

TITLE 4: Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation

NOTICE IS HEREBY GIVEN that the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau), Department of Consumer Affairs, is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs' 1st Floor Hearing Room located at 1625 North Market Blvd, Sacramento, California 95834, at 10:00 a.m. on March 26, 2013. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on March 26, 2013, or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by sections 125.9, 148, 19034, 19081, and 19161¹ of the Business and Professions Code, and to implement, interpret or make specific sections 125.9, 148, 19000, 19004, 19080, 19081, 19086, 19087, 19088, 19089.3, 19089.5, 19092, 19093, 19161.3, and 19161.5 of said Code, the Bureau is considering changes to Articles 1, 2, 13, and 15.5 of Division 3 of Title 4 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

The Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau), within the California Department of Consumer Affairs, is required to adopt rules and regulations necessary for the administration of the Home Furnishings and Thermal Insulation Act. The Act requires the Bureau to protect consumers from the safety hazards associated with residential furniture products offered for sale in California, regardless of their place of origin.

¹ Business and Professions Code section 19161(a) purports to define the term 'fire retardant' "as used in [that] section" as the "open-flame test adopted by the United States Consumer Product Safety Commission and set forth in Section 1633 and following of Title 16 of the Code of Federal Regulations" (emphasis added). This federal test is an apparatus for testing the open-flame flammability of mattresses and mattress sets. The test is not designed to test any other type of furniture. A reference to the CPSC test found at 16 C.F.R. 1633 et seq. necessarily refers to the testing of mattresses and mattress sets only. The appropriate wording for Section 19161(a) would have been "as used in this subdivision" rather than "section." Legislative notes for this statute support this interpretation.

Existing regulations establish the flammability and labeling requirements for Technical Bulletin 117 (TB 117) entitled, “Requirements, Test Procedures and Apparatus for Testing the Flame Retardance of Filling Materials Used in Upholstered Furniture”. This mandatory performance standard requires that the concealed filling materials and cover fabric of upholstered furniture undergo individual component testing to ensure that they pass open flame and cigarette smolder tests. The main emphasis of the current upholstered furniture flammability standard is on the open flame testing of interior filling materials.

This regulatory proposal would establish new performance and labeling requirements under the new flammability standard Technical Bulletin 117-2013 (TB 117-2013). The Bureau will be conducting an Initial Study on the environmental impacts of this regulatory action under the California Environmental Quality Act (CEQA).

The implementation of TB 117-2013 will make the following changes to existing regulations:

Amend section 1101 of Article 1 of Title 4 of the California Code of Regulations:

The proposed amendment changes the definition of the term “Bureau” to mean the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation. This is necessary due to the enactment in Assembly Bill 20 which consolidated the Bureau of Electronic and Appliance Repair and the Bureau of Home Furnishings and Thermal Insulation.

Amend sections 1126(d)(11), 1126(d)(12) and 1126(f)(Type No. 8) of Article 2 of Title 4 of the California Code of Regulations:

The proposed amendment would require that the statements and headings appearing on official law labels and invoices of articles meeting Bureau flammability standards are to refer to the new flammability standard TB 117-2013, thereby replacing each reference to TB 117.

Amend section 1370(a) of Article 13 of Title 4 of the California Code of Regulations:

The proposed amendment clarifies that, on or after July 1, 2014, the Bureau's authority to test products in accordance with TB 117-2013 will be expanded to cover fabrics, as well as the filling material, to ensure that such articles labeled as compliant with the new flammability standard is not making untrue or misleading statements.

The proposed amendment provides consistency with the amendments to section 1374(a), which establishes the flammability requirements of TB 117-2013, and also sections 1374.3(a) and 1374.3(b), which establish the proposed labeling requirements.

Repeal section 1370(b) of Article 13 of Title 4 of the California Code of Regulations:

The proposed repeal of this subsection removes reference to the obsolete fabric flammability standard, Technical Bulletin 105. The language in this subsection is unnecessary as this voluntary standard has not been practiced by the Bureau or industry for over 10 years. Furthermore, fabric flammability requirements are to be mandated as part of the new standard TB 117-2013.

Amend section 1373.2 of Article 13 of Title 4 of the California Code of Regulations:

The proposed amendment clarifies that, on or after July 1, 2014, all flexible polyurethane foam that is subject to this section must meet the test requirements of the new flammability standard TB 117-2013 .

Amend section 1374(a) of Article 13 of Title 4 of the California Code of Regulations:

The proposed amendment clarifies that, on or after July 1, 2014, the scope of this subsection would require that the cover fabrics of any article of upholstered or reupholstered furniture shall meet the requirements of the new flammability standard TB 117-2013.

The proposed amendment is necessary to provide consistency with the amendments to section 1370(a), which establish the proposed testing requirements, and also sections 1374.3(a) and 1374.3(b) which establish the proposed labeling requirements of articles adhering to this subsection.

