

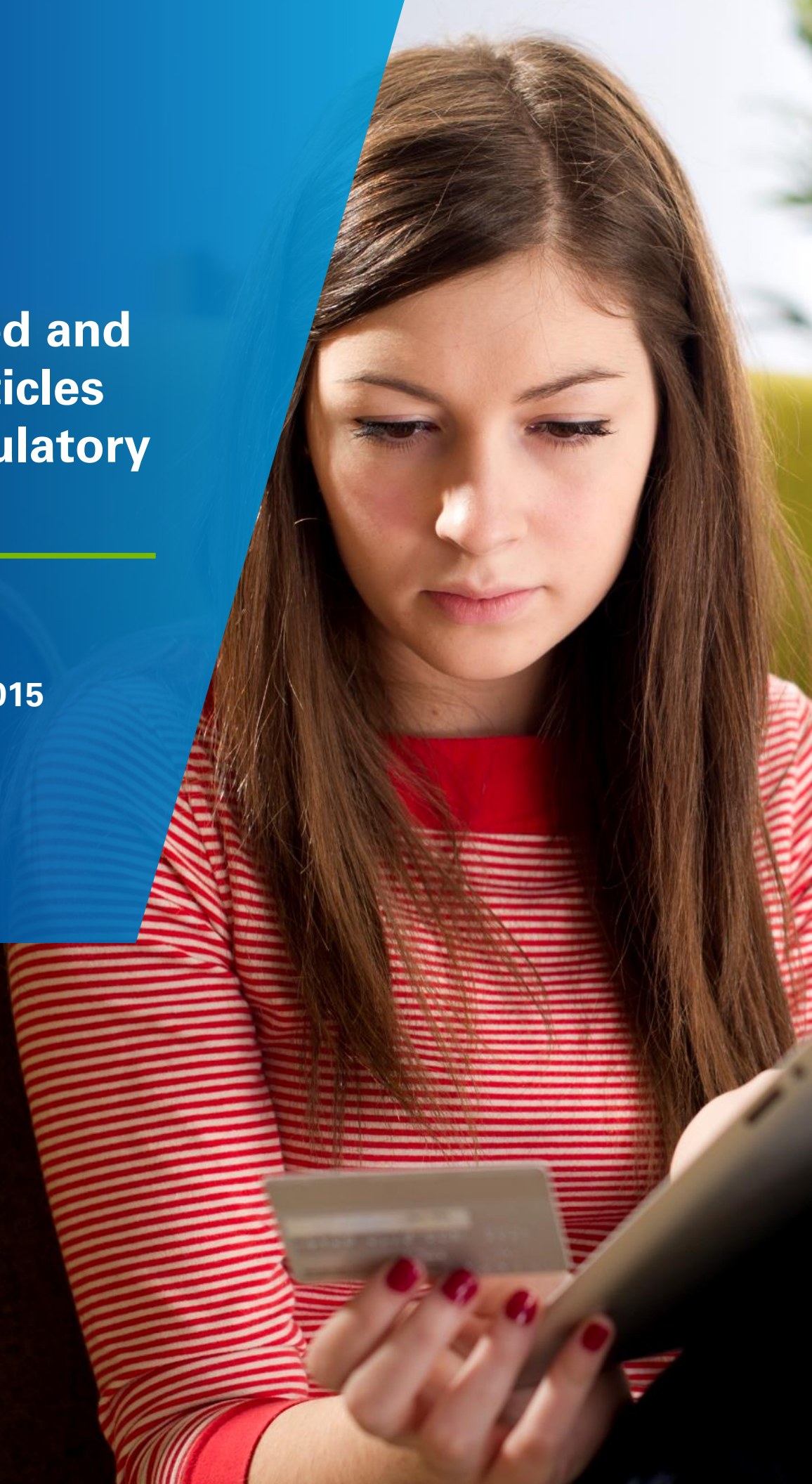


cutting through complexity

Upholstered and Stuffed Articles (USA) Regulatory Review

Final Report

September 2, 2015



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This report has been prepared by KPMG LLP ("KPMG") for the Ontario Ministry of Government and Consumer Services ("Client") pursuant to the terms of our engagement agreement with the Client dated February 10, 2014 (the "Engagement Agreement"). KPMG neither warrants nor represents that the information contained in this report is accurate, complete, sufficient or appropriate for use by any person or entity other than Client or for any purpose other than set out in the Engagement Agreement. This report may not be relied upon by any person or entity other than Client, and KPMG hereby expressly disclaims any and all responsibility or liability to any person or entity other than Client in connection with their use of this report.

1 Executive Summary

1.1 Project Background and Approach

The objective of this engagement was to identify potential options and key insights to modernize and streamline the Upholstered and Stuffed Articles (USA) regulation in response to a growing global economy. The scope of the project was limited to an evaluation of the public safety implications of the current regulation.

Several factors contributed to the need for a regulatory review at this time, including industry stakeholders raising questions regarding the application of USA regulatory requirements and the relevancy of and continuing need for Technical Standards and Safety Authority's (TSSA) USA safety program. Furthermore, there was a need to evaluate the potential for overlap between Ontario's USA regulation and the federal government's *Canada Consumer Product Safety Act*, which was implemented in 2011.

To carry out the review, KPMG conducted interviews with 15 different stakeholder groups, including government, regulatory authority, industry, and various associations in the sector. Eleven jurisdictions, including Ontario, were reviewed. The jurisdictions were chosen based on their regulatory, economic, and geographic attributes, as well as recent incidents relating to USA regulations within their jurisdiction. Safety data has further been sourced and analyzed, with a focus on TSSA's Annual Public Safety Performance Reports. The data shows that the majority of non-compliance orders issued by TSSA do not correspond to a potential safety hazard.

1.2 Policy Objectives and Options

Three overarching policy objectives have framed this review (these objectives were provided by the Ministry of Government and Consumer Services):

- **Objective 1: Promoting public safety**

The purpose of the *Technical Standards and Safety Act*, as set out in its purpose provision, is to enhance public safety in Ontario by providing for the efficient and flexible administration of technical standards with respect to, amongst other technical areas, upholstered and stuffed articles. Enhancing public safety cannot be an absolute; rather, the inherent dangers associated with the regulated areas (fuels, elevators, etc.) must be balanced against their necessity. Therefore, enhancing public safety necessarily becomes an exercise in reducing risk, based on rigorous risk assessments and using data, science, and best practices.

- **Objective 2: Becoming a modern regulator**

In January 2012, Ontario's Open for Business program released the "Alternatives to Regulation: Developing Smarter Policy Approaches," to support the Government of Ontario's regulatory modernization efforts to create a streamlined and focused regulatory environment that delivers results for business and other stakeholders, while protecting the public interest. This approach acknowledges that regulatory options must be interpreted within the applicable risk framework, but that to act as a modern regulator, governments "must find the right balance between allowing market forces to operate independently and intervening strategically to change behaviour." Within this policy objective, the joint ministry and TSSA Regulatory Renewal Steering Committee also identified that regulations should enable business to thrive and be flexible enough to adapt to changes in the marketplace over time.

- **Objective 3: Reduce the burden on business**

As identified by the Regulatory Renewal Steering Committee, regulations should take into account risk trade-offs with other public benefits and impact on business, while also reducing unnecessary burden on business that is not required to maintain public safety. Examples of this may be to reduce intergovernmental duplication or overlap and to encourage harmonization with other jurisdictions.

Three options have been identified:

- **Option 1: Increased Stringency of the USA Regulation**

This option involves increasing compliance and enforcement activities of the regime, in order to reduce the probability and impact of health hazards associated with USA goods.

Several variations could be employed to make the regime more stringent. These could include:

- Implementing the highest regulatory standards and directives among all of the reviewed jurisdictions.
- Allocating greater inspection and investigation resources.
- Seeking greater penalties for non-compliance.

- **Option 2: Modernization of the USA Regulation**

This option involves a variation of regulatory reforms to bring the USA regulations in line with modern manufacturing, sourcing, and retailing practices.

Several variations could be employed to improve the efficiency and effectiveness of the program, while addressing the key objectives of the government. These could include:

- An evidence-based, risk-informed approach to ensuring compliance.
- A rationalized list of products covered by the regulation.
- Registration fee schedule changes.
- Harmonization of provincial/federal regulations.

- **Option 3: Repeal of USA Regulatory Regime**

This option entails the repeal of the USA regulation currently in place to govern the manufacture, renovation, and retail of upholstered and stuffed articles in Ontario. This implies that:

- Labeling requirements would no longer be in place.
- Registration and licensing would not be required.
- Compliance and enforcement activities by TSSA would no longer be carried out.

1.3 High-Level Options Evaluation Against Objectives



1. Promoting Public Safety

This option is likely to either maintain or improve safety outcomes. However, this may come at a cost to the regulator and the industry through higher compliance costs.

This option is likely to have a minimal effect on public safety outcomes, if the risk assessment driving compliance activities is properly developed. Areas of highest risk would receive the highest degree of focus, scrutiny, and resource allocation.

This option may escalate risks related to the manufacture and retail of USA goods. The extent of this risk appears to be low, however, due to the low incidence of hazards identified and attributed to upholstered and stuffed articles.

2. Becoming a Modern Regulator

This option will only achieve modern regulator objectives if the increased stringency approaches and tools are based on evidence that suggests a deteriorating and riskier trend among USA goods.

This option is highly aligned with the notion of a modern regulator, as it would incorporate evidence, facts, and data in determining the most effective and efficient ways of enhancing compliance.

This option may not fully meet the objectives of becoming a modern regulator, as there will be no provincial oversight in the absence of USA legislation. However, this option would remove any regulatory burden on the USA sector, which does align with the policy objective.

3. Reducing the Burden on Business

This option is likely to have a negative effect on businesses, imparting higher compliance costs and making it more cumbersome to meet the new, more stringent regulatory requirements.

With an appropriate risk assessment framework, the burden on less risky businesses should decrease, while the compliance requirements for higher risk segments/products should increase.

This option is likely to have a positive impact on businesses as it eliminates all compliance costs.

2 Project Objectives and Methodology

2.1 Project Objectives

The objective of this engagement is to identify potential options and key insights to modernize and streamline the USA regulation in response to a growing global economy.

The options need to strike the right balance between addressing public safety risk and burden on businesses.

