Signature) (Date)

C. Upholstered Furniture 2008 NPR

Please indicate your vote on the following options:

- I. Terminate the rulemaking associated with upholstered furniture, and direct staff to draft a *Federal Register* notice announcing the Commission's termination of the rulemaking for Commission consideration.

(Signature)

(Date)

- II. Do not terminate the rulemaking associated with upholstered furniture.

(Signature)

(Date)

- III. Take other action. (Please specify.)

(Signature)

(Date)

Attachments: Draft *Federal Register* Notices: Direct Final Rule - Standard for the Flammability of Upholstered Furniture; Notice of Proposed Rulemaking - Standard for the Flammability of Upholstered Furniture

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[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1640

[Docket No. CPSC-2021-XXXX]

TITLE: Standard for the Flammability of Upholstered Furniture

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is issuing a direct final rule to codify in the Code of Federal Regulations the statutory requirements for the flammability of upholstered furniture under the COVID -19 Regulatory Relief and Work From Home Safety Act. This Act mandates that CPSC promulgate California Technical Bulletin 117-2013 as a flammability standard for upholstered furniture under section 4 of the Flammable Fabrics Act.

DATES: *Effective Date:* The rule is effective on June 25, 2021, and applies to upholstered furniture manufactured, imported, or reupholstered on or after that date, unless we receive a significant adverse comment by **[insert date 30 days after publication in the FEDERAL REGISTER]**. If we receive a timely significant adverse comment, we will publish notification in the *Federal Register*, withdrawing this direct final rule before the effective date. The Director of the *Federal Register* approves the incorporation by reference of certain documents listed in this final rule as of June 25, 2021.

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Compliance Date for Labeling Requirement: Compliance with the labeling requirement in § 1640.4 must start by June 25, 2022, and applies to upholstered furniture manufactured, imported, or reupholstered on or after that date.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2021-XXXX, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (e-mail), except through <https://www.regulations.gov>. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you may email such submissions to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

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Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2021-XXXX into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Andrew Lock, Project Manager, Directorate for Laboratory Sciences, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850 email: alock@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

On December 27, 2020, Congress signed into law, “COVID -19 Regulatory Relief and Work From Home Safety Act,” Pub. L. 116-260 (COVID-19 Act). Section 2101(c) of the COVID-19 Act mandates that, 180 days after the date of enactment of the COVID-19 Act, the standard for upholstered furniture set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin (TB) 117-2013 (TB 117-2013), entitled, “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” published June 2013, “shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).”

II. Description of the California Standard

The Commission is codifying the relevant sections in 16 CFR part 1640 to ensure that CPSC regulations clearly and accurately reflect the statutory requirements imposed on the regulated community by the COVID-19 Act. Immediate codification of

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the relevant portions of the COVID-19 Act requirements will put regulated parties on notice of their legal responsibilities and ensure that stakeholders, including manufacturers, importers, testing laboratories, consumers, and other interested parties, have notice that the CPSC will adopt the California standard effective on June 25, 2021.

Pursuant to the COVID-19 Act, as of June 25, 2021, the California standard, TB 117-2013, is considered to be a flammability standard promulgated under section 4 of the FFA. TB 117-2013 sets forth the requirements, test procedure, and apparatus for testing the smolder resistance of materials used in upholstered furniture from hazards associated with smoldering ignition. The standard provides methods for smolder resistance of cover fabrics, barrier materials, resilient filling materials, and decking materials for use in upholstered furniture. The COVID-19 Act also requires that states may not preempt sections 1374 through 1374.3 of title 4, California Code of Regulations (CCR) (except for subsections (b) and (c) of section 1374 of that title).

- Section 1374, 4 CCR 1374, is titled, “Flammability; Upholstered and Reupholstered Furniture” and provides that:
 - (a) On and after January 1, 2015, all filling materials and cover fabrics contained in any article of upholstered furniture and added to reupholstered furniture shall meet the fire retardant requirements as set forth in TB 117-2013.
 - (b) In addition to the requirements of subsection (a) above, finished articles of upholstered furniture may also be tested in accordance with TB 116 entitled “Test Procedures and Apparatus for Testing the Flame Retardance of Upholstered Furniture,” dated January 2019.
 - (c) The flammability requirements contained in this section are considered to be

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flammability performance standards. Testing under these standards shall be at the discretion of the licensee; however, products and materials offered for sale in this state shall meet all applicable flammability requirements established in these regulations.

- Section 1374.1, 4 CCR 1374.1, is titled “Exemptions. [Repealed];
- Section 1374.2, 4 CCR 1374.2, is titled “Criteria for Exemption” and includes exemptions for certain articles of upholstered furniture including outdoor cushions and pads, certain infant and toddler products, and medically prescribed furnishings;
- Section 1374.3, 4 CCR 1374.3 is titled “Labeling” and prescribes certain labeling requirements for upholstered furniture conforming to section 1374 (a) and 1374 (b).

In accordance with the requirements of 1 CFR 51.5, the CPSC includes regulatory text with following incorporations by reference:

- TB 117-2013;
- Sections 1374, 1374.2, and 1374.3 of 4 CCR.

III. Description of the Rule

The Commission codifies the following relevant statutory text of section 2101 in the COVID-19 Act:

A. Definitions

The COVID-19 Act provides the following definitions:

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- the term “bedding product” means—
 - (1) an item that is used for sleeping or sleep-related purposes; or
 - (2) any component or accessory with respect to an item described in subparagraph (1), without regard to whether the component or accessory, as applicable, is used—
 - (a) alone; or
 - (b) along with, or contained within, that item;
- the term “California standard” means TB 117-2013;
- the terms “foundation” and “mattress” have the meanings given those terms in 16 CFR 1633.2, as in effect on the date of enactment of the COVID-19 Act; and
- the term “upholstered furniture”—
 - (1) means an article of seating furniture that—
 - (a) is intended for indoor use;
 - (b) is movable or stationary;
 - (c) is constructed with an upholstered seat, back, or arm;
 - (d) is—
 - (i) made or sold with a cushion or pillow, without regard to whether that cushion or pillow, as applicable is attached or detached with respect to the article of furniture; or
 - (ii) stuffed or filled, or able to be stuffed or filled, in whole or in part, with any material, including a substance or material that is hidden or concealed by fabric or another covering, including a

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cushion or pillow belonging to, or forming a part of, the article of furniture; and

(e) together with the structural units of the article of furniture, any filling material, and the container and covering with respect to those structural units and that filling material, can be used as a support for the body of an individual, or the limbs and feet of an individual, when the individual sits in an upright or reclining position;

(2) includes an article of furniture that is intended for use by a child; and

(3) does not include—

(a) a mattress;

(c) a foundation;

(d) any bedding product; or

(e) furniture that is used exclusively for the purpose of physical fitness and exercise.

