



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1640

[Docket No. CPSC-2021-0007]

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.

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-2021-0007, 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.

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-2021-0007 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, phone: (301) 987-2099; 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,” Public Law 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 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 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:

- 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 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 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

¹ Section 16(a) of the FFA states that, with certain exceptions: “[W]henver 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).

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) 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 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 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 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 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 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 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—

- (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

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

For the reasons stated in the preamble, the Commission amends title 16 of the Code of Federal Regulations by adding part 1640 to subchapter D 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).

(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

“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

(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 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 Public Law 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 Public Law 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 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]

Alberta E. Mills, Secretary
Consumer Product Safety Commission

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