2.2 Timing

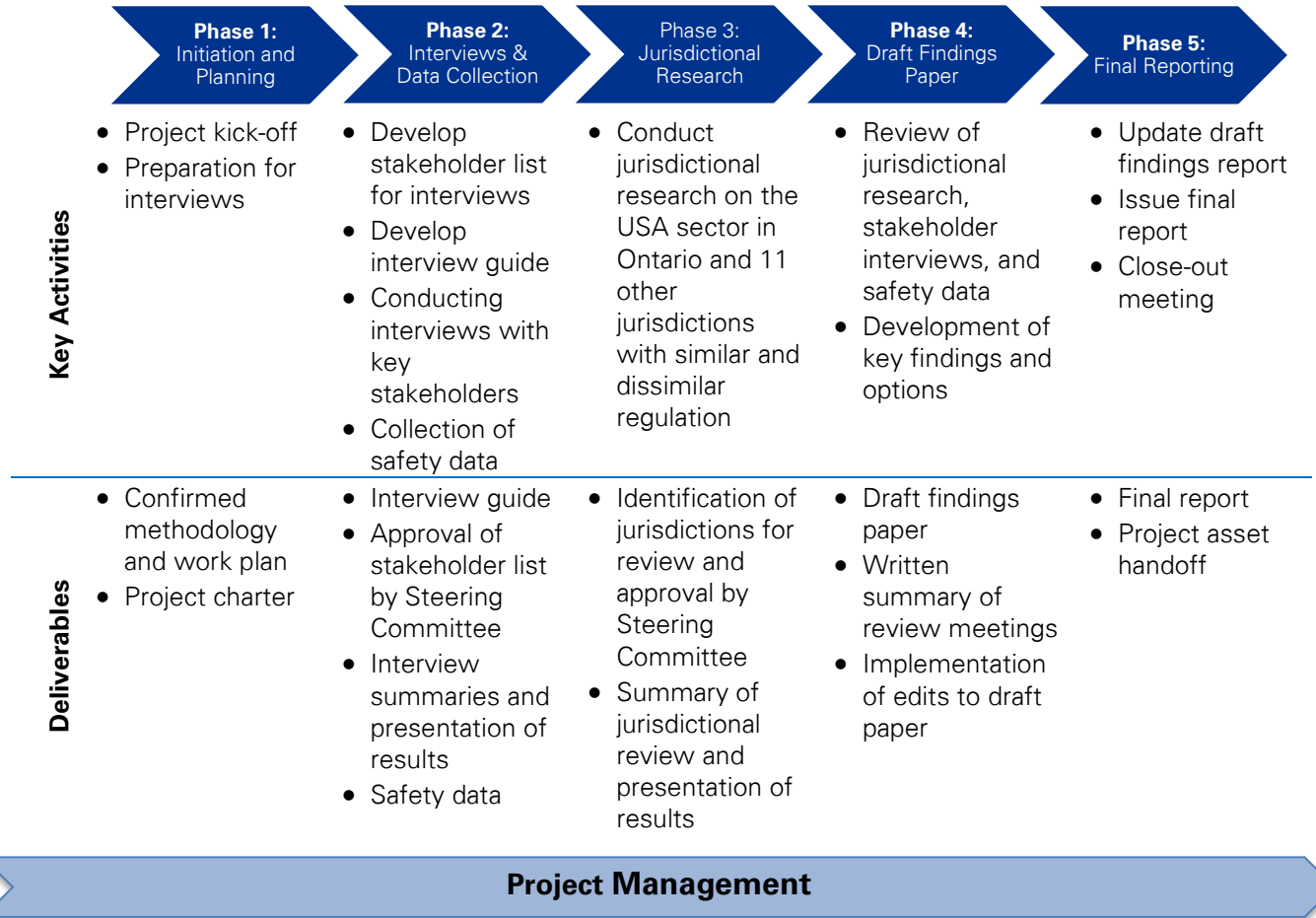
The project commenced on the week of February 9, 2015 and will be completed in July 2015.

2.3 Deliverables

- Confirmed methodology and work plan
- Project charter
- Interview guide
- Approval of stakeholder list by Steering Committee
- Interview summaries and presentation of results
- Safety data
- Identification of jurisdictions for review and approval by Steering Committee
- Summary of jurisdictional review and presentation of results
- Draft findings paper
- Written summary of review meetings
- Implementation of edits to draft paper
- Final report
- Project asset handoff

2.4 Methodology

2.4.1 Regulatory Review and Options Development



2.4.2 Stakeholder Interviews

To provide a multi-dimensional perspective on the USA regulation, the project included a series of interviews with stakeholders from the government, regulatory authority, industry, and various associations in the sector.

The stakeholders interviewed were chosen based on previous interactions with the ministry and TSSA regarding the USA program (collectively O. Reg 218/01 and TSSA's USA Safety Program policies and procedures), the impact of this program on their business, their members, and their depth of understanding of the regulation.

An interview guide of 11 questions was created in collaboration with the Ministry of Government and Consumer Services and TSSA (see Appendix A). These questions covered a range of issues relating to the USA regulatory regime, including inquiries on safety issues observed, the impact on their supply chain,

their experience with TSSA’s inspection process, and how new retail channels are affecting consumers, businesses, and compliance tools. The interview process included:

- Fifteen separate stakeholder interviews conducted by KPMG, related to the USA regulation from March 9 to March 26.
- KPMG further collected written submissions from retailers who are impacted by the USA regulation.
- A report on these interview findings was submitted by KPMG to MGCS and TSSA.

Organization	Category	No. Of Interviewees
1. Amazon	Manufacturer/ Retailer	3
2. Canadian Apparel Federation	Association (Industry)	1
3. Shimano Canada	Manufacturer	1
4. Government of Manitoba	Regulator	2
5. Government of Quebec	Regulator	3
6. Retail Council of Canada	Association (Retailer)	1
7. Consumers Council of Canada	Association (Consumer)	1
8. Ministry of Government and Consumer Services	Regulator	3
9. Canadian Federation of Independent Business	Association (Industry)	2
10. TSSA USA Advisory Council	Mixed Representation	5
11. TSSA USA Safety Program	Regulator	6
12. Retail Council of Canada Members	Manufacturer/ Retailer	7
13. Consumers’ Association of Canada	Association (Consumer)	1
14. Benchmade Leatherworks Inc.	Manufacturer/ Retailer	1
15. Quebec Furniture Manufacturers Association	Association (Industry)	1
Total Participants:		38

2.4.3 Jurisdictional Scan

The second phase of this review focused on jurisdictional research. KPMG conducted a jurisdictional review of six jurisdictions in Canada and the United States that have USA regulatory requirements similar to Ontario. Two jurisdictions without USA regulatory requirements (British Columbia and Nova Scotia) were also chosen for review. The jurisdictions were chosen based on their regulatory, economic, and geographic attributes, as well as recent incidents relating to USA regulations within their jurisdiction.

Reviews of federal regulations were also conducted on the United States, Canada, and the European Union. These reviews were conducted in order to understand overlaps in regulatory regimes between the

federal and provincial governments and to provide insights in how other federal regimes coordinate their programs across jurisdictions.

As per the above framework, KPMG conducted research on 11 jurisdictions to inform the development of options for modernizing Ontario’s Upholstered and Stuffed Articles regulation. The research of these jurisdictions involved:

- Analysis of secondary sources, including review of applicable legislation, regulations, annual reports, performance publications, and media articles, among others.
- Interviews with government officials from these jurisdictions (with the exception of the European Union), in some cases with multiple parties (see Appendix B).

2.4.4 Jurisdictions Reviewed and Interviews Conducted

Jurisdiction	Regulation Covering USA Articles	Interview(s) Conducted
Ontario	✓	✓
Manitoba	✓	✓
Quebec	✓	✓
California	✓	✓
Pennsylvania	✓	✓
Ohio	✓	✓
European Union	✓	x
British Columbia	x	✓
Nova Scotia	x	✓
United States (Federal)	✓	✓
Canada (Federal)	✓	✓

3 Current Landscape

3.1 Recent Developments

The Ministry of Government and Consumer Services (MGCS) and the Technical Standards and Safety Authority (TSSA) have launched a regulatory policy project to review the Upholstered and Stuffed Articles (USA) regulation under the Technical Standards and Safety Act, 2000. TSSA is the agency with the delegated authority to administer and enforce the Act and its regulations. The intention of TSSA's USA safety program is to protect the public from potential hazards associated with the use of unclean or unsafe materials in upholstered and stuffed articles. Products covered under the regulation include bedding, furniture, sports equipment, luggage, handbags, toys, and clothing. The USA regulation requires that product manufacturers attach an approved label to their products and register with TSSA, enabling traceability should a safety issue arise. Registration also allows TSSA inspectors to order the destruction of an article, if it is believed to pose a danger to public health (Section 21, USA regulation). These same regulatory requirements apply in Manitoba and Quebec.

Several factors contribute to the need for a regulatory review at this time, including:

- Industry stakeholders have raised questions regarding the application of USA regulatory requirements and the relevancy of and continuing need for TSSA's USA safety program;
- The federal government's Canada Consumer Product Safety Act came into force in 2011, which may overlap with some of the provisions of Ontario's USA regulation;
- In August 2013, an online retailer raised concerns about the regulation's product labeling requirements, describing compliance with the requirements as a challenge to competing in global e-commerce;
- In November 2013, the Canadian Apparel Federation (CAF) sent letters to the federal Minister of Industry and to the Canada-United States of America Regulatory Cooperation Council, recommending changes to the way clothing is regulated in Canada and the United States; and
- The Consumer Measures Committee and trade representatives from Ontario, Quebec and Manitoba – the only jurisdictions in Canada to impose labeling and registration requirements related to clothes that contain stuffing or padding – have taken the CAF recommendations into consideration as potential trade irritants.

3.2 Administrative Regime

3.2.1 Licensing/Registration¹

The licensing regime that impacts businesses selling upholstered and stuffed goods within Ontario is as follows:

- No one can carry on business as a manufacturer or as a renovator unless they are licensed within Ontario;
- An application for registration must contain contact information, officer names, and types of articles manufactured or renovated; and

¹ Licensing and registration will be used interchangeably throughout the report.

- Craft operators must also state the number of stuffed articles the operator proposes to manufacture during the one-year period in which their license is valid.

Business are required to pay fees to obtain a license, which must be renewed on an annual basis. Manufacturers pay \$400 in licensing fees, renovators pay \$85, and craft operators pay \$20. These fees are revenue for the TSSA and go towards the operation of the USA program. For the 2014 fiscal year, revenues are \$3,697,000. The budget for the 2014 fiscal year is \$3,725,000.

3.2.2 Regulatory Provisions

The USA regulatory provisions focus on labeling, down processing, and sterilization. In regards to labelling, there are specific directions in the regulation that instruct manufacturers/retailers on how to design, affix, and display labels on USA goods. Down processing and cleanliness includes specific directions in the regulation that instruct manufacturers on the handling of down and feathered materials in order to be compliant with the law. For example, down or other feather products used as stuffing must be washed with a detergent for at least 30 minutes in water of a temperature of at least 52 degrees Celsius. The products must then be rinsed thoroughly for at least 20 minutes in warm water, and be drained and treated by steam at a temperature of at least 110 degrees Celsius.

There are additional specific directions in the regulation that instruct manufacturers on the sterilization of articles, in order to be compliant with the law. An upholstered or stuffed article that has been in contact with a person suffering from a communicable disease shall not be offered for sale or sold, unless it has been sterilized through exposure for at least 10 hours to formaldehyde gas in a gas-tight sterilization chamber. This chamber must be equipped with at least one air inlet and one air outlet, with each having a gas-tight closure gate or valve. Proof of its sterilization must be provided to the Director. The air outlet of the sterilization chamber is required to have a duct of a size sufficient to carry the exhaust gases to the outside atmosphere at a point removed from any door, window or opening. The formaldehyde gas referred to in subsection 1 of the regulation shall be generated from 570 milliliters of formaldehyde solution for every 28 cubic meters of space in the sterilization chamber. Where two or more upholstered or stuffed articles are in a sterilization chamber at the same time, they shall be set apart far enough apart from each other that gas may circulate freely among them. Finally, where shelves are used in a sterilization chamber, the shelves shall be of lattice construction. Other jurisdictions, (such as California, Québec and Manitoba) also have highly specific sterilization and down processing instructions, though there are minor variations in the temperature and length of processing time required.