B. Testing and Certification

The COVID-19 Act provides that for purposes of testing and certification:

- A fabric, related material, or product to which the California standard applies shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) with respect to that standard.
- Each manufacturer of a product that is subject to the California standard shall include the statement “Complies with U.S. CPSC requirements for upholstered furniture flammability” on a permanent label located on the

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product, which shall be considered to be a certification that the product complies with that standard.

C. Preemption

The COVID-19 Act provides that for purposes of preemption, notwithstanding section 16 of the FFA¹ and section 231 of the Consumer Product Safety Improvement Act of 2008,² and except as provided in sections 1374 through 1374.3 of title 4, California Code of Regulations (except for subsections (b) and (c) of section 1374 of that title), or the California standard, no State or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

In addition, the COVID-19 Act provides that the COVID-19 Act and the FFA (15 U.S.C. 1191 *et seq.*) will not preempt or otherwise affect—

¹ Section 16(a) of the FFA states that, with certain exceptions: “[W]henever a flammability standard or other regulation for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.” 15 U.S.C. 1203(a).

² Section 231 of the CPSIA, Pub. L. 110–314, provides that, “The provisions of this section establishing the extent to which the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*) preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Flammable Fabrics Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation.” (15 U.S.C. 2051 note).

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- (1) any State or local law, regulation, code, standard, or requirement that—
 - (a) concerns health risks associated with upholstered furniture; and
 - (b) is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture;
- (2) sections 1374 through 1374.3 of title 4, California Code of Regulations (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of this Act; or
- (3) the California standard.

IV. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule (DFR). The Administrative Procedure Act (APA) generally requires notice and comment rulemaking. 5 U.S.C. 553(b). In Recommendation 95-4, the Administrative Conference of the United States (“ACUS”) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because CPSC believes that this action is not controversial, and CPSC does not expect significant adverse comment because we are codifying statutorily mandated requirements. Unless we receive a significant adverse comment within 30 days, the rule will become effective on June 25, 2021. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the

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rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive a significant adverse comment, the Commission will withdraw this direct final rule. A notice of proposed rulemaking (NPR), providing an opportunity for public comment, is also being published in this same issue of the *Federal Register*.

V. Effective Date and Compliance Date

Sec. 2101 of the COVID-19 Act states that, beginning on June 25, 2021, the California standard shall be considered to be a flammability standard promulgated by the CPSC under section 4 of the FFA (15 U.S.C. 1193). Section 4(b) of the FFA provides that a flammability standard shall become effective one year from the date it is promulgated, unless the Commission finds for good cause that an earlier or later effective date is in the public interest, and the Commission publishes the reason for that finding. Section 4(b) of the FFA also requires that an amendment of a flammability standard shall exempt products “in inventory or with the trade” on the date the amendment becomes effective, unless the Commission limits or withdraws that exemption because those products are so highly flammable that they are dangerous when used by consumers for the purpose for which they are intended. 15 U.S.C. 1193(b).

A. Effective Date

Under the COVID-19 Act, because the California standard is required to be promulgated as an FFA standard as of June 25, 2021, under section 4(b) of the FFA, the effective date would be a year from the date of promulgation, or June 25, 2022, absent Commission action. However, the Commission concludes that there is good cause to

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require an earlier effective date of June 25, 2021 because based on current information, a very high percentage (up to 95 percent) of upholstered furniture items currently marketed in the United States already comply with the TB 117-2013 requirements. Therefore, the June 25, 2021 effective date would not impose any significant additional burden to industry. Accordingly, upholstered furniture manufactured, imported, or reupholstered on or after June 25, 2021, is required to be compliant with the requirements of the standard.

B. Inventory

Section 4(b) of the Flammable Fabrics Act also states that “[e]ach . . . [promulgated] standard . . . shall exempt . . . products in inventory or with the trade as of the date on which the standard . . . becomes effective except that, if the Commission finds that any such . . . product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, it may under such conditions as the Commission may prescribe, withdraw, or limit the exemption for such . . . product.” *Id.* Because industry is substantially compliant with the TB-117-2013 requirements, most products in inventory or with trade would already meet the flammability requirements under the COVID-19 Act, and therefore, would not support a finding by the Commission that such products would be deemed highly flammable. Accordingly, the Commission concludes that there is no basis to prescribe, withdraw, or limit the exemption for products in inventory or trade.

B. Compliance Date for Labeling

The COVID-19 Act imposes a new requirement which directs each manufacturer of a product that is subject to the California standard to include the statement “Complies

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with U.S. CPSC requirements for upholstered furniture flammability’’ on a permanent label located on the product. Because this is a new requirement, the Commission provides a later compliance date, for the labeling requirements only, to allow the furniture industry sufficient time to implement the new labeling requirements and address any supply chain issues that may exist for relabeling upholstered furniture. Accordingly, upholstered furniture manufactured, imported, or reupholstered on or after June 25, 2021, must comply with the flammability requirements of TB 117-2013, and comply with the labeling requirements by June 25, 2022.