Amend section 1374(c) of Article 13 of Title 4 of the California Code of Regulations:

The proposed amendment deletes the implementation date of this subsection to remove nonessential language allowing for easier interpretation.

Amend section 1374(e) of Article 13 of Title 4 of the California Code of Regulations:

The proposed amendment makes non-substantive changes to strengthen the intent of this subsection to make clear that the articles used within public occupancies and public assembly areas, for which are fully sprinklered, are required to meet the test requirements of TB 117-2013 or the test requirements of TB 133. In its current text, it could be misinterpreted as having to meet both requirements.

Repeal section 1374.1 of Article 13 of Title 4 of the California Code of Regulations:

The proposed repeal of section 1374.1 would remove the exemption label requirement for items that are exempt from meeting the Bureau's flammability requirements.

Amend section 1374.3(a) and 1374(b) of Article 13 of Title 4 of the California Code of Regulations:

The proposed amendment would change the wording on the flammability label to clarify and require that the article, for which the label is attached, meets the requirements of the new flammability standard TB 117-2013.

Amend section 1374.3(e) of Article 13 of Title 4 of the California Code of Regulations:

The proposed amendment would eliminate the reference of section 1374.1 in this section of regulation as it is proposed to be repealed.

Amend section 1383.2(a) of Article 15.5 of Title 4 of the California Code of Regulations:

The proposed amendment would eliminate the citation and fine provision related to exempted labels. Under section 1374.1, exempted labels are proposed to be repealed.

In addition, the Bureau proposes to amend section 1374.2(c) to clarify that infant walkers, booster seats, car seats, changing pads, floor play mats, highchair pads, highchairs, infant swings, bassinets, infant seats, infant bouncers, nursing pads, playards, playpen side pads, infant mattresses, infant mattress pads, and portable hook-on chairs shall also be exempt from the Bureau flammability requirements along with the previously exempted items which are strollers, infant carriers, and nursing pillows.

B. Policy Statement Overview/Anticipated Benefits of Proposal

This regulatory proposal aims to update the flammability standards allowing the Bureau to conduct smolder resistance testing of products for the purpose of protecting consumers from fires ignited by smoking materials, which are the leading ignition source of fires today. This proposal also aims to lessen the burden on manufacturers through the proposed exemption of products deemed to pose no serious fire hazard.

As specified in Business and Professions Code section 19004.1, protection of the public shall be the highest priority for the Bureau when exercising its regulatory function under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

This regulatory proposal benefits the health and welfare of California residents and the environment as it provides greater fire safety protection against smoldering materials, which are the leading ignition source of fires and losses today. This will provide consumers with a more realistic approach to fire safety in addition to reducing the upholstered furniture's smolder ignition potential.

As an added benefit, this regulatory proposal significantly reduces or eliminates manufacturers' reliance on materials treated with flame retardant chemicals. It is the Bureau's understanding that many manufacturers, who are no longer compelled to make materials open-flame resistant, will no longer use flame retardant chemicals in their products. Manufacturers would instead be able to purchase and use the less expensive non-flame retardant materials therefore saving in material costs.

Consistency and Compatibility with Existing State Regulations

This Bureau has evaluated this regulatory proposal and it is neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

Section 1370(a) incorporates the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation Technical Bulletin 117-2013 document entitled, "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Material Used in Upholstered Furniture", January 2013.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. The amendment to section 1383.2(a) removes the Bureau's authority to assess fines related to the violation of section 1374.1. Historically, the Bureau has not imposed or collected fine assessments in this area due to manufacturer's compliance with exemption label requirements. Therefore, there would be no fiscal impact to the Bureau, other state agencies or to the Federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on research and testimonies reporting that 80-85% of U.S. manufacturers currently comply with the voluntary standard ASTM E-1353-08a, for which TB 117-2013 is based. The new standard saves manufacturers money in duplicative testing efforts as opposed to implementing a brand new standard. With such large stakeholder participation, it substantially reduces the need for extensive laboratory testing and associated costs, deeming it less burdensome on manufacturers. Further, manufacturers have until July 1, 2014, to meet the requirements set forth in the new TB 117-2013 standard. This will substantially reduce and/or eliminate the manufacturer's costs of compliance as they have a sufficient time period to deplete their current supplies. Manufacturers have stated this timeframe is reasonable for compliance. In addition, furniture retailers can sell through their inventory of products without restriction.

Furniture products that are subject to this regulatory proposal must have attached a flammability and official law label just as previously required. The proposed grammatical changes to these labels may incur an insignificant initial cost for reprinting new labels. Therefore, the Bureau finds that the impact on businesses will be negligible.

