

State of California
Department of Consumer Affairs



Business and Professions Code §19094
(formally known as SB 1019)

Upholstered Furniture; Flame Retardant Chemicals

**FREQUENTLY ASKED
QUESTIONS (FAQs)**

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Adoption and Implementation

1. Q: When was the SB 1019 label requirement implemented?

A: SB 1019 enacted Business and Professions (B&P) Code section 19094 and became effective on January 1, 2015. The Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (BEARHFTI) implemented the law on that date. In addition, BEARHFTI currently has a memorandum of understanding (MOU) with the Department of Toxic Substances Control (DTSC) to test samples of products that are marked “contain NO added flame retardant chemicals.” For more information regarding these chemicals and commonly used flame retardants used in furniture, please go to http://dtsc.ca.gov/ECL/Flame_Retardants.cfm.

General Compliance

2. Q: Does the “flame retardant chemical statement” apply to outdoor upholstered furniture?

A: B&P Code section 19094 specifically applies to “covered products” which means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013 (TB117-2013), entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*. Currently, upholstered furniture intended or expected to be used exclusively for outdoors is not required to meet TB117-2013.

3. Q: Does the “flame retardant chemical statement” apply to mattresses or mattress pads?

A: B&P Code section 19094 specifically applies to “covered products” which means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013 (TB117-2013), entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*. Mattresses and mattress sets are not required to meet the TB117-2013 flammability requirement. However, a foam topper (mattress pad) without a cover and comprised of polyurethane foam must meet the TB117-2013 Section 3 and must contain a compliant TB117-2013 flammability label that will include the “flame retardant chemical statement”.

4. Q: Is the “flame retardant chemical statement” applicable to products that are already labeled as compliant with TB117-2013?

A: B&P Code section 19094 will not be retroactive and the existing furniture (furniture manufactured before January 1, 2015) can be sold without the flame retardant chemical labeling.

5. **Q: What materials in the upholstered furniture must contain no prescribed flame retardants in order to indicate “Contains NO added flame retardant chemicals”?**

A: This is described in B&P Code section 19094, paragraph (1) of subdivision (a), which states: “Component” means separate constituent parts of upholstered furniture sold in California, as identified in TB117-2013, specifically cover fabrics, barrier materials, resilient filling materials, and decking materials.

B&P Code 19094 in Other States

6. **Q: Is the “flame retardant chemical statement” applicable in any other states?**

A: The Bureau has no jurisdictional authority in other states and to date we are not aware of adoption of this statement elsewhere. You may contact the appropriate authorities in other states to find out their requirements, if any.

Documentation Requirements

7. **Q: What type of documentation must the manufacturer/supplier provide upon request by the Bureau?**

A: The law requires the manufacturer of the covered product to retain sufficient documentation to show whether flame retardant chemicals were added to the products and/or components. In this case, sufficient means written statements from the supplier for each component attesting flame retardant chemicals were added or were not added.

8. **Q: Who carries the burden of responsibility for determining flame retardant chemical content of customer owned materials (COM)?**

A: The manufacturer of a piece of COM furniture is obligated to maintain documentation that no added flame retardant is contained in a piece of furniture. This obligation is met if the manufacturer has written documentation from all suppliers of components attesting that no added flame retardants are in the supplied components. In the absence of this information, it would be inappropriate to identify the product as containing no added flame retardants. Please contact the Bureau for assistance in complying with this section.

9. **Q: How long do manufacturers need to retain documents?**

A: Statute does not specify how long records must be retained. However, as a matter of practice, the Bureau does not generally seek documentation on products that were sold more than three years ago.

10. **Q: If the Bureau requests documentation establishing the accuracy of flame retardant chemical labeling, within how many days must the manufacturer/supplier provide this information?**

A: The manufacturer/supplier shall provide to the Bureau, within 30 days of the request, documentation establishing the accuracy of the flame retardant chemical statement on the label. If the requested documentation is not received within 30 days of the initial request, the Bureau may proceed with enforcement action.

11. **Q: If violations or citations are issued by the Bureau, will this be public information?**

A: The violations/citations will be posted on the BEARHFTI web site at www.bearhfti.ca.gov.

12. **Q: Who is liable for violations of the documentation requirement?**

A: Both the manufacturer and component suppliers for the upholstered furniture products are jointly and severally liable for documentation.