VI. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble of the rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble of the rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR regulations, section II of this preamble summarizes the material in TB 117-2013 and sections 1374, 1374.2, and 1374.3 of 4 CCR that the Commission incorporates by reference into 16 CFR part 1640. These documents are reasonably available to interested parties because these documents are not copyrighted and are publicly available. TB 117-2013 is available for viewing and downloading at https://bhgs.dca.ca.gov/about_us/tb117_2013.pdf. Interested parties can request a copy of TB 117-2013 from the State of California, Department of Consumer Affairs, 4244 South Market Court, Suite D, Sacramento, CA 95834. Sections 1374, 1374.2, and 1374.3

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of 4 CCR are available for viewing and downloading at <https://oal.ca/gov/publications/ccr/>. Interested parties can order a hard-copy version of the CCR or purchase individual Titles, from Barclay, publisher of the Official CCR, at 1-800-888-3600. See § 1640.6(b) for more availability information.

The CPSC will make both TB117-2013, and sections 1374, 1374.2, and 1374.3 of 4 CCR available in www.regulations.gov in this docket, under Supporting and Related Material. Interested parties can also schedule an appointment to inspect copies at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301-504-7479; email: cpsc-os@cpsc.gov.

VII. Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). The COVID-19 Act provides that for purposes of testing and certification, fabric, related material, or product to which the California standard applies shall not be subject to section 14(a) of the CPSA (15 U.S.C. 2063(a)) with respect to that standard. Accordingly, section 14(a) of the CPSA does not apply to this standard for the flammability of upholstered furniture. However, the COVID-19 Act requires each manufacturer of a product that is subject to the California standard to include the statement "Complies with U.S. CPSC requirements for upholstered furniture

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flammability” on a permanent label located on the product, which shall be considered to be a certification that the product complies with this standard.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The CPSC has determined that the direct final rule is limited to codifying the relevant statutory provisions of the COVID-19 Act, and will not cause a significant impact on small entities. The CPSC certifies that this rule will not, if issued, have a significant impact on a substantial number of small entities.

IX. Paperwork Reduction Act

The COVID-19 Act includes requirements for labeling because it requires each manufacturer of a product that is subject to the California standard to include a permanent label located on the product with the statement “Complies with U.S. CPSC requirements for upholstered furniture flammability.”

Although marking, labeling, and instructional literature can constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521), the PRA excepts labels that disclose information completely defined by the agency, such as the Surgeon General's warnings about cigarettes. Here, the required label is defined by statute and allows for no variability regarding the content of the label. Thus, the public disclosure of information required by the product label: “Complies with

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U.S. CPSC requirements for upholstered furniture flammability” does not fall within the definition of “collection of information” under the PRA. 5 CFR 1320.3(c)(2).

X. Environmental Considerations

The Commission’s regulations provide a categorical exclusion for the Commission’s rules from any requirement to prepare an environmental assessment or an environmental impact statement where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

XI. Preemption

The COVID-19 Act provides that for purposes of preemption, notwithstanding the preemption provisions under section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) and section 231 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (15 U.S.C. 2051 note), and except as provided in sections 1374 subsections (b) and (c) of the California Code of Regulations of section 1374; or the California standard, no state or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

In addition, the COVID-19 Act includes a provision – “Preservation of Certain State Law” providing that nothing in the COVID-19 Act or the FFA (15 U.S.C. 1191 et seq.) will preempt or otherwise affect—

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- (1) any State or local law, regulation, code, standard, or requirement that—
 - (a) concerns health risks associated with upholstered furniture; and
 - (b) is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture;
- (2) sections 1374 through 1374.3 of title 4, California Code of Regulations (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of this Act; or
- (3) the California standard.

This rule codifies the preemption provisions to put regulated parties on notice of their legal responsibilities regarding preemption and to eliminate the potential for confusion that might arise in the event that a conflict is perceived between the preemption requirements of the COVID-19 Act and those contained in other CPSC statutes.

XII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1640

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Consumer protection, Flammable materials, Incorporation by reference, Labeling, Upholstered furniture materials, Textiles.

For the reasons stated in the preamble, the Commission adds Title 16 of the Code of Federal Regulations by adding part 1640 to read as follows:

PART 1640 – STANDARD FOR THE FLAMMABILITY OF UPHOLSTERED FURNITURE

Sec.

1640.1 Purpose and scope

1640.2 Effective date and Compliance date

1640.3 Definitions

1640.4 Certification and labeling

1640.5 Requirements

1640.6 Incorporation by Reference

Authority: Sec. 2101, Pub. L. 116-260, 15 U.S.C. 1193

§ 1640.1 Purpose and scope

(a) *Purpose.* This part establishes the standard for the flammability of upholstered furniture, as set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117- 2013, entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” published June 2013 (for availability, see § 1640.6).

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(b) *Scope*. All upholstered furniture as defined in § 1640.3 manufactured, imported, or reupholstered on or after the effective date of this standard is subject to the requirements of this part.

§ 1640.2 Effective Date and Compliance Date

(a) *Effective Date*. This part (the standard) is effective June 25, 2021 and shall apply to all upholstered furniture, as defined in § 1640.3, manufactured, imported, or reupholstered on or after that date.

(b) *Compliance Date*. Compliance with the labeling requirement in § 1640.4 shall be required by June 25, 2022, and shall apply to all upholstered furniture, as defined in § 1640.3, manufactured, imported, or reupholstered on or after that date.

§ 1640.3 Definitions

(a) *Bedding product* means

(1) an item that is used for sleeping or sleep-related purposes; or

(2) any component or accessory with respect to an item described in this paragraph (a), without regard to whether the component or accessory, as applicable, is used—

(i) alone; or

(ii) along with, or contained within, that item;

(b) *California standard* means the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117- 2013, entitled

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“Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture”, published June 2013 (see § 1640.6).

(c) *Foundation* has the meaning given that term in § 1633.2 of this chapter.

(d) *Mattress* has the meaning given that term in § 1633.2 of this chapter.