Due to similarities in the regulations and geographic proximity, Ontario has a reciprocal agreement with Québec and Manitoba. If the factory is located in any of the provinces, registration can be done directly with the respective province and is automatically accepted in the other two provinces. If the factory is located outside of these three provinces, registration must be done directly with each of the provinces where the articles would be sold.

3.2.3 Enforcement

Incidents and complaints regarding upholstered and stuffed articles are investigated by TSSA inspectors. Inspections may include routine representative sampling. These inspections can occur at any time from the manufacturing to point-of-sale stage. If an incident of non-compliance is found, TSSA inspectors will implement steps to prevent recurrence – including prosecution of individuals or companies contravening the regulation. Prosecution is only used as a final step to prevent a recurrence. Other disciplinary actions to obtain compliance include the Director revoking a registration where the registrant has contravened the regulation and has refused to comply after being requested to do so. Anyone who obstructs, hinders or interferes with an inspection can be subject to a fine. Upon an inspection, the person inspecting is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of the person being inspected.

An inspection that results in an infraction may lead to numerous other courses of action on the part of the TSSA and the entity being inspected. Inspectors follow specific instructions (standard operating procedures) on how to deal with an infraction type. An example, cited from TSSA's internal documents (Criteria for Infractions and Corresponding Inspector's Instructions: Issuing Orders, Non-compliance Reports-SOP-OP-USA-011-00), is provided below:

Infraction Explanation	Remedial Action Required	Release Codes
<p>Unclean/unsafe filling materials</p> <p>Unclean/unsafe filling materials include vermin infested; contaminated by elements such as human or animal waste, water, debris, mold; a by-product from a used source; regulated used articles which have been covered by a new cover (such as a mattress) and resold as new.</p>	<p>Destroy</p> <p>Note to inspectors: under no circumstance is the cited article allowed to be given to store employees or public, cleaned (altered) or donated. Inform Statutory Director of your findings and proposed actions.</p>	<p>Condemned and/or Destroyed</p> <p>Note to inspectors: inspectors generally accompany the articles to the disposal plant to witness destruction.</p> <p>Cited articles cannot be shipped out of Province.</p>

TSSA determines inspections through a mixture of reactive and proactive efforts. Some inspections occur in response to complaints, including anonymous complaints, some of which are from competitors. TSSA will conduct follow up inspections and inspect repeat offenders to determine if they are becoming compliant. The staff allocated within TSSA to the program include six inspectors and one statutory director.

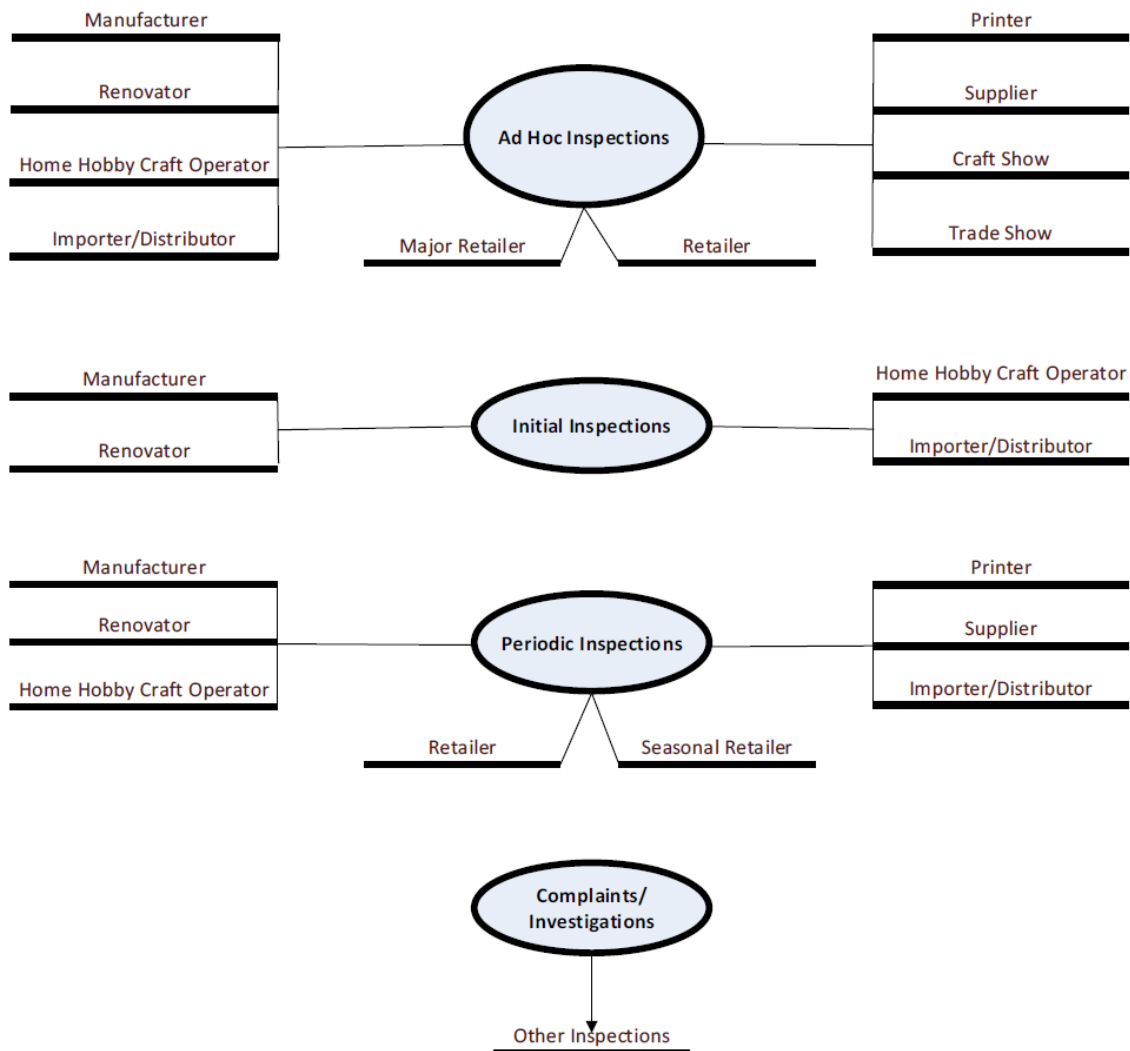
There are five types of inspections carried out by TSSA:

1. **Ad hoc** is an unscheduled inspection. Example: unregistered customer, customer that requires frequent inspections, and/or because of an issue in the marketplace. This is considered to be the proactive component of enforcement. Ad hoc inspections can also take place if an inspector is in an area and comes across a market participant. These inspections are the first inspections of these entities.
2. **Complaints** are received from consumers and competitors and can be anonymous. Inspectors then follow up with entities involved in the complaint.
3. **Initial** inspections are first time inspections of a registered customer. Initial inspections can be classified as proactive enforcement. Initial inspections take place after a customer registers with the TSSA.
4. **Other** inspections are used as the service request (SR) category when investigating complaints/investigations.
5. **Periodic** are annual/regular inspections of customers. SRs are populated to the universal work queue by the Oracle system. Periodic inspections can be classified as proactive enforcement.

The types of inspections, explanations, and rationale are documented in TSSA's internal procedures. As an example, an ad hoc craft show inspection is justified as follows (source: Standard Operating Procedure Upholstered and Stuffed Articles (USA) Criteria for Selecting Task Types within Oracle Service Request SOP-OP-USA-012-00):

Task Type	Explanation	Reasons for Inspections Additional Information
USA-Ad hoc Craft Show Inspection	An unscheduled inspection conducted at a craft show and is debriefed as one inspection for all the show booths/kiosks because education is the primary focus. These shows are retail in nature and open to the public.	<ul style="list-style-type: none"> • shows are typically routine within territories; • when there is a safety issue assigned by Statutory Director; • educate customers; • most shows held over weekends; • difficulty with timely follow-up due to closure of show, especially with out of province exhibitors.

The application of inspections to various market participants is depicted in the diagram below (source: Standard Operating Procedure Upholstered and Stuffed Articles (USA) Criteria for Selecting Task Types within Oracle Service Request SOP-OP-USA-012-00):



3.2.4 Product Categories

Following is the list of upholstered and stuffed articles that are covered by the regulation:

- Toys
- Sporting goods
- Pet items
- Furniture
- All other products with stuffing (any material used for padding, filling or cushioning).
- Mattresses
- Down-filled apparel
- Bedding items
- Handbags
- Luggage
- Seasonal ornaments
- Home furnishing products
- Insulated outerwear

The regulations also outline multiple items that are exempted:

- Original upholstery or articles manufactured as part of a motor vehicle, trailer, traction engine, farm tractor, road building machine, bicycle and any vehicle, drawn, propelled or driven by any kind of power, including muscular power, a motorized snow vehicle, an airplane, or a boat or other watercraft intended for personal use, provided that the upholstery or articles meet the standards of the appropriate federal authority at the time the vehicle or airplane is manufactured.
- Life-saving equipment that bears a stamp or label of approval of the appropriate federal authority.
- Disposable or single use articles.
- Helmets that bear a stamp or label of approval of the appropriate provincial or federal authority.
- Padded undergarments.
- Shoulder pads and trimmings in articles of clothing, and articles of clothing containing shoulder pads or trimmings, or both, but only with respect to the shoulder pads or trimmings, or both.

Additionally, imported goods which are sold online are not within the scope of the USA regulatory regime. Goods that are bought online and are mailed directly to a consumer's home from overseas factories are not inspected by the TSSA. Consumers who purchase these goods do so at their own risk. However, online goods bought through Canadian retailers that operate in Canada and have warehouses in Canada, are part of the program. For example, an e-reader case that is purchased through Amazon.ca is part of the USA regulatory regime, whereas an e-reader case that is purchased through Amazon.com is not.

Lastly, flammability is not within the scope of the USA regulatory regime and is covered by federal legislation.

3.3 Inspection and Infraction Information

Data provided by TSSA suggests that ad hoc inspections comprise the majority of enforcement activities, as detailed in the chart below ("Seasonal" inspections have also been included in the chart, in addition to the five categories described in the previous section). In fact, over the past five years, ad hoc inspections accounted for approximately 69% of the total. Prior to FY15, the majority of seasonal inspections were classified as ad hoc.

Inspection Type	FY11	FY12	FY13	FY14	FY15	Total
Ad hoc Total	1013	711	930	771	743	4169
Complaint	1	0	0	0	0	1
Initial Total	7	6	14	11	8	46
Other Inspection	2	11	23	23	25	84
Periodic Total	139	388	274	319	334	1454
Seasonal Inspection			5	9	243	257
Total	1162	1116	1246	1133	1353	6011

A single inspection can yield a number of instances of non-compliance, and multiple inspection orders. In fact, in FY2014, across 1,133 inspections conducted, there were 19,267 orders issued, averaging 17 orders per inspection.

Inspection Orders

An inspection order refers to an infraction, which has been issued with respect to an article that does not comply with the regulation. An article can incur one order or multiple orders, depending on the infractions determined by the inspector, such as no provincial label, manufacturer not registered in Ontario, and no contents declared. These orders range from high, medium to low risk. When dealing with a chain retailer, orders issued at one location apply to all stores in Ontario because the order has been issued to that article.