The following reporting, recordkeeping, or other compliance requirements are projected to result from the proposed action:

This regulatory proposal does not mandate reporting or recordkeeping requirements; however, TB 117-2013 specifies specific equipment, materials, and measurements for testing. The specific dimensions, sizes and specifications for such items such as foam,

standard reference material, and draft enclosure are necessary to provide consistent test results and accurate indications of whether a material does in fact pass these flammability standards. These items can be acquired from various sources and are widely available. With no standard testing method and apparatus, the Bureau would have no practical way of enforcing its flammability rules.

Upholstered Furniture Exemptions: The exemption of 17 baby and infant products from flammability requirements will not have a significant adverse economic impact on businesses. This initial determination is based on research and testimony reporting that exempting these products from flammability standards reduces the need to use flame retardant filling materials. Manufacturers would instead be able to purchase and use the less expensive non-flame retardant filling materials therefore saving in material costs.

All products subject to exemption from flammability standards must have attached an official law label as previously required. Exempted products will no longer require an exemption label. This will be a cost savings to manufacturers of exempted products.

Cost Impact on Representative Private Person or Business:

The Bureau is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

This initial determination is based on research and testimonies reporting that 80-85% of U.S. manufacturers currently comply with the voluntary standard ASTM E-1353-08a. The Bureau has based the development of TB 117-2013 on this voluntary standard for the purpose of saving manufacturers money in duplicative testing efforts as opposed to implementing a brand new standard. With such large stakeholder participation, it substantially reduces the need for extensive laboratory testing and associated costs, deeming it less burdensome on manufacturers.

Further, manufacturers have until July 1, 2014, to meet the requirements set forth in the new TB 117-2013 standard. This will substantially reduce and/or eliminate the manufacturers' costs of compliance as they have a sufficient time period to deplete their current supplies. Manufacturers have stated this timeframe is reasonable for compliance. In addition, furniture retailers can sell through their inventory of products without restriction.

Furniture products that are subject to this regulatory proposal must have attached a flammability and official law label just as previously required. The proposed grammatical changes to these labels may incur an insignificant initial cost for reprinting new labels. Therefore, the Bureau finds that the impact on representative private persons or businesses will be negligible.

This regulatory proposal does not mandate reporting or recordkeeping requirements; however, TB 117-2013 specifies specific equipment, materials, and measurements for testing. The specific dimensions, sizes, and specifications for such items such as foam,

standard reference material, and draft enclosure are necessary to provide consistent test results and accurate indications of whether a material does in fact pass these flammability standards. These items can be acquired from various sources and are widely available. With no standard testing method and apparatus, the Bureau would have no practical way of enforcing its flammability rules.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses. The regulatory proposal impacts current manufacturing practices and may have a minor impact on some small businesses. Specifically, a majority of the furniture currently manufactured already complies with the new flammability standard. The remaining manufacturers would design furniture with use of smolder resistant fabrics or interliners. The use of interliners is prevalent in upholstered furniture as it enhances the cushion and comfort level for consumer satisfaction.

Further, manufacturers have until July 1, 2014, to meet the requirements set forth in the new TB 117-2013 standard. This will substantially reduce and/or eliminate the manufacturers' costs of compliance as they have a sufficient time period to deplete their current supplies. Manufacturers have stated this timeframe is reasonable for compliance. In addition, furniture retailers can sell through their inventory of products without restriction.

Furniture products that are subject to this regulatory proposal must have attached a flammability and official law label just as previously required. The proposed grammatical changes to these labels may incur an insignificant initial cost for reprinting new labels. Therefore, the Bureau finds that small businesses will have a negligible impact.

All products subject to exemption from flammability standards must have attached an official law label as previously required. Exempted products will no longer require an exemption label. This will be a cost savings to manufacturers of exempted products.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

The reasoning for this determination is because this regulatory proposal will only have a minor impact on current manufacturing practices. A majority of the furniture currently manufactured already complies with the new flammability standard. The remaining manufacturers would design furniture with use of smolder resistant fabrics or interliners. The use of interliners is prevalent in upholstered furniture as it enhances the cushion and comfort level for consumer satisfaction. All exempt products will continue to require

an official law label. All non-exempted products subject to this regulatory proposal must have flammability and official law labels attached as previously required.

Benefits of Regulation:

The Bureau has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and state's environment:

This regulatory proposal benefits the health and welfare of California residents and the environment as it provides greater fire safety protection against smoldering materials, which are the leading ignition source of fires and losses today. This will provide consumers with a more realistic approach to fire safety in addition to reducing the upholstered furniture's smolder ignition potential.

As an added benefit, this regulatory proposal significantly reduces or eliminates manufacturers' reliance on materials treated with flame retardant chemicals. It is the Bureau's understanding that many manufacturers, who are no longer compelled to make materials open-flame resistant, will no longer use flame retardant chemicals in their products.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau at 4244 South Market Court, Suite D, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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Website Access: Materials regarding this proposal can be found at www.bearhfti.ca.gov.