(e) *Upholstered furniture*

(1) means an article of seating furniture that—

(i) is intended for indoor use;

(ii) is movable or stationary;

(iii) is constructed with an upholstered seat, back, or arm;

(iv) is:

(A) made or sold with a cushion or pillow, without regard to whether that cushion or pillow, as applicable, is attached or detached with respect to the article of furniture, or

(B) stuffed or filled, or able to be stuffed or filled, in whole or in part, with any material, including a substance or material that is hidden or concealed by fabric or another covering, including a cushion or pillow belonging to, or forming a part of, the article of furniture; and

(v) together with the structural units of the article of furniture, any filling material, and the container and covering with respect to those structural units and that filling material, can be used as a support for the body of an individual, or the limbs and feet of an individual, when the individual sits in an upright or reclining position;

(2) includes an article of furniture that is intended for use by a child; and

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(3) does not include—

(i) a mattress;

(ii) a foundation;

(iii) any bedding product; or

(iv) furniture that is used exclusively for the purpose of physical fitness and exercise.

§ 1640.4 Certification and Labeling

(a) *Testing and Certification.* A fabric, related material, or product to which the California standard applies shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) with respect to that standard.

(b) *Certification Label.* Each manufacturer of a product that is subject to the California standard shall include the statement “Complies with U.S. CPSC requirements for upholstered furniture flammability” on a permanent label located on the product, which shall be considered to be a certification that the product complies with that standard.

§ 1640.5 Requirements

(a) *In General.* All upholstered furniture must comply with the requirements in the California standard, Technical Bulletin (TB) 117-2013, “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” June 2013 (incorporated by reference § 1640.6).

(b) *Preemption.* Notwithstanding section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) and section 231 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2051 note), and except as provided in sections 1374, 1374.2, and 1374.3 of 4

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California Code of Regulations (CCR) (except for subsections (b) and (c) of section 1374 of that title) (incorporated by reference § 1640.6) or the California standard, no State or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

(c) *Preservation of Certain State Law.* Nothing in Pub. L. 116-260 or the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*) and section 231 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2051 note), may be construed to preempt or otherwise affect:

- (1) any State or local law, regulation, code, standard, or requirement that—
 - (i) concerns health risks associated with upholstered furniture; and
 - (ii) is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture;
- (2) sections 1374, 1374.2, and 1374.3 of 4 CCR (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of Pub. L. 116-260; or
- (3) the California standard.

§ 1640.6 Incorporation by Reference

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at U.S. Consumer Product Safety Commission (CPSC), Room 820, 4330 East West Highway, Bethesda, MD 20814, and is

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available from the other sources listed in this section. To schedule an appointment, contact CPSC's Division of the Secretariat: telephone (301) 504-7479 or email: cpsc-os@cpsc.gov. The material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(a) State of California, Department of Consumer Affairs, 4244 South Market Court, Suite D, Sacramento, CA 95834; email DCA@dca.ca.gov; phone (800) 952-5210; or visit https://bhgs.dca.ca.gov/about_us/tb117_2013.pdf.

(1) *California standard*. Technical Bulletin (TB) 117-2013, "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture," June 2013; IBR approved for § 1640.5.

(2) [Reserved]

(b) State of California, Office of Administrative Law (OAL), 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, phone 916-323-6815, email staff@oal.ca.gov; or visit <https://oal.ca.gov/publications/ccr/>; or purchase a hard-copy version (full code or individual titles) from Barclay, publisher of the Official CCR, at 1-800-888-3600.

(1) California Code of Regulations (CCR), Title 4, Sections 1374, 1374.2, and 1374.3, in effect as of February 26, 2021 Register 2021, No. 9; IBR approved for § 1640.5.

(2) [Reserved]

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Dated: _____

Alberta E. Mills, Secretary
Consumer Product Safety Commission

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[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1640

[Docket No. CPSC-2021-XXXX]

TITLE: Standard for the Flammability of Upholstered Furniture

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is proposing to codify in the Code of Federal Regulations the statutory requirements for the flammability of upholstered furniture under the COVID -19 Regulatory Relief and Work From Home Safety Act. This Act mandates that CPSC promulgate California Technical Bulletin 117-2013 as a flammability standard for upholstered furniture under section 4 of the Flammable Fabrics Act. In the “Rules and Regulations” section of this *Federal Register*, the Commission is issuing this determination as a direct final rule. If we receive no significant adverse comment in response to the direct final rule, we will not take further action on this proposed rule.

DATES: Submit comments by [Insert Date 30 Days After Date of Publication in the Federal Register].

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2021-XXXX, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (e-mail), except through

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<https://www.regulations.gov>. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you may email such submissions to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2021-, XXXX into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Andrew Lock, Project Manager, Directorate for Laboratory Sciences, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850 email: alock@cpsc.gov.

SUPPLEMENTARY INFORMATION: Along with this proposed rule, CPSC is publishing a direct final rule in the “Rules and Regulations” section of this issue of the *Federal Register*. The

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CPSC is using the direct final rule procedure to codify in the Code of Federal Regulations (CFR), the statutory provision of the COVID-19 Regulatory Relief and Work From Home Safety Act (COVID-19 Act). Section 2101(c) of the COVID-19 Act mandates that, 180 days after the date of enactment of the COVID-19 Act, the standard for upholstered furniture set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin (TB) 117-2013 (TB 117-2013), entitled, “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” published June 2013, “shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).” Under the direct final rule, the standard is effective June 25, 2021; however, compliance with the labeling requirement shall be required by June 25, 2022.

CPSC believes that this action is not controversial, and CPSC does not expect significant adverse comment because we are codifying statutorily mandated requirements. CPSC has explained the reasons for codifying the statutory language in the direct final rule. Unless CPSC receives significant adverse comment regarding the determination during the comment period, the direct final rule in this issue of the *Federal Register* will become effective on June 25, 2021, and CPSC will not take further action on this proposal. If CPSC receives a significant adverse comment, CPSC will publish a notice in the *Federal Register* withdrawing the direct final rule, and the rule will not take effect. CPSC will then respond to public comments in a later final rule, based on this proposed rule. CPSC does not intend to institute a second comment period on this action. Parties interested in commenting must do so at this time. For additional information,

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please see the direct final rule published in the “Rules and Regulations” section of this issue of the *Federal Register*.

List of Subjects in 16 CFR Part 1640

Consumer protection, Flammable materials, Incorporation by reference, Labeling, Upholstered furniture materials, Textiles.

