



January 16, 2014

## LAWSUIT SEEKS TO OVERTURN REGULATION WEAKENING FIRE SAFETY STANDARD

Today, a lawsuit has been filed in Sacramento Superior Court to overturn recent changes to California's furniture flammability standard that diminish fire safety. The following statement is attributable to Anne Noonan, Chemtura's Senior Vice President, Industrial Engineered Products:

"The California government entity responsible for protecting individuals and families against the threat of furniture fire recently issued revised rules that weaken its landmark fire safety standard for upholstered furniture. This standard was the benchmark for furniture makers and retailers nationwide for almost 40 years. This lawsuit is necessary to obtain judicial review of TB 117-2013 and the authority of the California Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau) to ignore a key requirement in the revised fire safety standard effective January 1, 2014."

"The revised rules require furniture makers to pass only a cigarette 'smolder test,' and eliminates a vital requirement -- required by the law mandating the Bureau to establish fire safety standards -- that all filling material used in upholstered furniture pass an 'open flame' test to replicate a candle, match or lighter flame. Ironically, smoldering cigarettes are a diminishing fire threat because of the significant drop in smoking and the California Fire Safe Cigarette law ([http://osfm.fire.ca.gov/strucfireengineer/strucfireengineer\\_fsc.php](http://osfm.fire.ca.gov/strucfireengineer/strucfireengineer_fsc.php)), while flaming ignition sources remain part of our daily lives."

"According to fire safety scientists, if left to stand, California's revised, weakened fire safety standard could tragically lead to more fires and more injuries, deaths and property damage nationwide. (See "Fire Facts and Significant Voices in this Debate" at end of this statement.)" "The fire safety-minded National Fire Protection Association (NFPA) has also weighed in on California's weakening of TB 117 stating:

'California is also poised to drop a key open-flame testing provision from the new edition of its regulation, a move that has prompted other organizations to consider addressing the furniture flammability problem — including the need for a national standard. The Consumer Product Safety Commission (CPSC), which has effectively regulated flammability tests for mattresses, recently sought input for the development of a furniture flammability standard. NFPA has also made the issue a priority. In response to the activity in California and at the CPSC, NFPA's Board of Directors last year asked the association to define and describe the furniture flammability problem; the resulting white paper, "Upholstered Furniture Flammability," was completed in February. In addition, NFPA's Standards Council is seeking public comment for a

possible test method evaluating fire resistance of upholstered furniture subjected to a flaming ignition source.’ (<http://www.nfpa.org/newsandpublications/nfpa-journal/2013/september-october-2013/features/old-problem-fresh-look>)

“This weakening of the furniture fire safety standard is even more troubling when you consider the Bureau’s insistence just a few years ago that an open flame test was crucial to a viable national fire safety standard. When the CPSC was considering a national furniture flammability standard in 2008 (Proposed Furniture Flammability Std. 16), the Bureau stated the following:

‘The Bureau strongly believes that any national furniture flammability standard must address the typical scenario of open flame ignition in upholstered furniture.’

“The Bureau furthered added:

‘Considering the fact that many open flame furniture fires are caused by small children playing with matches or lighters, the seriousness of such hazard cannot be overstated.’

“As a member of the industry that develops and supplies products to prevent fire injuries and deaths, we are filing this lawsuit to defend the need for a standard that provides more fire protection, not less; and to require the Bureau to adhere to its statutory obligations in the rulemaking process. We are seeking a judgment that will set aside the revised standard – a standard that does not provide protection from open flame ignition sources, as mandated by law. Our hope is that the court will throw out the revised standard and that the Bureau will develop a new standard that addresses both smolder and open flame ignition sources, which would improve, rather than weaken, fire safety.

“Sadly, fire safety has taken a wrong turn in California and its impact will be felt by families nationwide unless we can reverse this misguided and unlawful decision.”

### **Facts about Fire Safety**

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In the absence of a national fire safety standard for upholstered furniture, the now-defunct California TB 117 was the de facto fire safety standard for the entire country. Since its adoption in 1976, furniture fires dropped by 84 percent and deaths from these fires dropped by 67 percent. (Source: National Fire Protection Association, 1980-2009 latest data) The reasons are many: fewer people smoking cigarettes, the prevalence of smoke alarms and the fire safety requirements placed on polyurethane foam and other filling materials found in most couches and chairs.

## Facts about Flame Retardants

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Decades of independent scientific research have proven time and again that flame retardants safely reduce the number and severity of potentially deadly fires. When fires do occur, flame retardants help save lives by giving people more time to evacuate their home, office, vehicle, hotel room, and airplanes, among others. See: [www.flameretardantfacts.com](http://www.flameretardantfacts.com) for more information.