Labeling

13. **Q: According to B&P Code section 19094, should the “flame retardant chemical statement” be added to the TB117-2013/TB116/TB133 label?**

A: B&P Code section 19094 specifically applies to “covered products” which means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013, entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*. Therefore, the “flame retardant chemical statement” will be added to the TB117-2013, TB116/TB117-2013 compliant flammability labels. The compliant TB133 flammability label does not require the “flame retardant chemical statement” because upholstered furniture for use in public occupancies does not fall under the definition of “covered product” in B&P Code section 19094.

14. **Q: Does the Type No. 8 law label (intended for bulk materials used or which can be used in articles of upholstered furniture) as shown in the examples in Article 2, California Code of Regulations section 1126(f), 1126(d)(11) and invoices 1126(d)(12) need to include the “flame retardant chemical statement”?**

A: B&P §19094 does not address law labels or required invoice information found in Article 2, 1126, therefore the “flame retardant chemical statement” is not required on Type No. 8 law label or invoices.

15. Q: What is the font size required for the “flame retardant chemical statement”? Do the letters have to be in capital letters?

A: The font size must be a minimum height of 1/8 inch; however, the statement need not be in all capital letters. The 1/8 inch height will be measured from the lowest measuring lower case letter.

16. Q: What is the label size requirement for the “flame retardant chemical statement”?

A: The “flame retardant chemical statement” shall follow the TB117-2013 flammability label verbiage. The minimum label size requirement for the flammability labels is 2 x 3 inches. Therefore, you may technically add this statement to the bottom of the flammability label and, if you are able to meet the font size and capital letter (for flammability label portion) requirements, it may be included in the 2 x 3 inches. The flammability label must be a minimum size of 2 x 3 inches, minimum size of type shall be 1/8 inch in height and type shall be in capital letters.

17. Q: Can the B&P Code section 19094 label be on a separate label?

A: No, this statement shall follow the compliant flammability label verbiage.

18. Q: Must the “flame retardant chemical statement” directly follow the compliant flammability verbiage?

A: The “flame retardant chemical statement” must follow the compliant flammability label verbiage. It may be separated by a black line, located below or to the right of the compliant flammability label verbiage. It must be printed on the same label as the compliant flammability label verbiage.

19. Q: Does the label have to be permanently attached to the product?

A: Yes.

20. Q: Shall the “flame retardant chemical statement” be located to the left / right / top / bottom of the flammability label?

A: The “flame retardant chemical statement” must be located to the right or below the compliant flammability label verbiage. The statement must not be located to the left or above the compliant flammability label verbiage.

21. Q: What is the specific wording required for the B&P Code section 19094 label?

A: The specific wording of the law is as follows:

“The upholstery materials in this product:
_____contain added flame retardant chemicals
_____contain NO added flame retardant chemicals

The State of California has updated the flammability standard and determined that the fire safety requirements for this product can be met without adding flame retardant chemicals. The state has identified many flame retardant chemicals as being known to, or strongly suspected of, adversely impacting human health or development.”

22. Q: Does the “flame retardant chemical statement” require both the “contain” and “does not contain” statements or may we print only the statement that applies?

A: Both statements must appear. An “X” must appear to the left of the statement that applies to the product.

23. Q: Is it acceptable to use a box instead of a line in front of the flame retardant chemical statement that applies?

A: You may use either a box or line, as long as both statements appear and an “X” is indicated to the left of the statement that applies to the product.

24. Q: Can the B&P Code section 19094 label be stickered on below the compliant flammability statement until new labels are made?

A: Yes, if it is permanently adhered and all other legal labeling requirements are met.

25. Q: Do you have examples of the new label requirements?

A: Examples are provided below. Please keep in mind that these are only examples included to assist you. As discussed in FAQ #16 and #18, the formats of the labels may differ so long as they comply with applicable laws and regulations.

Label Examples:

(a) This label to be attached to every article of upholstered furniture complying ONLY with flammability requirements of Technical Bulletin 117-2013.

(b) This label to be attached to every article of upholstered furniture complying with both Technical Bulletin 116 and Technical Bulletin 117-2013.