High Risk Orders

High risk orders are written in the case where a USA article poses a potential health risk to the public. These articles are red-tagged and immediately removed from sale or destroyed. Categories include unclean/soiled/contaminated filling material (immediate destruction ordered), no content disclosed (immediately removed from sale), incorrect content (immediately removed from sale), and no second-hand label (immediately removed from sale).

When an article is red tagged because it is unclean, unsafe, soiled, or contaminated, a report is immediately emailed to the appropriate individual and/or a copy of the report is submitted directly to the owner or manager. An explanation of the issue is also included with the report. The inspector discusses the destruction method, arranges verification of destruction, and witnesses destruction. When articles have been sealed and destruction orders have been issued, articles are isolated until arrangements have been made for destruction. Open communication is ongoing when high risk articles are cited. In some cases, inspectors have a frequent inspection cycle with customer to ensure compliance.

An additional high risk category is when a third party distributor/liquidator/auctioneer has purchased regulated articles where the filling material has not been disclosed and there is no trace back to manufacturer. These articles are removed from sale. Immediate remedial action can take place, and the inspector assists the customer by sampling the article to confirm the filling material and informing the customer of the contents so they can affix remedial action labels stating "Current Date, New Material Only, Contents Contain:..." In most cases, this is done while the inspector is still in the store. The customer is educated regarding the requirements of the regulation and subsequent sale of regulated articles, regardless of purchase origin.

Medium Risk/Low Risk Orders

These orders are written when the infraction poses a medium/low risk to the public and can be corrected within 30 days. Categories include: no label, but correct content is disclosed on another label or packaging; country of origin conflicts with registration address; or, in the case of furniture, labels are not in a conspicuous location. As required, customers may request an extension to the original compliance date. Orders issued for medium/low risk articles include: affix label for next shipment; customer to contact inspector with complete factory address; and customer to provide generic name.

Resolving Orders

For orders not involving the destruction of articles, resolution is made in multiple ways: on site, by phone, and by email. The retailer will send the report to the buyer or vendor, who then deals directly with the inspector. This process ensures confidentiality. Examples of resolutions include:

- A manufacturer registers,
- A vendor then emails the inspector the revised New Material Label with the corrected contents disclosed,
- The vendor sends the inspector the complete factory address (often amendments are made to the TSSA registration system or the factory is registered as new, this corrects any fraudulent attempts).

In all cases, the inspector takes the opportunity to educate the vendor with respect to the requirements of the regulation. A follow up inspection of the retailer ensures that corrective action has been made. When all these steps are completed, the inspector releases the orders and informs the retailer. TSSA considers communication between all parties to be essential to resolving orders.

As a demonstration of the types of infractions issued as a result of inspections, the following table contains the breakdown of inspection orders by infraction type in FY2014. Infractions types related to "unclean / unsafe filling materials", which could point to a direct health and safety risk are highlighted and analyzed further in the charts that follow. TSSA also considers other types of orders to be of high risk to the public (also bolded in the chart below), including "no contents declared," "incorrect content declaration," and "no second hand label". This is based on a possibility of a health concern arising from filling/stuffing information being incorrect. It would also appear that the vast majority of infraction types issued by TSSA do not correspond to a potential safety hazard.

A note on the chart below: TSSA cites that limitations in their current data management system prevent inspectors from recording the number of articles affected by each order issued. A manual count of inspection reports reveals approximately 2,250 articles were ordered destroyed due to unclean/unsafe filling materials in total since 2010. The chart below shows the number of orders issued for 2014 fiscal year, not the number of articles attached to each order.

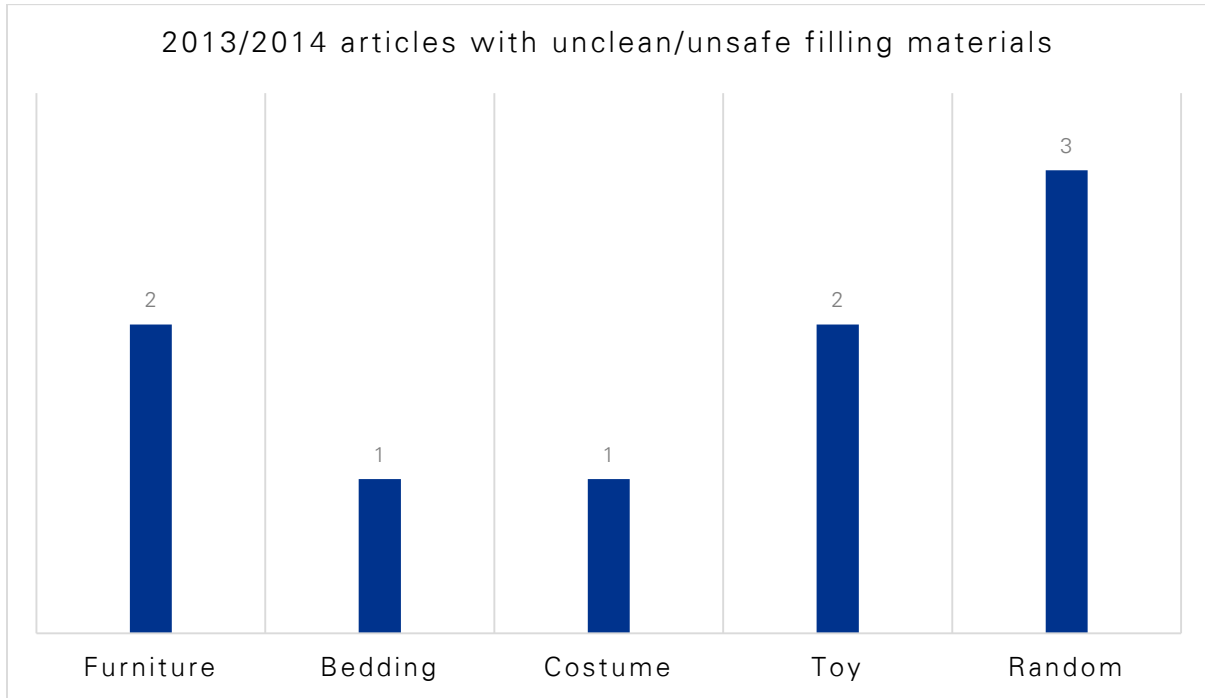
Infraction Type	Number of Inspection Order Issued
Other	7610
Manufacturer not registered in Ontario	4714
No provincial label	3436
Non-approved label format	1448
No contents declared	1045
Expired registration	291
Location of label	255
Incorrect content declaration	231
Country of origin conflicts with registration address	94
Non-generic name	65
Material of label	21
Renovator not registered in Ontario	21
Storage of filling materials/ articles	18
Unclean/unsafe filling materials	9
Separation of filling materials	6
Home hobby craft operator not registered in Ontario	1
No second-hand label	1
Label not securely affixed	1
Total	19267

Source: TSSA

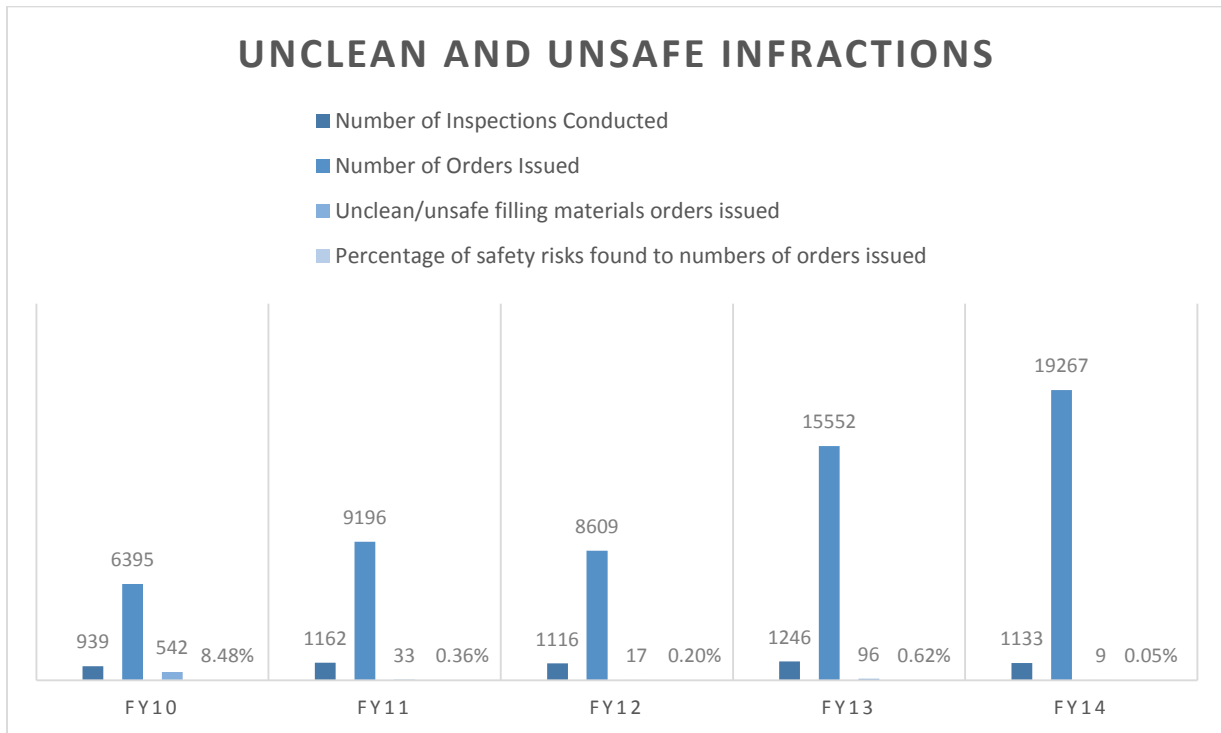
Given that the "Other" category comprises the largest proportion of incident types, it is further broken down into sub-categories below (source: in progress FY2015 inspection orders):

- Send a copy of the corrective action label to the inspector for confirmation
- List all filling materials by generic name, in order of predominance by volume
- Contact inspector to confirm Ontario Registration Number
- For furniture, affix provincial label in conspicuous location
- Affix approved provincial label
- Labels must be non-paper, made of white durable fabric or synthetic material
- Contact Inspector to confirm complete factory address
- Register manufacturer
- Place filling materials and/or articles off the floor

3.4 Safety Outcomes, Safety Data, Key Performance Indicators (KPIs)



Source: TSSA



Source: TSSA

The chart above shows the number of inspections conducted from the years 2010 to 2014. The number of orders issued as a result of these inspections and, of these orders, how many orders were related to unclean and/or unsafe filling materials are further depicted. Finally, the percentages of orders for unclean and/or unsafe fillings material out of total orders per year is given.

The 2010 fiscal year is an outlier on the chart, with a higher number of unclean/unsafe filling materials found than the following years. TSSA explains this spike as a result of two major investigations from which a significant number of orders were written, involving upholstered furniture, mattresses, and box springs.