For the reasons stated in the preamble, the Commission proposes to add Title 16 of the Code of Federal Regulations by adding part 1640 to read as follows:

PART 1640 – STANDARD FOR THE FLAMMABILITY OF UPHOLSTERED FURNITURE

Sec.

1640.1 Purpose and scope

1640.2 Effective date and Compliance date

1640.3 Definitions

1640.4 Certification and labeling

1640.5 Requirements

1640.6 Incorporation by Reference

Authority: Sec. 2101, Pub. L. 116-260, 15 U.S.C. 1193

§ 1640.1 Purpose and scope

(a) *Purpose.* This part establishes the standard for the flammability of upholstered furniture, as set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and

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Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117- 2013, entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” published June 2013 (for availability, see § 1640.6).

(b) *Scope*. All upholstered furniture as defined in § 1640.3 manufactured, imported, or reupholstered on or after the effective date of this standard is subject to the requirements of this part.

§ 1640.2 Effective Date and Compliance Date

(a) *Effective Date*. This part (the standard) is effective June 25, 2021 and shall apply to all upholstered furniture, as defined in § 1640.3, manufactured, imported, or reupholstered on or after that date.

(b) *Compliance Date*. Compliance with the labeling requirement in § 1640.4 shall be required by June 25, 2022, and shall apply to all upholstered furniture, as defined in § 1640.3, manufactured, imported, or reupholstered on or after that date.

§ 1640.3 Definitions

(a) *Bedding product* means

(1) an item that is used for sleeping or sleep-related purposes; or

(2) any component or accessory with respect to an item described in this paragraph (a),

without regard to whether the component or accessory, as applicable, is used—

(i) alone; or

(ii) along with, or contained within, that item;

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(b) *California standard* means the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117- 2013, entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture”, published June 2013 (see § 1640.6).

(c) *Foundation* has the meaning given that term in § 1633.2 of this chapter.

(d) *Mattress* has the meaning given that term in § 1633.2 of this chapter.

(e) *Upholstered furniture*

(1) means an article of seating furniture that—

(i) is intended for indoor use;

(ii) is movable or stationary;

(iii) is constructed with an upholstered seat, back, or arm;

(iv) is:

(A) made or sold with a cushion or pillow, without regard to whether that cushion or pillow, as applicable, is attached or detached with respect to the article of furniture, or

(B) stuffed or filled, or able to be stuffed or filled, in whole or in part, with any material, including a substance or material that is hidden or concealed by fabric or another covering, including a cushion or pillow belonging to, or forming a part of, the article of furniture; and

(v) together with the structural units of the article of furniture, any filling material, and the container and covering with respect to those structural units and that filling material, can be used as a support for the body of an individual, or the limbs and feet of an individual, when the individual sits in an upright or reclining position;

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(2) includes an article of furniture that is intended for use by a child; and

(3) does not include—

(i) a mattress;

(ii) a foundation;

(iii) any bedding product; or

(iv) furniture that is used exclusively for the purpose of physical fitness and exercise.

§ 1640.4 Certification and Labeling

(a) *Testing and Certification.* A fabric, related material, or product to which the California standard applies shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) with respect to that standard.

(b) *Certification Label.* Each manufacturer of a product that is subject to the California standard shall include the statement “Complies with U.S. CPSC requirements for upholstered furniture flammability” on a permanent label located on the product, which shall be considered to be a certification that the product complies with that standard.

§ 1640.5 Requirements

(a) *In General.* All upholstered furniture must comply with the requirements in the California standard, Technical Bulletin (TB) 117-2013, “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” June 2013 (incorporated by reference § 1640.6).

(b) *Preemption.* Notwithstanding section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) and section 231 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2051 note), and except as provided in sections 1374, 1374.2, and 1374.3 of 4 California Code of

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Regulations (CCR) (except for subsections (b) and (c) of section 1374 of that title) (incorporated by reference § 1640.6) or the California standard, no State or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

(c) *Preservation of Certain State Law.* Nothing in Pub. L. 116-260 or the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*) and section 231 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2051 note), may be construed to preempt or otherwise affect:

- (1) any State or local law, regulation, code, standard, or requirement that—
 - (i) concerns health risks associated with upholstered furniture; and
 - (ii) is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture;
- (2) sections 1374, 1374.2, and 1374.3 of 4 CCR (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of Pub. L. 116-260; or
- (3) the California standard.

§ 1640.6 Incorporation by Reference

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at U.S. Consumer Product Safety Commission (CPSC), Room 820, 4330 East West Highway, Bethesda, MD 20814, and is available from the other sources listed in this section. To schedule an appointment, contact CPSC's Division of the Secretariat: telephone (301) 504-7479 or email: cpsc-os@cpsc.gov. The material is also available

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for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to:

www.archives.gov/federal-register/cfr/ibr-locations.html.

(a) State of California, Department of Consumer Affairs, 4244 South Market Court, Suite D, Sacramento, CA 95834; email DCA@dca.ca.gov; phone (800) 952-5210; or visit

https://bhgs.dca.ca.gov/about_us/tb117_2013.pdf.

(1) *California standard*. Technical Bulletin (TB) 117-2013, “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” June 2013; IBR approved for § 1640.5.

(2) [Reserved]

(b) State of California, Office of Administrative Law (OAL), 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, phone 916-323-6815, email staff@oal.ca.gov; or visit

<https://oal.ca.gov/publications/ccr/>; or purchase a hard-copy version (full code or individual titles) from Barclay, publisher of the Official CCR, at 1-800-888-3600.

(1) California Code of Regulations (CCR), Title 4, Sections 1374, 1374.2, and 1374.3, in effect as of February 26, 2021 Register 2021, No. 9; IBR approved for § 1640.5.