NOTICE

THIS ARTICLE MEETS THE FLAMMABILITY REQUIREMENTS OF CALIFORNIA BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME FURNISHINGS AND THERMAL INSULATION TECHNICAL BULLETIN 117-2013. CARE SHOULD BE EXERCISED NEAR OPEN FLAME OR WITH BURNING CIGARETTES.

The upholstery materials in this product:
____contain added flame retardant chemicals
____contain NO added flame retardant chemicals

The State of California has updated the flammability standard and determined that the fire safety requirements for this product can be met without adding flame retardant chemicals. The State has identified many flame retardant chemicals as being known to, or strongly suspected of, adversely impacting human health or development.

NOTICE

THIS ARTICLE MEETS ALL FLAMMABILITY REQUIREMENTS OF CALIFORNIA BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME FURNISHINGS AND THERMAL INSULATION TECHNICAL BULLETINS 116 AND 117-2013. CARE SHOULD BE EXERCISED NEAR OPEN FLAME OR WITH BURNING CIGARETTES.

The upholstery materials in this product:
____contain added flame retardant chemicals
____contain NO added flame retardant chemicals

The State of California has updated the flammability standard and determined that the fire safety requirements for this product can be met without adding flame retardant chemicals. The State has identified many flame retardant chemicals as being known to, or strongly suspected of, adversely impacting human health or development.

Exempt Products

26. Q: Does the “flame retardant chemical statement” apply to upholstered furniture exempt from the TB117-2013?

A: B&P Code section 19094 does not apply to exempt upholstered furniture. B&P Code section 19094 specifically applies to “covered products” which means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013, entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*.

Flame Retardant Chemicals / Proposition 65

27. Q: Can I manufacture products without flame retardants now that TB117-2013 standard has been adopted?

A: The Bureau’s flammability standards are performance standards and do not prescribe or prohibit the use of any specific materials or manufacturing methods to meet the flammability standards. It is the responsibility of the manufacturer (and all other related parties; supplier, retailer, etc.) to comply with the TB117-2013 flammability requirement. B&P Code section 19094 requires a statement specifying whether the product contains or does not contain flame retardant chemicals. It is at the manufacturer’s discretion to decide whether his/her products will or will not contain flame retardant chemicals and label them accurately.

28. Q: Do I have to label my product as containing FR chemicals or treatments?

A: SB 1019 was signed by the Governor and chaptered on September 30, 2014, making it law. Therefore, labels attached to upholstered furniture sold in the state of California must contain true statements, in accordance with B&P Code section 19094, regarding the flame retardant chemicals in products.

29. Q: If my product is labeled “contain added flame retardant chemicals,” do I also need a Proposition 65 label attached to my product?

A: There may be labeling and/or notice requirements under CA Proposition 65. For questions and issues related to specific detection levels in flame retardant chemicals and hazardous materials labeling, contact the California Environmental Protection Agency (Cal EPA) and/or Office of Environmental Health Hazard Assessment (OEHHHA), the State agencies responsible for overseeing provisions of Proposition 65. You may visit the following links for additional Proposition 65 information:

Proposition 65 Web-site:

<http://oehha.ca.gov/prop65/background/p65plain.html>

Link to Chemicals Considered or Listed Under Proposition 65:

<https://oehha.ca.gov/proposition-65/chemicals>

Questions about Proposition 65:

<http://www.oehha.ca.gov/prop65.html>

30. Q: May I combine my Proposition 65 label with the Law Label, Flammability Label, and/or the B&P Code section 19094 flame retardant chemical statement?

A: The Proposition 65 label must be a separate label.

31. Q: What types of flame retardant chemicals are being identified under the B&P Code section 19094?

A: The law specifies the following:

(3) "Flame retardant chemical" means any chemical or chemical compound for which a functional use is to resist or inhibit the spread of fire. Flame retardant chemicals include, but are not limited to, halogenated, phosphorous-based, nitrogen-based, and nanoscale flame retardants, flame retardant chemicals listed as "designated chemicals" pursuant to Section 105440 of the Health and Safety Code, and any chemical or chemical compound for which "flame retardant" appears on the substance Safety Data Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the Code of Federal Regulations.

(4) "Chemical" means either of the following:

(A) An organic or inorganic substance of a particular molecular identity, including any combination of those substances occurring, in whole or in part, as a result of a chemical reaction or occurring in nature, and any element, ion, or uncombined radical, and any degradate, metabolite, or reaction product of a substance with a particular molecular identity.