While inspections have revealed instances where the cleanliness or safety of a product's filling was an issue, there is limited documented evidence of permanent or non-permanent injuries that were incurred by Ontarians as a result of their usage of USA products. Furthermore, TSSA cannot assess the relative risk of injury or fatality from USA goods due to insufficient data. The USA program does not have any regulatory requirements for reporting incidents or almost incidents. As such, information on the potential risk of injury or death is simply not available. However, the relatively low number of high risk orders issued by TSSA could suggest a low risk of injury or fatality from USA goods.

4 Stakeholder Perspectives

4.1 Introduction

This section of the report is drawn from a separate comprehensive document, containing the findings of stakeholder interviews. That report was submitted to the ministry on March 27, 2015, which was followed by a presentation of the findings on March 31, 2015. For more information and data on the findings highlighted below, please refer to the separate report.

As described in the methodology section, KPMG conducted a campaign of stakeholder interviews related to the USA regulation from March 9 to March 26. The main overarching themes from these interviews have been identified (listed on the following pages as 1 through 11), with additional subthemes detailed where appropriate. These interviews add a multi-dimensional perspective on the USA regulation, providing insights from the government, the regulatory authority, industry, and various associations in the sector.

4.2 Issues Summary

Issue 1 – Public Safety Risks

Reported issue 1A – Bed Bugs: Instances of articles containing bed bugs have been reported by stakeholders. Some stakeholders see this as a health hazard (regulator), while others perceive it to be a nuisance pest (retail associations, manufacturers/retailers, government).

Reported issue 1B – Allergens: Stakeholders commented that some members of the public would be concerned with the article's content due to allergens (regulator, manufacturers/retailers, consumers' associations).

Reported issue 1C – Public Recalls: Some stakeholders commented that public recalls of goods are reliable indicators of risks to public safety (government). So far, there have been few recalls related to articles under the USA regulation, and most of those dealt with matters unrelated to the stuffing materials, but rather product design, features (zippers), etc.

Reported issue 1D – Divergence on Public Health Threats: Some stakeholders cited examples of public health hazards due to contaminated/unsafe articles (regulators, government), such as mattresses being manufactured with unclean and unsafe materials, mattresses using old rusty coils, a dead mouse found in a pillow, and incidents of bed bugs in items being sold. Others point to little or no evidence of serious health risks from USA goods (retail associations, manufacturers/retailers, government).

Issue 2 – Consumer Protection

Reported issue 2A – Protection Against Fraud: Stakeholders have seen instances of fraud in the marketplace, with the stuffing and filling in goods not being the same as the label lists (regulator, government, consumer and retail associations, manufacturers/retailers).

Reported issue 2B – Role of Brand Perception and Marketplace Competition: Most industry representatives cited internal quality and supply chain control practices, company reputation, and brand perception as factors that contribute to public trust in product safety (retailers/manufacturers, retail associations).

Reported issue 2C – Consumers' expectations and trust in government: Stakeholders described the Canadian public as having trust that a government body is looking out for the public's wellbeing (regulator, government, consumers association).

Reported issue 2D – Role of label at point of purchase: Stakeholders generally agree that an article's label plays an important role at the time of purchase, with some minor exceptions (regulator, government, retail and consumer).

Issue 3 – New and Emerging Channels

Reported issue 3A – Labels on goods sold online: Many stakeholders agreed that there needs to be a reconsideration of the requirements for labels on online goods (retail and consumer associations, manufacturers/retailers, government).

Reported issue 3B – Grey market: Many stakeholders identified the grey market as a significant issue to their business. The “grey market” is genuine products that are being bought online through different channels that are not enforceable through the USA regime (retail associations, manufacturers/retailers).

Reported issue 3C – Online sales of used goods: Stakeholders identify the increasing trend of selling used goods over the internet, which are not enforced under USA regulations and could potentially put consumers at risk (regulator, government, retail and consumer associations, manufacturers/retailers).

Reported issue 3D – Impact of international trade and globalization: Stakeholders generally agreed that globalization has brought widespread changes to the retailing and sourcing environment.

Issue 4 – Impacts to Value Chain

Reported issue 4A – Cost of labels: Stakeholders gave varying insights on the costs to comply with Ontario’s labelling requirements. Some see it as a minor incremental cost (regulator, manufacturers/retailers, government), while others point to financial, aesthetic, and usability issues for companies (manufacturers/retails, retail associations).

Reported issue 4B – Variance of label size requirements for articles: Stakeholders provided varying perspectives on the impact of different label sizing requirements across goods (regulator, government, retail and consumer associations, manufacturers/retailers).

Reported issue 4C – Burden of compliance: Stakeholders gave mixed opinions on the impact of compliance on their value chain as a whole. Some impacts were experienced at the point of manufacture (label production and adherence), other impacts at the point of importation (customization of products for the Canadian market), as well as further impacts at the point of retail (inspection burden on retailers and disruption to the business) (retail associations, manufacturers/retailers).

Issue 5 – Spillover Effects

Reported issue 5A – Ontario setting a high bar for regulatory oversight: Stakeholders have found that if they comply with Ontario’s regulation for upholstered and stuffed articles, they would meet or exceed the regulatory requirements in other provinces (retail and consumer associations, manufacturers/retailers).

Issue 6 – Jurisdictional Insights

Reported issue 6A – Reactive versus proactive enforcement: Stakeholders agreed that Ontario is more proactive in enforcement, while many other jurisdictions are reactive in enforcement (regulator, government, retail and consumer associations, manufacturers/retailers). Reactive enforcements refers to regulators taking action after a complaint or incident has occurred. Proactive enforcement refers to regulators conducting random or targeted inspections that are not based off of complaints. They are looking for potential issues, before they generate complaints or incidents.

Issue 7 – Harmonization of Regulations

Reported issue 7A – Broad support for harmonizing USA regulations: Stakeholders agree that harmonization across Canada, North America, and eventually globally, would have a positive impact on the sector (government, retail and consumer associations, and manufacturers/retailers).

Issue 8 – Lack of Comprehensive Data Sets

Reported issue 8A – Identification of data sets: Stakeholders struggled to identify sources of reliable information that would highlight or identify the risks related to USA goods (retail and consumer associations, manufacturers/retailers).

Issue 9 – Lack of Awareness of Regulations

Reported issue 9A – Need for education on regulations: Stakeholders believe that a balanced approach of education and enforcement would yield higher levels of compliance with regulations (retail and consumer associations, manufacturers/retailers).

Issue 10 – Stakeholder Suggestions

Reported issue 10A – Update language of USA regulation: Many stakeholders remarked on the need for the USA regulation to be modernized to suit the unique needs of the 21st century retail landscape (government, retail and consumer associations, manufacturers/retailers).

Reported issue 10B – Determine new approach to dealing with online channels: Stakeholders have acknowledged that online channels are becoming more prominent, but struggled with constructive comments on how to roll them in under the existing USA regime (regulator, government, retail and consumer associations, manufacturers/retailers).

Issue 11 – Financial burden

In addition to the issues identified on the previous pages, stakeholders have also expressed their view on the financial burden related to the USA regulations. Reportedly, the costs associated with the label itself are minimal, related to 5 to 10 cents per unit. However, more significant costs are incurred from:

- Label design costs;
- Segregation of goods for different geographies;
- Inventorying costs for different products;
- Time and effort expended in dealing with the regulator;
- Time and product costs associated with products being pulled from sales or destroyed;
- Incremental regulatory resources (i.e. salaries of employees who deal with compliance matters); and
- (Manufacturers/retailers, retail associations).

5 Jurisdictional Insights

5.1 Introduction to Jurisdictional Insights

This section of the report is drawn from a separate comprehensive document, containing research results on legislative, regulatory, administrative, and operational aspects of other similar jurisdictions. That report was submitted and presented to the Ministry on April 16, 2015. For more information and data on the findings highlighted below, please refer to the separate report, which is available upon request to the Ministry.

The original report and the summary presented below are structured on the basis of the jurisdictional analysis framework presented to the Ministry of Government and Consumer Services on March 26, 2015, and subsequently revised and approved on April 2, 2015.

As per the above framework, KPMG conducted research on 11 jurisdictions to inform the development of options for modernizing Ontario's Upholstered and Stuffed Articles regulation. The research of these jurisdictions involved analysis of secondary sources, including review of applicable legislation, regulations, annual reports, performance publications, and media articles, among others. KPMG also held interviews with government officials in most of the jurisdictions, in some cases with multiple parties.

5.2 Insights from Regulated Jurisdictions

Most regulatory bodies overseeing upholstered and stuffed articles attribute the majority of non-compliance cases to the lack of awareness and understanding of the law. Once educated and informed about pertinent regulations, companies willingly comply, either by registering, affixing appropriate labels, or modifying the product. The implication of this finding is that providing education, building awareness, and assisting companies in the sector may lead to higher rates of compliance among market participants.

A mix of revenue models is employed by the reviewed jurisdictions to regulate the sector. License fees and expiry schedules vary from state to state, and some have reporting requirements on the goods sold. Furthermore, in Pennsylvania and Ohio, per article fees are collected from the sale of regulated goods. This implies that Ontario, in exploring options for modernizing the USA regulation, may consider different funding models for its USA program.

There is a general lack of comprehensive data sets that reveal an attributable link between enforcement activities and public health and safety outcomes. Anecdotal evidence of cases that have mitigated potential health hazards have been provided by regulators, however, a holistic view of regulatory effectiveness is largely absent without a broad, quantitative set of impact data. Some jurisdictions collect output data (i.e., number of inspections, citations, prosecutions, etc.), but the ultimate results of that activity are not being tracked by any of the reviewed jurisdictions.

US states work together to standardize labelling requirements on goods, aiming to diminish or eliminate differences in label composition (sizing, colour) required (as raised in interviews with Ohio officials). Furthermore, regulatory harmonization appears to be one of the most important issues for businesses operating in this sector. Thus, efforts to standardize labeling, testing, and other regulator provisions with major North American counterparts may need to be a priority for Ontario in modernizing the USA regulation. For example, as part of the Québec government's efforts to better inform the stakeholders and eliminate trade barriers in North America, a senior economic development advisor is an active member of the IABFLO (International Association of Bedding and Furniture Law Officials) network.

It appears that populous states with a significant industrial sector tend to set the standard for a regulatory regime in their respective geographic area. Covering eastern, middle, and western US geography, the three reviewed states (Pennsylvania, Ohio and California) likely provide some degree of regulatory protection to

their neighbouring jurisdictions, as the product customization for each state may exceed the cost of affixing a label that is compliant in one or all of the regulated states. The corollary in Canada may also exist, with Ontario, Manitoba, and Quebec imparting similar effects on other Canadian provinces.

A proactive enforcement regime, similar to those that exist in Ontario, Ohio, and California, appears to be more resource intensive, as inspectors need to cover large geographic areas and retail / manufacturing locations. Unless a highly focused risk-based approach is adopted, the efficacy of inspections may not be high, leading to interactions with organizations that are already in compliance. Thus, collecting the right data to inform risk factors, conducting analysis to identify high probabilities of non-compliance, and targeting very specific segments or individual organizations will need to be instituted if Ontario is to continue proactive enforcement of the USA regulations.

In the United States, there are bedding regulations at the federal level, as well as fifteen states that have upholstered and stuffed articles regulations. Three Canadian provinces have upholstered and stuffed articles regulations, in addition to federal product safety legislation and regulations.