(2) [Reserved]

Dated: _____

Alberta E. Mills, Secretary
Consumer Product Safety Commission



Staff Briefing Package

Upholstered Furniture Flammability; COVID-19 Regulatory Relief and Work From Home Safety Act

March 24, 2021

For Additional Information, Contact:
Andrew Lock, Project Manager
Division of Engineering
Directorate for Laboratory Sciences
Office of Hazard Identification and Reduction
U.S. Consumer Product Safety Commission

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Briefing Memorandum



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

This document has been electronically
approved and signed

MEMORANDUM

Date: March 24, 2021

TO : The Commission
Alberta E. Mills, Secretary

THROUGH: Jennifer Sultan, Acting General Counsel
Mary T. Boyle, Executive Director
DeWane Ray, Deputy Executive Director for Safety Operations

FROM : Duane E. Boniface, Assistant Executive Director
Office of Hazard Identification and Reduction

Andrew Lock, Ph.D., Project Manager, Upholstered Furniture Flammability,
Directorate for Laboratory Sciences

SUBJECT : Upholstered Furniture Flammability; COVID-19 Regulatory Relief and Work
From Home Safety Act

I. Introduction

In the Consolidated Appropriations Act, 2021, Congress included the *COVID-19 Regulatory Relief and Work From Home Safety Act* (the Act), which stated that California's Technical Bulletin 117-2013 (TB 117-2013) shall be considered to be a flammability standard promulgated under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193) 180 days after the Act was enacted on December 27, 2020.¹ In this memorandum, staff discusses the requirements of the Act.

TB 117-2013 focuses on the ignition potential of upholstered furniture components from a smoldering ignition source, such as a cigarette. Staff has previously described the hazards associated with smoldering and open-flame ignitions in separate reviews.^{2,3}

II. Congressional Action

The Senate introduced the Safer Occupancy Furniture Flammability Act (SOFFA), S.3551, in October 2018. A companion bill with identical language was introduced in the House of Representatives, H.R.4220. Both bills state that California TB 117-2013 shall be considered to be a flammability standard promulgated by the CPSC under the Flammable Fabrics Act. The 115th session of Congress concluded without any further action on these bills. The bills were reintroduced in the 116th Congress in May 2019.

The SOFFA Act was renamed the COVID-19 Regulatory Relief and Work From Home Safety Act, and was included in the 2021 Combined Appropriations bill that was signed into law on December 27, 2020. Pub. L. 116-260. The main provisions of the Act include:

- California standard [TB 117-2013] shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193) (180 days after enacted, June 25, 2021).
- An item to which the California standard applies shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)).
- There is no General Certificate of Compliance (GCC) that a manufacturer needs to maintain, other than the label required by the Act.
- A Certification Label shall include the statement: “Complies with U.S. CPSC requirements for upholstered furniture flammability” on a permanent label located on the product.
- Preemption - federal or state law may not preempt the California standard.

III. The California Standard, TB 117-2013

The California Bureau of Home Goods and Services (BHGS, formerly called The California Bureau of Electronics, Appliance Repair, Home Furnishings and Thermal Insulation or BEARHFTI), is the consumer protection agency in California that, among other things, regulates furniture sold in California. In 1975, California initiated a mandatory standard, *Requirements, Test Procedure and Apparatus for Testing the Flame Retardance of Resilient Filling Material Used in Upholstered Furniture*, Technical Bulletin 117 (TB 117). The standard included a smoldering and an open-flame test method for the resilient filling material of upholstered furniture (typically foam), and a minimal requirement for cover fabric flammability. BHGS stated that manufacturers could meet the requirements of the pre-2013 versions of TB 117 by using polyurethane foam treated with flame-retardant chemicals.

California revised this standard in 2013 (TB 117-2013) so that “the reliance on flame retardant chemicals will be significantly reduced or eliminated.”⁴ Specifically, the revised test removed the open-flame ignition test for upholstered furniture filling material and modified the cover fabric requirement to be a test based on ASTM International (ASTM) E1353-08a^{e1}. TB 117-2013 relies heavily on ASTM E 1353-08 a^{e1} for its test method; it is a small-scale mockup test intended to address only fires caused by smoldering material. The ASTM standard is based on the industry standard that the Upholstered Furniture Action Council (UFAC) introduced in 1979. Approximately 90 percent of furniture production conforms to UFAC’s voluntary industry program.⁵

TB 117-2013 is essentially the same as the UFAC standard that the upholstered furniture industry has had in place since 1979. Furthermore, the ASTM and National Fire Protection Association (NFPA) standards are also the same as the TB 117-2013 standard, with minor

variations. TB 117-2013 consists of tests to evaluate the cigarette-ignition resistance of individual components used in upholstered furniture. The test method focuses primarily on the cover material. The tests use a mockup assembly made of plywood and containing two pieces of the cover fabric to be tested and two pieces of standard foam. In a series of tests in which three mockups are tested simultaneously, a lit cigarette is placed into the crevice created by the mockup assemblies, and the cigarette is allowed to burn. If the cover fabric fails, a second series of tests is conducted using mockups with a barrier material and a standard cover fabric. The linear char length on the fabric surface in the vertical direction is recorded. Vertical char length measurements determine whether the individual components pass or fail TB 117-2013. An example of a smoldering mockup can be seen in Figure 1. If the cover fabric fails, then additional tests are conducted for barrier material, filling material, and decking individually.

After issuing TB 117-2013, California's BEARHFTI (now BHGS) initiated a fire barrier test plan to assess fire barriers as a possible way to resist open-flame ignition. BEARHFTI produced a summary report⁶ and a cost-benefit analysis⁷ on the use of barrier materials, concluding that although barriers may provide some improved fire safety, it was cost prohibitive to require their use in upholstered furniture in California. BEARHFTI continues routine testing and enforcement. BEARHFTI regularly reports that more than 95 percent of upholstered furniture samples the Bureau has tested comply with TB 117-2013's flammability requirements.⁸

There is no labeling requirement in TB 117-2013. Instead, the labeling requirement is part of a separate California rule, SB 1019, Upholstered furniture: flame-retardant chemicals. This label also requires the reporting of flame retardants used in the furniture.

IV. Effective Date and Compliance Date

The Directorate for Economic Analysis (EC) EC staff states in Tab A that, based on current information, a very high percentage of upholstered furniture items currently marketed in the United States complies with TB117-2013 or the very similar voluntary standards published by ASTM, NFPA, and UFAC. Furthermore, these standards are largely compatible with furniture fabrics and filling materials used by the furniture industry for many years, and much of the unit production and imports by firms that do not certify compliance with one of the standards could comply without significant modifications. BHGS estimated a 95 percent compliance rate, and UFAC estimates a 90 percent compliance rate. Therefore, staff anticipates that few manufacturers will need to make any physical changes to the products being produced and will not need additional time to comply with the mandatory standard flammability requirement.