(B) A chemical ingredient, which means a substance comprising one or more substances described in subparagraph (A).

(5) "Molecular identity" means the substance's properties listed below:

(A) Agglomeration state.

(B) Bulk density.

(C) Chemical composition, including surface coating.

(D) Crystal structure.

(E) Dispersability.

(F) Molecular structure.

(G) Particle density.

(H) Particle size, size distribution, and surface area.

(I) Physical form and shape, at room temperature and pressure.

(J) Physicochemical properties.

(K) Porosity.

(L) Solubility in water and biologically relevant fluids.

(M) Surface charge.

(N) Surface reactivity.

(6) "Added flame retardant chemicals" means flame retardant chemicals that are present in any covered product or component thereof at levels above 1,000 parts per million.

For more information regarding these chemicals and commonly used flame retardants used in furniture, please go to http://dtsc.ca.gov/ECL/Flame_Retardants.cfm.

32. Q: B&P Code section 19094, (a)(3), (6), defines “flame retardant chemical”. What is a “flame retardant chemical”?

A: A “flame retardant chemical” is any chemical or chemical compound, as defined in B&P Code section 19094, (a)(3), for which a functional use is to resist or inhibit the spread of fire, that is present in any listed component (see below) contained within a covered product at levels above 1000 ppm. Flame retardant chemicals include, but are not limited to, the following:

- Halogenated, phosphorous-based, nitrogen-based, and nanoscale flame retardants,
- Flame retardant chemicals listed as "designated chemicals" pursuant to Section 105440 of the Health and Safety Code (see <http://biomonitoring.ca.gov/chemicals/designated-chemicals>), and
- Any chemical or chemical compound for which "flame retardant" appears on the substance Safety Data Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the Code of Federal Regulations. (An SDS is required to be provided by the chemical manufacturer, distributor, or importer with the product or upon request)

In assessing a potential violation of this legislation, the Bureau will treat cases individually and look at all circumstances. For example, it is unlikely that the presence of water or sand in a covered product would constitute a violation because while one may argue that these compounds may resist or inhibit fire, the Bureau has no evidence that this is a functional use of these products in B&P §19094 covered products and components at this time. For more information regarding these chemicals and commonly used flame retardants used in furniture, please go to http://dtsc.ca.gov/ECL/Flame_Retardants.cfm.

33. Q: B&P Code section 19094, (a) (6), states “Added flame retardant chemical” means flame retardant chemicals that are present in any covered product or component thereof at levels above 1000 parts per million (ppm). Is the 1000 ppm limit a cumulative or individual chemical content limit?

A: The 1000 ppm is a cumulative limit when multiple flame retardant chemicals are used within an individual component. Component means the separate constituent parts of upholstered furniture; cover fabrics, barrier materials, resilient filling materials, and decking materials.

Example 1: Three components of a Sofa are being tested.
Component 1 is found to have 900 ppm of Chemical A.
Component 2 is found to have 900 ppm of Chemical B.
Component 3 is found to have 900 ppm of Chemical C.

No violation: This example would not constitute a violation of B&P §19094.

Example 2: Three components of a Sofa are being tested.
Component 1 is found to have 900 ppm of Chemical A.
Component 2 is found to have 900 ppm of Chemical B.
Component 3 is found to have 3,000 ppm of Chemical C.

Violation: Component 3 exceeds the 1,000 ppm limit, therefore the covered product would violate B&P §19094.

Example 3: Three components of a Sofa are being tested.
Component 1 is found to have 900 ppm of Chemical A and 200 ppm of Chemical B.
Component 2 is found to have 900 ppm of Chemical B.
Component 3 is found to have 900 ppm of Chemical C.

Violation: Component 1 has a cumulative 1,100 ppm chemical content, it exceeds the 1,000 ppm limit, therefore the covered product would violate B&P §19094.

Example 4: Three components of a Sofa are being tested.
Component 1 is found to have 700 ppm of Chemical A and 200 ppm of Chemical B.
Component 2 is found to have 900 ppm of Chemical B.
Component 3 is found to have 900 ppm of Chemical C.

No Violation: Component 1 has a cumulative 900 ppm chemical content, it does not exceed the 1,000 ppm limit, therefore the covered product would not violate B&P §19094.