5.3 Insights from Non-regulated Jurisdictions

Canadian provinces without regulations see these issues as either falling under federal regulatory domain, to be handled by Health Canada (the federal department responsible for administering the CCPSA), or a civil matter to be resolved in small claims court. It is not the role of these provinces and their regulatory bodies to take action against companies with upholstered and stuffed goods disputes. They receive few complaints relating to these articles.

Stakeholders in the reviewed jurisdictions do not perceive USA-type articles to pose significant health and safety threats. In the event that such threats were to arise, they perceive the federal government to have sufficient tools at its disposal to appropriately address any health and safety issues.

The extent of spillover effects from regulated jurisdictions is unclear. Importers that are selling goods across Canada will adhere to Ontario's labelling requirements and not track where goods go within Canada. A majority of manufacturing in Canada takes place in Québec and Ontario (approximately 45% takes place in Québec). These manufacturers are adhering to the USA regulations and sending their goods to the rest of Canada. The number of goods in the unregulated provinces that would be found as not meeting Ontario's regulatory standards is unknown by these unregulated provinces. It is also possible that offshore manufacturers, who import goods into the North American market, are likely adhering to U.S. state regulations. Therefore, any spillover effects (to the extent that they exist) may arise from not only Ontario's regulation, but also from large U.S. states that have USA-type labeling regulations in place.

5.4 Insights from Federal Jurisdictions

The federal regime covers all products covered in Ontario's Upholstered and Stuffed Articles regulation, including stuffed toys which are specifically addressed in the Toys Regulations under the CCPSA. If there is a significant safety risk from a product that causes serious, permanent harm or death, Health Canada will take action to remove those goods from the public. When the Consumer Product Safety Program identifies a trend of a product having risk to safety, or becomes aware of an incident involving a consumer product, the program will review the information related to the case and determine whether or not the seriousness of the incident warrants a risk assessment. A risk assessment is not carried out in all situations. If the program determines that a risk assessment is not warranted, the issue is still tracked and monitored. Enforcement ranges from voluntary requests, recalls, penalties and fines, with criminal prosecutions as a final step to achieve corrective action. Further detail on the federal regime can be found in the separate report.

Under the USA regulation, as per the administrative section, TSSA has inspection power for both proactive and reactive enforcement of the regulation. Under the Canadian Consumer Product Safety Act, federal inspectors also have inspection powers aimed at verifying compliance and preventing non-compliance. The

inspector may at any reasonable time enter a place, including a conveyance, in which the inspector has reasonable grounds to believe that a consumer product is manufactured, imported, packaged, stored, advertised, sold, labelled, tested or transported, or a document relating to the administration of the Act or the regulations is located.² To summarize, both regimes cover the same products, accept complaints on products, have inspection powers, and will enforce orders relating to risks to public safety.

There are some notable differences between the federal and provincial programs. Firstly, the federal program has a clearer threshold for what a safety risk is. Health Canada defines health and safety hazards as an incident that causes serious impact to health. A serious impact is a health event that is irreversible, such as losing a limb, suffering permanent damage, or dying. TSSA, on the other hand, investigates all incidents of non-compliance with the regulation whether a health or safety impact is observed or not. For example, according to federal government officials, issues like bed bugs would likely not fall under the federal department's responsibility. The department is also less likely to respond to individual or smaller group cases with minor issues. Health Canada says in rare cases, people may experience severe allergic reactions to bed bug bites.³ The US Centre for Disease Control and Prevention cites bed bugs as "a problem worldwide, are resurging, causing property loss, expense, and inconvenience. The good news is that bed bugs do not transmit disease."⁴ In contrast, TSSA does view infestations, such as bed bugs, as a potential safety risk and conducts inspections in response to consumer complaints on bed bugs.

Additionally, under the CCPSA, the list of an inspector's powers is longer, more specific and, arguably, broader than those under the USA regime. For example, under the USA regulation, seizure of goods or any other thing may only be done via a warrant, issued by a Justice of the Peace. Under the CCPSA, no warrant is required for the seizure of goods. The CCPSA also specifically provides for testing.

Furthermore, while both regimes can impose fines, fines under the CCPSA regime can be higher. Moreover, under the CPPSA there is the provision for administrative monetary penalties, which do not require prosecution. There is also power for Health Canada to recall a product that does not exist under the USA regime.

As highlighted in section 3.4, the USA regulation does not have requirements for reporting incidents. The TSSA USA program does require the reporting of incidents as per a Director's Order issued in October, 2014. In contrast, if a retailer or manufacturer becomes aware of a safety risk related to one of their upholstered and stuffed articles, they are legally obligated to report that risk to Health Canada.⁵

The main difference between the federal and the provincial regulations is the federal act arguably has wider powers for mitigating safety risks related to upholstered and stuffed articles. They can impose higher fines, have stronger inspection powers, have recall powers, legal obligations on retailers and manufacturers to report incidents, and cover a wider array of articles than the USA regulation. However, the USA regulation does have wider scope in terms of the level of harm it chooses to address and the level of enforcement action in response to individual complaints.

Below is a high-level chart of some of the similarities and differences between the CCPSA and USA regulation. The first line, upholstered and stuffed articles, refers to all the products under the USA regulation. CCPSA covers all of the products included in the USA regulation, as well as all consumer products, including their components, parts, or accessories that may reasonably be expected to be obtained by an individual or to be used for non-commercial purposes, including for domestic, recreational,

² Health Canada. http://www.hc-sc.gc.ca/cps-spc/pubs/indust/ccpsa_ref-icspc/index-eng.php#a104

³ Healthy Canadians. <http://www.healthycanadians.gc.ca/healthy-living-vie-saine/environnement-environnement/pesticides/bedbugs-punaies-lits-eng.php>

⁴ Centers for Disease Control and Prevention. <http://www.cdc.gov/parasites/bedbugs/>

⁵ Health Canada. http://www.hc-sc.gc.ca/cps-spc/pubs/indust/ccpsa_ref-icspc/index-eng.php#a104

and sports purposes. Products' packaging is also included. A detailed comparison of the components of the USA regulation and the CCPSA is provided in section 6 – Federal Legislation Overlap Analysis.

Aspects of regimes	USA Regulation	CCPSA
Upholstered and stuffed articles	✓	✓
Proactive enforcement powers	✓	✓
Reactive enforcement powers	✓	✓
Removing items from sale	✓	✓
Recall powers	✗	✓
Prosecution powers	✓	✓
Obligation from retailers and manufacturers to report safety risks	✗	✓
Regular enforcement on risks that cause serious, permanent injury	✓	✓
Regular enforcement on risks that cause non-serious, non-permanent injury	✓	✗

5.5 Products Covered in Reviewed Jurisdictions

California

- Upholstered furniture
- Bedding products with concealed filling materials (mattresses, pillows, comforters, mattress pads).
- Filling materials (cotton batting, polyurethane foam, feather & down)
- Thermal insulation

United States Federal Regulations

- US regulations cover thousands of products
- Focus on protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard

Pennsylvania

- | | |
|----------------|---|
| • Mattresses | • Other filled bedding |
| • Pillows | • Stuffed toys |
| • Bolsters | • Upholstered furniture |
| • Feather beds | • Bulk materials intended for use in such products listed above |
| • Cushions | |
| • Comforters | |

Canadian Federal Regulations

- All consumer products including their components, parts, or accessories that may reasonably be expected to be obtained by an individual or to be used for non-commercial purposes, including for domestic, recreational, and sports purposes. Products' packaging is also included
- Stuffed toys are the only articles related to stuffed goods that are also specifically identified by the act. However, the Act applies to all products in the definition above
- Products not covered include explosives, cosmetics, drugs, food, medical devices, and ammunition

Ohio

- Cushions
- Toys and dolls
- Infant accessories
- Beddings and pillows
- Sport and leisure
- Utility items
- Upholstered furniture
- Dual sleeping furniture
- Other items (Air mattresses, tree stands, padded tractor seats, boat seats, boat cushions, therapeutic pads, magnetic pads)
- Additionally, any articles containing filling materials for sleeping, sitting, resting or reclining purposes will come under scope.

Ontario

- Toys
- Sporting goods
- Pet items
- Furniture
- Mattresses
- Down-filled apparel
- Bedding items
- Handbags
- Luggage
- Seasonal ornaments
- Home furnishing products
- Insulated outerwear
- All other products with stuffing (any material used for padding, filling or cushioning)

European Union

- The EU has regulations that cover an array of household products including:
- General product safety for consumer products
- Toys
- Home furnishings and furniture
- Textile's labeling

Among the jurisdictions reviewed, with the exception of the Canada's wide federal legislation and regulations, Ontario has the most extensive list of products covered by an upholstered and stuffed articles regulation. Ohio's list of articles that fall under their USA regulation is the third most extensive. The key

difference in scope is Ohio covers all other filling materials in personal articles that are for sleeping, sitting, resting, or reclining, whereas Ontario has a wider scope of articles beyond articles that a person may rest against. Articles in Ontario can include personal items, such as the foam lining in electronic reader covers. Ohio further does not include stuffed apparel in its regime; Utah is the only other jurisdiction outside of Canada that includes stuffed clothing in its regime. Their regulation on stuffed apparel focuses on apparel through the consumer protection lens, regulating that customers are receiving the materials they are being told they are paying for, particularly concerning apparel that contains stuffing that provides warmth, like parkas and winter boots. Ontario has the second widest scope of articles included in its upholstered and stuffed articles regulation, behind the Canadian federal legislation and regulations.

6 Federal Legislation Overlap Analysis

A key driver for having a regulatory review conducted at this time is the 2011 implementation of the federal government’s *Canada Consumer Product Safety Act* (CCPSA). Questions arose on how the new federal legislation and regulations might overlap with the pre-existing provincial regulations. The following section provides analysis on overlaps and gaps between the CCPSA and its regulations, the USA regulations, and any other relevant legislation/regulations. The analysis is split up between six applicable areas: (1) health and safety; (2) licensure; (3) product quality; (4) labelling and product misrepresentation; (5) inspection powers; and (6) enforcement powers and penalties. The Other Acts and Regulations column includes acts and regulations from the federal government and the Ontario government. The reader should assume the act or regulation is federal, unless specified that it is a provincial act or regulation.

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
1. Health & Safety		
<p>Prohibitions on use of certain materials in manufacture</p> <p>9. (1) No person shall use second-hand material as stuffing in the manufacture of an upholstered or stuffed article or add second-hand material as stuffing in its renovation.</p> <p>(2) No person shall use material that contains vermin or is unclean in the manufacture or renovation of any upholstered or stuffed article.</p>	<p><u>CCPSA</u></p> <p>Manufacturer and importer</p> <p>7. No manufacturer or importer shall manufacture, import, advertise or sell a consumer product that</p> <p>(a) is a danger to human health or safety⁶;</p> <p>(b) is the subject of a recall order made under section 31 or such an order that is reviewed under section 35 or is the subject of a voluntary recall in Canada because the</p>	<ul style="list-style-type: none"> • The USA Regulations focus on product category specific health and nuisance concerns and prohibit sale of products contravening these standards. The CCPSA puts in place higher level general standards focussed on risks to human health and safety that apply across product categories. • The USA prohibitions include public health and nuisance issues that may not reach the level of an unreasonable “human health and safety” hazard for

⁶ A “danger to human health or safety” is defined in s. 2 of the CCPSA as “any unreasonable hazard - existing or potential - that is posed by a consumer product during or as a result of its normal or foreseeable use and that may reasonably be expected to cause the death of an individual exposed to it or have an adverse effect on that individual's health - including an injury - whether or not the death or adverse effect occurs immediately after the exposure to the hazard, and includes any exposure to a consumer product that may reasonably be expected to have a chronic adverse effect on human health.”