Effective Date for the Standard

Section 4(b) (15 USC § 1193(b)) of the Flammable Fabrics Act states "Each . . . [promulgated] standard . . . shall become effective twelve months from the date on which such standard . . . is promulgated, unless the Commission finds for good cause shown that an earlier or later date is in the public interest and publishes the reason." Thus, TB117-2013 would become effective on June 25, 2022, unless the Commission finds for good cause shown that an earlier date is in the public interest. The Commission could find such good cause because most of the industry is already compliant with the standard and that a June 25, 2021 effective date would not add significant



Figure 1 – Example of TB 117-2013-style mockup posttest. Char length is measured up from the crevice vertically.

additional burden for most manufacturers. Accordingly, with the exception of the labeling requirement discussed below, the Commission could allow TB117-2013 to become effective on June 25, 2021.

Exemption for Inventory

Section 4(b) of the Flammable Fabrics Act also states that “[e]ach . . . [promulgated] standard . . . shall exempt . . . products in inventory or with the trade as of the date on which the standard . . . becomes effective except that, if the Commission finds that any such . . . product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, it may under such conditions as the Commission may prescribe, withdraw, or limit the exemption for such . . . product.” Congress has deemed TB117-2013 to be adequate to address the flammability hazard associated with smoldering ignition of upholstered furniture. Because industry is substantially compliant with the TB-117-2013 requirements, most products in inventory or with trade would already meet the flammability requirements under the Act, and therefore, would not result in a finding by the Commission that such products would be deemed highly flammable. Accordingly, staff can find no basis for recommending that the Commission prescribe, withdraw, or limit the exemption for products in inventory or trade.

Compliance Date for Labeling Requirements

In addition to the underlying flammability requirements in TB 117-2013, the Act also imposes permanent labeling requirements. Unlike the flammability requirements, CPSC staff anticipates that some products may not meet the labeling provision by a June 25, 2021 effective date. Staff bases this conclusion on statements from members of the regulated community and a leading industry group who have asked the Commission for additional time to “implement the new requirements and cycle through product already or soon to be produced by providing adequate

lead time for those products to be shipped, imported, distributed, and sold at retail.”⁹ Should additional questions arise regarding compliance with the labeling requirements, CPSC staff is available to provide additional guidance, and confer with BHGS, as necessary.

Because the labeling requirements do not have a direct impact on the flammability of furniture, staff believes that an additional 12 months for compliance with the labeling requirement will allow industry ample time to implement appropriate labeling for products in commerce consistent the direction by Congress. This compliance date would apply to the labeling requirements only and not to the underlying flammability requirements, which may become effective as of June 25, 2021, for good cause.

V. Staff Conclusions

In the Consolidated Appropriations Act, 2021, Congress included the *COVID-19 Regulatory Relief and Work From Home Safety Act* (the Act), which stated that California’s Technical Bulletin 117-2013 (TB 117-2013) shall be considered to be a flammability standard promulgated under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193) 180 days after the Act was enacted on December 27, 2020. This memo and Tab A provide the informational basis to support a decision for a June 25, 2021 effective date for TB117-2013 with a compliance date of June 25, 2022 for the labeling requirement. This memo also addresses the exemption for products in inventory or with the trade. However, the Commission could select an alternative effective date or compliance date, as follows:

- A. The Commission could choose an effective date of June 25, 2022, without finding good cause for an earlier effective date, consistent with FFA Section 4.
- B. The Commission, for good cause, could choose the same effective date and compliance date (for performance and labeling requirements) of June 25, 2021, the earliest possible effective date.
- C. The Commission, for good cause, could choose another effective date or compliance date (for performance and labeling requirements) other than June 25, 2021 or June 25, 2022.
- D. The Commission could choose to prescribe, limit, or withdraw the exemption for products in inventory or trade.

VI. References

¹ Consolidated Appropriations Act, 2021, H.R. 133, TITLE XXI—COVID–19 REGULATORY RELIEF AND WORK FROM HOME SAFETY ACT.

² Lock, A, “Staff Briefing Package, The Feasibility, Benefits and Costs of Adopting TB 117-2013 as a Mandatory National Standard,” CPSC, September 8, 2016, <https://www.cpsc.gov/s3fs-public/The%20Feasibility%20Benefits%20and%20Costs%20of%20Adopting%20-TB117-2013%20-%20September%208%202016.pdf>

³ Lock, A, “Upholstered Furniture Update 2019,” CPSC, October 1, 2019, <https://www.cpsc.gov/s3fs-public/Upholstered%20Furniture%20Update%202019.pdf>

⁴ BEARHFTI, “INITIAL STATEMENT OF REASONS,” March 26, 2013, <http://www.bearhfti.ca.gov/laws/isr.pdf>.

⁵ 73 FR 11702, 11704 <https://www.federalregister.gov/documents/2008/03/04/08-768/standard-for-the-flammability-of-residential-upholstered-furniture>

⁶ BEARHFTI, “Summary Report of Barrier Research,” California, August 2018.

⁷ Wassmer, R., “A Cost-Benefit Analysis of Consumer Protection Through Upholstered Furniture Fire Barriers,” June 2018.

⁸ Nurbakhsh, S. “Technical Bulletin 117-2013 and B&P Code Section 19094 (SB 1019) (Fire Retardant Chemicals),” 2017 UL Furniture Flammability & Human Health Summit Atlanta, GA, December 12-14, 2017.

