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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

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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