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
<p>(3) No person shall use down or other feather products in the manufacture or renovation of an upholstered or stuffed article unless the down or other feather products have first been processed in accordance with section 18.</p> <p>Prohibition on sale of unsanitary articles</p> <p>10. (1) No person shall sell or offer for sale an upholstered or stuffed article that has been in contact with a person suffering from a communicable disease unless the article has been sterilized in accordance with section 19 or disinfected in accordance with section 20.</p> <p>(2) No person shall sell or offer for sale an upholstered or stuffed article that contains vermin unless the article has been sterilized in accordance with section 19 or disinfected in accordance with section 20.</p> <p>(3) No person shall sell or offer for sale an upholstered or stuffed article that is so soiled or is in such condition that the article is likely to affect adversely a person's health.</p>	<p>product is a danger to human health or safety; or</p> <p>(c) is the subject of a measure that the manufacturer or importer has not carried out but is required to carry out under an order made under section 32 or such an order that is reviewed under section 35.</p> <p>Advertising and selling</p> <p>8. No person shall advertise or sell a consumer product that they know</p> <p>(a) is a danger to human health or safety;</p> <p>(b) is the subject of a recall order made under section 31 or such an order that is reviewed under section 35 or is the subject of a voluntary recall in Canada because the product is a danger to human health or safety; or</p> <p>(c) is the subject of a measure that has not been carried out but is required to be carried out under an order made under section 32 or such an order that is reviewed under section 35.</p> <p>CCPSA Regulations</p> <ul style="list-style-type: none"> • Toys Regulations – focus on thermal, flammability, electrical, mechanical, choking and auditory hazards. There are also prohibitions and restrictions on toys containing certain toxic substances. With respect to stuffed toys: 	<p>the purposes of the prohibitions in the CCPSA (for example vermin, lack of cleanliness, etc. unless those escalate to an extreme level or pose a specific threat).</p> <ul style="list-style-type: none"> • In the CCPSA regime, product category-specific requirements and specifications are dealt with in regulations to the Act and s. 6 prohibits the manufacture, import, advertisement or sale of a consumer product that doesn't meet such regulatory requirements. There are no regulations that specifically deal with the issues addressed in the USA regulation except with respect to stuffed toys under the Toy Regulations, which must be clean and free of vermin. • At the provincial level, under the <i>Health Protection and Promotion Act</i>, Boards of Health have authority with respect to health hazards. Again, however, the USA prohibitions address a number of issues which, while extremely inconvenient or distasteful, may not reach the level of a "health hazard."

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
	<p>29. Material that is used as stuffing in a doll, plush toy or soft toy must meet all of the following requirements:</p> <p>(a) it must be clean and free from vermin;</p> <p>(b) it must be free of hard and sharp foreign matter; and</p> <p>(c) it must be non-toxic and non-irritant in accordance with Schedules 2 and 3.</p> <ul style="list-style-type: none"> • Cribs, Cradles and Bassinets Regulations – focus on mattress support, crib spacing, assembly instructions, and strangulation. Mattresses are addressed primarily in respect of required thickness to avoid suffocation hazards. • Hazardous Products (Mattresses) Regulations – requires mattresses to comply with flammability standard. • Textile Flammability Regulations – focus on flammability of bedding and textile products. <p><u>Public Health Protection Act</u></p> <p>Order by M.O.H. or public health inspector re health hazard</p> <p><u>13. (1)</u> A medical officer of health or a public health inspector, in the circumstances mentioned in subsection (2), by a written order may require a person to take or to refrain from</p>	

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
	<p>taking any action that is specified in the order in respect of a health hazard.⁷</p> <p>Condition precedent to order</p> <p><u>(2)</u> A medical officer of health or a public health inspector may make an order under this section where he or she is of the opinion, upon reasonable and probable grounds,</p> <p>(a) that a health hazard exists in the health unit served by him or her; and</p> <p>(b) that the requirements specified in the order are necessary in order to decrease the effect of or to eliminate the health hazard.</p>	

⁷ Under s. 2 of the *Health Protection and Promotion Act*, "health hazard" means, "(a) a condition of a premises, (b) a substance, thing, plant or animal other than man, or (c) a solid, liquid, gas or combination of any of them, that has or that is likely to have an adverse effect on the health of any person."

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
2. Licensure		
<p>Licence required</p> <p>3. (1) No person shall carry on business as a manufacturer or as a renovator unless the person is licensed.</p> <p>(2) An application for a licence as a manufacturer or as a renovator shall be in the form provided by the designated administrative authority, be accompanied by the fee set by the designated administrative authority and contain the following information:</p> <ol style="list-style-type: none"> 1. The name, address and telephone number of the applicant, including the name under which the applicant carries on business. 2. The names of the officers, if the applicant is a corporation. 3. The types of articles manufactured or renovated. 	None	<ul style="list-style-type: none"> • There is no equivalent to the requirement for pre-sale licensure of manufacturers and renovators under the USA Regulations. • In other regulatory schemes, product standards are enforced by prohibiting sale of non-compliant products and, in some cases, requiring product licences (e.g. health products under the <i>Food and Drugs Act</i>) or certifications (e.g. electrical products under the <i>Product Safety Regulation</i> to the <i>Electricity Act</i>). Another model is to require notification to a regulatory or inspection authority prior to commencement of operations (e.g. food premises under the <i>Health Protection and Promotion Act</i>). • Comparable regimes (i.e. of licensing entities as opposed to products) apply in the case of health product manufacturing and distribution establishments, which are federally regulated under the <i>Food and Drug Regulations</i>, the <i>Natural Health Product Regulations</i> and the <i>Medical Devices Regulations</i>, food importation and preparation for interprovincial trade (under new <i>Safe Food For Canadians Act</i>).

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
3. Product Quality		
<p>See quality and content provisions listed under category 1 (Health & Safety) above.</p>	<p><u>CCPSA</u></p> <p>See quality and content provisions listed under category 1 (Health & Safety) above.</p> <p><u>Sale of Goods Act & Contract Law</u></p> <p>Implied conditions as to quality or fitness</p> <p>15. Subject to this Act and any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:</p> <ol style="list-style-type: none"> 1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description that it is in the course of the seller's business to supply (whether the seller is the manufacturer or not), there is an implied condition that the goods will be reasonably fit for such purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose. 2. Where goods are bought by description from a seller who deals in goods of that description (whether the seller is the manufacturer or not), there is an implied condition that the goods will be of merchantable quality, but if the buyer has examined the goods, there is no implied condition as regards defects that such examination ought to have revealed. 	<ul style="list-style-type: none"> • <i>Contract Law</i> - The key provision in the Sale of Goods Act is that, where goods are bought by description (i.e. a "mattress") from a seller who deals with goods of that description, they must be of "merchantable quality," which means that they must meet reasonable expectations of an average purchaser. An average purchaser would expect that upholstered goods will not be full of bed bugs or stuffed with rotten material. • <i>Remedy in Contract Law</i> - The remedy for a breach of a right under the Sale of Goods Act is for the purchaser to claim for damages to put them in the position they would have been in had it not been for the warranty breach. This can include getting one's money back as well as consequential damages for other expenses. • <i>Tort Law</i> - In the event that an upholstered or stuffed article causes harm because of the way it is marked (or not marked) or because it contains a noxious substance/ vermin there is a potential claim for negligence. Such a claim would likely be brought against the manufacturer. Failure to meet a CCPSA standard would be extremely persuasive evidence that the manufacturer failed to meet the

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	<p>3. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.</p> <p>4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.</p> <p><u>Consumer Protection Act, 2002 (Ontario)</u></p> <p>Quality of goods</p> <p>9. (2) The implied conditions and warranties applying to the sale of goods by virtue of the <i>Sale of Goods Act</i> are deemed to apply with necessary modifications to goods that are leased or traded or otherwise supplied under a consumer agreement.</p> <p><u>Tort (Negligence) Law</u></p> <p>To prove negligence, a plaintiff must establish that:</p> <p>(a) the defendant owed them a duty of care;</p> <p>(b) the defendant breached the applicable standard of care associated with that duty; and</p> <p>(c) the defendant's breach caused the plaintiff's harm and damages.</p> <p>In the product liability context, manufacturers are typically found to owe a duty to purchasers of their products. That duty requires that they take reasonable care to ensure that their products will not result in injury or property damage and are reasonably safe for their foreseeable use.</p>	<p>standard of care. Similarly, failure to meet a USA standard would be evidence of a standard of care breach.</p> <ul style="list-style-type: none"> • <i>Remedy in Tort</i> - Damages would include out-of-pocket expenses as well as compensation for pain and suffering (although this is capped pursuant to a 1978 Supreme Court of Canada ruling).

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4. Labelling & Product Misrepresentation		
<p>Labelling requirements</p> <p>5. (1) On completing the manufacture or renovation of an upholstered or stuffed article, a manufacturer or renovator shall immediately affix a label in accordance with this Regulation to a conspicuous part of the main body of the article.</p> <p>(2) A retailer who receives a second-hand article for purposes of sale shall, immediately upon receiving it, affix a second-hand label in Form 5 to a conspicuous part of the article.</p> <p>Prohibition on sale of unlabelled articles</p> <p>6. (1) No person shall sell or offer for sale, whether by auction or otherwise, an upholstered or stuffed article that does not bear a label in accordance with this Regulation that is securely affixed to a conspicuous part of the main body of the article.</p> <p>(2) Subsection (1) does not apply to the sale or offering for sale by a householder of his or her own household articles from or on the householder's own premises.</p> <p>Prohibition on removal of labels</p> <p>7. No person shall remove, deface or alter, or attempt to remove, deface or alter, any label that is affixed in accordance with this Regulation to an article before the article to which it is affixed is sold by retail and delivered</p>	<p>CCPSA</p> <p>Misleading claims — package or label</p> <p>9. No person shall package or label a consumer product</p> <p>(a) in a manner — including one that is false, misleading or deceptive — that may reasonably be expected to create an erroneous impression regarding the fact that it is not a danger to human health or safety; or</p> <p>(b) in a manner that is false, misleading or deceptive regarding its certification related to its safety or its compliance with a safety standard or the regulations.</p> <p>Competition Act</p> <p>Misrepresentations to public</p> <p>74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,</p> <p>(a) makes a representation to the public that is false or misleading in a material respect;</p> <p>(b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and</p>	<ul style="list-style-type: none"> As illustrated here, there are a numerous statutes and regulations that prohibit labelling of products in a manner that is false or misleading. There is not, however, another regulatory source that creates specific requirements as to labelling regarding the content of the stuffed and upholstered items covered under the USA Reg. The CCPSA requires that consumer products be labelled so as not to create a false impression about the safety of the consumer product. The federal <i>Competition Act</i> and the provincial <i>Consumer Protection Act, 2002</i> both govern misleading representations about products. As of March 23, 2015, the Ontario MGCS and the Competition Bureau have entered into an MOU aiming to increase coordination between the two organizations. For textiles, the <i>Textile Labelling Act</i> does not entirely address all items addressed under the USA regulation, although there is some overlap. Textiles for the purpose of that Act are “any textile fibre, yarn or fabric, or any product made in whole or in part from a textile fibre, yarn or fabric.”