⁹ Perdue, B., Letter to Acting Chairman Robert Adler, February 3, 2021

TAB A: Economic Considerations



MEMORANDUM

Date: March 24, 2021

TO: Andrew Lock, Ph.D., Directorate for Laboratory Sciences,
Division of Engineering, Upholstered Furniture Flammability Project Manager

THROUGH: Gregory B. Rodgers, Ph.D., Associate Executive Director,
Directorate for Economic Analysis
Robert L. Franklin, Supervisory Economist,
Directorate for Economic Analysis

FROM: Charles L. Smith, Economist, Directorate for Economic Analysis

SUBJECT: Economic Considerations Related to the Effective Date of California TB17-2013
as a Mandatory National Upholstered Furniture Standard

I. Introduction

The COVID-19 Regulatory Relief and Work from Home Safety Act¹ (the Act) specifies that the California upholstered furniture flammability standard, TB117-2013, shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission (CPSC or Commission) under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193). The promulgation date of the standard will be 180 days after enactment, which is June 25, 2021. Section 4(b) of the Flammable Fabrics Act states “[e]ach [promulgated] standard . . . shall become effective twelve months from the date on which such standard . . . is promulgated, unless the Commission finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding.”

The Act does not address the issue of when furniture in inventory must comply with TB117-2013 in relation to the effective date; however, section 4(b) of the Flammable Fabrics Act states “[e]ach . . . [promulgated] standard . . . shall exempt . . . products in inventory or with the trade as of the date on which the standard . . . becomes effective except that, if the Commission finds that any such . . . product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, it may under such conditions as the Commission may prescribe, withdraw, or limit the exemption for such . . . product.” However, Congress has deemed that TB 117-2013 is adequate to address the flammability hazard associated with smoldering ignition of upholstered furniture, and most of the industry is already compliant with that standard, or very similar flammability requirements (see below). Because industry is substantially compliant with the TB-117-2013 requirements, most products in inventory or with trade would already meet the

¹ Part of “The Consolidated Appropriations Acts, 2021,” available at:
<https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>

flammability requirements under the Act, and therefore, would not result in a finding by the Commission that such products would be deemed highly flammable. Accordingly, staff can find no basis for recommending that the Commission prescribe, withdraw, or limit the exemption for products in inventory or trade.

II. Compliance with TB117-2013

TB117-2013 is based on the ASTM International (ASTM) standard: ASTM E-1353-08a, *Standard Test Methods for Cigarette Ignition Resistance of Components of Upholstered Furniture*. Tests on cover fabric, barrier material, and filling material are conducted using a small mockup that consists of a horizontal and a vertical panel; another small mockup is used to test furniture decking materials. Upholstery cover fabrics are subjected to cigarette-ignition testing over 2-inch-thick standard polyurethane substrates. If the fabrics fail the component test, they can only be used in complying furniture covering a material that has passed a barrier test, which uses Standard Type II fabric (a 100 percent cotton velvet fabric) for horizontal and vertical panels as cover fabrics. Resilient filling materials must pass smoldering tests that use Standard Type I fabric (a 100 percent cotton mattress ticking) as the cover fabric.

TB 117-2013 is essentially the same as the UFAC voluntary standard that the upholstered furniture industry has had in place since 1979. Furthermore, the ASTM and NFPA standards are also the same as the TB 117-2013 standard, with minor variations. The last market evaluation of conformance with the UFAC program that the CPSC staff conducted occurred in 1996. At that time, based on ignition testing of chairs purchased by the CPSC, staff estimated that about 90 percent of upholstered furniture may have been produced in conformance with the UFAC program. The level of conformance to the voluntary program (including by a majority of units produced by firms that were not officially participating in the program) suggests that the UFAC program is compatible with commonly used fabrics and filling materials in the production of upholstered furniture. In our analysis of the UFAC program as a regulatory alternative, we concluded that the costs of mandating the requirements of the UFAC program should be minimal (Smith, 2007). Based on the similarities of the UFAC Program and TB117-2013, and the importance of the California market to the furniture industry, the percentage of units being manufactured that might require modifications and the relatively small associated costs of compliance should also be minimal for adoption of TB117-2013 as a national safety standard.

III. Labeling Requirements

There is no labeling requirement in TB 117-2013; rather, a separate state requirement for labeling indicating the presence of flame-retardant chemicals is set forth in California rule, SB 1019, *Upholstered furniture: flame-retardant chemicals*. This label also requires the reporting of flame retardants used in the furniture. The only labeling requirement specified by the Act is that “[e]ach manufacturer of a product that is subject to the California standard . . . shall include the statement: ‘Complies with U.S. CPSC requirements for upholstered furniture flammability’ on a permanent label located on the product, which shall be considered to be a certification that the product complies with that standard. Existing labels would have to be modified to address this requirement.

IV. Effective Date Considerations

Under Section 4(b) of the Flammable Fabrics Act, the standard shall become effective 12 months from its promulgation date, unless the Commission finds for good cause shown that an earlier or later date is in the public interest and publishes the reason. With a promulgation date of June 25, 2021, the requirements of TB117-2013 and the label required by the COVID-19 Regulatory Relief and Work from Home Safety Act would have an effective date of June 25, 2022, unless the Commission finds that a different effective date is in the public interest. Based on our current information, a very high percentage of upholstered furniture items currently marketed in the United States complies with TB117-2013 or the very similar voluntary standards published by ASTM and UFAC. Furthermore, these standards are largely compatible with furniture fabrics and filling materials used by the furniture industry for many years, and much of the unit production and imports by firms that do not certify compliance with one of the standards could comply without significant modifications. These factors could support a decision by the Commission that an effective date earlier than June 25, 2022, would not be burdensome to the furniture industry, and could be in the public interest.

CPSC staff is aware of some requests by furniture industry representatives for guidance on labeling, and that the CPSC work with California officials to consolidate labeling requirements. Because the labeling requirements do not directly impact the flammability of the furniture, even if the Commission concludes that an earlier compliance date is warranted for the performance requirements of TB117-2013, the Commission could conclude that labeling requirements need not be enforced before the June 25, 2022, date prescribed by the Flammable Fabrics Act.

V. Impacts on Small Businesses

Compliance with the California standard is not expected to have a significant impact on a substantial number of smaller furniture manufacturers and importers. We believe that most small firms are already compliant with the requirements of the California standard, and for the firms that do not already comply, the costs of compliance are expected to be low, as they are for manufacturers generally.

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