## Recent Example of the Life-Saving Value of Fire Resistance, including Flame Retardants

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The weakening of the fire safety standard in California, in response to a directive from Governor Brown to reduce the use of flame retardants, is in stark contrast to the dramatic proof of the life-saving benefits of flame retardants just months ago in the state. A Bloomberg Businessweek article – “Four reasons so many people survived the Asiana crash” -- in the wake of the July 2013 Asiana Airline crash in San Francisco stated:

“The plastics and fabrics aboard airplanes not only are engineered to retard flames; they also don’t produce toxic fumes when they do encounter fire. That wasn’t always the case—smoke can be even more deadly than flames in an airplane crash. Airplanes built after 1990 also must meet standards on how much heat materials release in a fire and the density of smoke the fire produces.”

<http://www.businessweek.com/articles/2013-07-08/four-reasons-so-many-people-survived-the-asiana-crash>)

## Significant Voices in this Debate regarding Fire Safety Standards

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**National Fire Protection Association:** “Address the Full Spectrum of Major Fire Scenarios.” “NFPA feels strongly that a fully comprehensive fire safety regulation of upholstered furniture must address the full spectrum of major fire scenarios, including the open flame scenarios.” (NFPA comments to Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation on proposed changes to TB 117, March 22, 2013)

**Underwriters Laboratories, Inc.:** “An Open Flame Test is a Necessary Addition to Smoldering Test Requirements.” “Based on the research we have conducted, UL continues to believe that an open flame test is a necessary addition to smoldering test requirements to understand furniture fire dynamics, time to flashover, and to provide sufficient egress time for occupants.” (UL, Inc. comments to Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation on proposed changes to TB 117, March 20, 2013)

**California Conference of Arson Investigators:** “The Elimination of the Open Flame Ignition Test is a Significant Step Backward.” “Polyurethane foam is resistive to smoldering ignition but ignites easily and will burn vigorously when ignited with an open flame.” ...“The elimination of the open flame ignition test is a significant step backward.” (CCAI comments to Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation on proposed changes to TB 117, March 6, 2013)

**US Consumer Product Safety Commission:** “Smolder Ignition Bench-Scale Testing ‘Did Not Demonstrate an Adequate Prediction of Real Furniture Flammability Performance’.” After testing upholstered furniture, CPSC concluded that “bench-scale performance did not demonstrate an adequate prediction of real furniture flammability performance, especially in the smoldering ignition tests. The open-flame ignition bench-scale qualification tests for fire barriers, however, do appear to result in improvements in full-scale fire performance.” (US CPSC public notice dated March 15, 2013)

**National Association of State Fire Marshals:** “The CPSC Must Grasp the Opportunity to Address Open Flame Ignitions of Upholstered Furniture.” “...the CPSC must grasp the opportunity to address open flame ignitions of upholstered furniture as part of this rulemaking. The CPSC’s own analysis, and that of the National Fire Protection Association (NFPA), have indicated that ignition of upholstered furniture by non-smoldering sources is significant. As the NFPA representative pointed out in her April 25 presentation, non-cigarette ignitions of upholstered furniture accounted for nearly 80 percent of the fires and 55 percent of fire deaths each year from 2006 to 2010.” (National Association of State Fire Marshals Statement to the U.S. Consumer Products Safety Commission, June 27, 2013  
[http://www.firemarshals.org/pdf/NASFM\\_comment\\_to\\_cpsc\\_furniture\\_June\\_2013\\_FINAL.pdf](http://www.firemarshals.org/pdf/NASFM_comment_to_cpsc_furniture_June_2013_FINAL.pdf))

**National and International Flammability Experts:** “Address both Smoldering and Open Flame Ignition Sources.” “We advise and urge the State of California to take meaningful action to address both smoldering and open flame ignition sources of upholstered furniture fires, and not allow a regulation to be promulgated that could well result in more fires, with related injuries, deaths and property loss.” (Comments of Margaret Simonson McNamee, Ph.D. (SP technical Research Institute of Sweden), Gordon Damant (Retired, Bureau Chief, California Bureau of Home Furnishings and Thermal Insulation), Roy Deppa, P.E., (Retired, US Consumer Product Safety Commission), Nicholas Marchica (Retired, US Consumer Product Safety Commission), David Purser, Ph.D. (Retired, Fire and Risk Sciences Division, UK Building Research Establishment) and Steven Spivak (Professor Emeritus, Fire Protection Engineering, University of Maryland) to Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation on proposed changes to TB 117, March 25, 2013)