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<p>or, in the case of renovators, is returned to the owner</p>	<p>proper test thereof, the proof of which lies on the person making the representation; or</p> <p>(c) makes a representation to the public in a form that purports to be</p> <p style="padding-left: 40px;">(c) a warranty or guarantee of a product, or</p> <p style="padding-left: 40px;">(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,</p> <p>if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.</p> <p><u>Consumer Protection Act, 2002 (Ontario)</u></p> <p>False, misleading or deceptive representation</p> <p>14. (1) It is an unfair practice for a person to make a false, misleading or deceptive representation.</p> <p>Examples of false, misleading or deceptive representations</p> <p>(2) Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations:</p> <ol style="list-style-type: none"> 1. A representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities they do not have. ... (Indicates that the section of the act continues, but not relevant in this analysis). 	<ul style="list-style-type: none"> • The <i>Consumer Packaging and Labelling Act</i> would only apply in the case of upholstered or stuffed goods that are packaged (which would not ordinarily be the case). • That act is primarily concerned with appropriate representation of the nature, quality, age, size, material content, composition, geographic origin, performance, use or method of manufacture, or production of the pre-packaged product as may be prescribed. Textile articles are exempt from the act. Products that are packaged in such a manner that the product contents are visible and identifiable are also exempt from labelling, making any overlap with USA goods minimal.

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	<p>3. A representation that the goods or services are of a particular standard, quality, grade, style or model, if they are not. ...</p> <p>4. A representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, but the reasonable use of goods to enable the person to service, prepare, test and deliver the goods does not result in the goods being deemed to be used for the purposes of this paragraph.</p> <p><u>Textile Labelling Act</u></p> <p>Prohibition respecting consumer textile articles</p> <p>3. No dealer shall sell, import into Canada or advertise</p> <p>(a) a prescribed consumer textile article unless the article has applied to it a label containing a representation with respect to the textile fibre content of the article; or</p> <p>(b) any consumer textile article that has applied to it a label containing a representation with respect to the textile fibre content of the article unless the label is applied to it in accordance with and complies with all applicable provisions of this Act.</p> <p>...</p> <p>Representations relating to consumer textile articles</p> <p>5. (1) No dealer shall apply to a consumer textile article a label, or sell, import into Canada or advertise a consumer textile article that has</p>	

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	<p>applied to it a label containing any false or misleading representation that relates to or may reasonably be regarded as relating to the article.</p> <p>Representations relating to textile fibre products</p> <p>(2) No dealer shall, by means of a label, advertising or otherwise, make any false or misleading representation that relates to or may reasonably be regarded as relating to a textile fibre product.</p> <p><u>Consumer Packaging and Labelling Act</u></p> <p>Representations relating to pre-packaged products</p> <p>7. (1) No dealer shall apply to any pre-packaged product or sell, import into Canada or advertise any pre-packaged product that has applied to it a label containing any false or misleading representation that relates to or may reasonably be regarded as relating to that product.</p> <p>Definition of “false or misleading representation”</p> <p>(2) For the purposes of this section, “false or misleading representation” includes</p> <p>(a) any representation in which expressions, words, figures, depictions or symbols are used, arranged or shown in a manner that may reasonably be regarded as qualifying the declared net quantity of a pre-packaged product or as likely to</p>	

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	<p>deceive a consumer with respect to the net quantity of a pre-packaged product;</p> <p>(b) any expression, word, figure, depiction or symbol that implies or may reasonably be regarded as implying that a pre-packaged product contains any matter not contained in it or does not contain any matter in fact contained in it; and</p> <p>(c) any description or illustration of the type, quality, performance, function, origin or method of manufacture or production of a pre-packaged product that may reasonably be regarded as likely to deceive a consumer with respect to the matter so described or illustrated.</p>	
5. Inspection Powers		
<p>Inspection</p> <p>17. (1) An inspector may conduct an inspection and may, as part of that inspection, enter and inspect at any reasonable time the lands and premises where any of the things, parts of things or classes of things to which this Act, the regulations or a Minister's order apply are used, operated, installed, made, manufactured, repaired, renovated or offered for sale for the purpose of,</p> <p style="padding-left: 40px;">(a) ensuring compliance with this Act, the regulations or a Minister's order;</p>	<p><u>CCPSA</u></p> <p>Authority to enter place</p> <p>21. (1) Subject to subsection 22(1), an inspector may, for the purpose of verifying compliance or preventing non-compliance with this Act or the regulations, at any reasonable time enter a place, including a conveyance, in which they have reasonable grounds to believe that a consumer product is manufactured, imported, packaged, stored, advertised, sold, labelled, tested or transported, or a document relating to the administration of this Act or the regulations is located.</p>	<ul style="list-style-type: none"> • Most of the regulatory schemes identified in this analysis include inspection authority. For example, under the TSSA/USA regime, the CCPSA regime and the <i>Consumer Protection Act</i> regime, there are broad powers of inspection. • Under the CCPSA, the list of inspector powers is longer, more specific and, arguably, broader than under the TSSA/USA regime. For example, under the TSSA/USA, seizure of goods or any other thing may only be done via a warrant, issued by a Justice of

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<p>(b) ensuring that an authorization holder remains entitled to the authorization; or</p> <p>(c) determining whether a hazardous condition exists.</p> <p>Limitations on power to enter</p> <p>(2) An inspector shall not,</p> <p>(a) use force to enter and inspect lands or premises under this section; or</p> <p>(b) enter any part of premises that are being used as a dwelling, except with the consent of the owner or occupier.</p> <p>Powers on inspection</p> <p>18. (1) An inspector conducting an inspection on lands or premises, including the premises of an authorization holder, may,</p> <p>(a) examine all documents, records and things that are relevant to the inspection;</p> <p>(b) require a person on the premises being inspected to produce a document, record or other thing that is relevant to the inspection;</p> <p>(c) use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or a record that is relevant to the inspection and that is in any form; and</p> <p>(d) on giving a receipt for it, remove any thing relevant to the inspection, including a document, a record, a</p>	<p>Powers</p> <p>(2) The inspector may, for the purpose referred to in subsection (1),</p> <p>(a) examine or test anything — and take samples free of charge of an article to which this Act or the regulations apply — that is found in the place;</p> <p>(b) open a receptacle or package that is found in the place;</p> <p>(c) examine a document that is found in the place, make a copy of it or take an extract from it;</p> <p>(d) seize and detain for any time that may be necessary</p> <p>(i) an article to which this Act or the regulations apply that is found in the place, or</p> <p>(ii) the conveyance;</p> <p>(e) order the owner or person having possession, care or control of an article to which this Act or the regulations apply that is found in the place — or of the conveyance — to move it or, for any time that may be necessary, not to move it or to restrict its movement;</p> <p>(f) use or cause to be used a computer or other device that is at the place to examine a document that is contained in or available to a computer system or reproduce it or cause it to be reproduced in the form of a printout or other intelligible output and remove the output for examination or copying;</p>	<p>the Peace. Under the CCPSA, no warrant is required for seizure of goods. The CCPSA also specifically provides for testing.</p> <ul style="list-style-type: none"> • The inspection powers under each regime are, of course, limited to the matters covered by the applicable legislation/regulations. That being the case, inspections under the CCPSA are limited to the human health and safety focus of that Act, rather than the broader focus of the TSSA/USA regime. • Similarly, from a consumer protection standpoint, there are inspection powers such as the broad inspection powers set out under the <i>Consumer Protection Act, 2002</i>. Those too are limited to matters such as unfair practices, misleading advertising, etc. that are provided for under that Act.

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<p>data storage disk or a retrieval device needed to produce information.</p> <p>...</p> <p>Assistance</p> <p>(3) An inspector may be accompanied by any person or persons who may be of assistance to him or her in carrying out the inspection.</p> <p>Seal</p> <p>(4) An inspector conducting an inspection may seal anything where the thing may be sealed under section 29.</p> <p>...</p> <p>Entry, inspection, etc.</p> <p>19. (1) Every person shall,</p> <p>(a) furnish all necessary means in his or her power to facilitate any entry, inspection, examination, test or inquiry by an inspector in the exercise of his or her powers and the carrying out of his or her duties; and</p> <p>(b) pay the fees required by the Corporation for an inspection, examination, test or inquiry under clause (a).</p> <p>Written request</p> <p>(2) An inspector who requires that a record or other thing be produced for inspection must do so in writing and state the nature of the record or thing required.</p>	<p>(g) use or cause to be used copying equipment that is at the place and remove the copies for examination;</p> <p>(h) take photographs and make recordings and sketches; and</p> <p>(i) order the owner or person in charge of the place or a person who manufactures, imports, packages, stores, advertises, sells, labels, tests or transports a consumer product at the place to establish their identity to the inspector's satisfaction or to stop or start the activity.</p> <p>Conveyance</p> <p>(3) For the purpose of entering the conveyance, an inspector may order the owner or person having possession, care or control of the conveyance to stop it or move it to a place where the inspector can enter it.</p> <p>Entering private property</p> <p>(4) An inspector who is carrying out their functions and any person accompanying them may enter on or pass through or over private property.</p> <p>Assistance and information to be given to inspector</p> <p>(5) The owner or person in charge of the place and every person found in the place shall give an inspector who is carrying out their functions all reasonable assistance and provide them with any information that they may reasonably require.</p>	

<p>Obligation to produce and assist</p> <p>(3) A person who is required to produce a document, record or other thing under subsection 18 (1) shall produce it and shall, on request by the inspector, provide any assistance that is reasonably necessary, including any assistance in using any data storage, processing or retrieval device or system, to produce information or a record that is relevant to the inspection and that is in any form.</p>	<p>Warrant or consent required to enter dwelling-house</p> <p>22. (1) If the place mentioned in subsection 21(1) is a dwelling-house, an inspector may not enter it without the consent of the occupant except under the authority of a warrant issued under subsection (2).</p> <p>Authority to issue warrant</p> <p>(2) A justice of the peace may, on <i>ex parte</i> application, issue a warrant authorizing, subject to the conditions specified in the warrant, the person who is named in it to enter a dwelling-house if the justice of the peace is satisfied by information on oath that</p> <p>Inspectors</p> <p>105.1 The Director may, in writing,</p> <ul style="list-style-type: none"> (a) appoint persons as inspectors for the purposes of this Act; and (b) designate persons, including persons engaged as inspectors or investigators for the purposes of any other Act, as inspectors for the purposes of this Act or for any specific purposes under this Act provided for in the designation. <p><u>Consumer Protection Act, 2002 (Ontario)</u></p> <p>Inspection powers</p> <p>105.2 (1) An inspector may, without a warrant, enter and inspect any place in order to perform an inspection to ensure this Act is being complied with.</p> <p>Time of entry</p> <p>(2) The power to enter and inspect a place without warrant may only be exercised during the</p>	
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	<p>place's regular business hours, or during other reasonable times.</p> <p>Dwellings (3) The power to enter and inspect a place without a warrant shall not be used to enter and inspect a place or a part of a place that is used as a dwelling.</p> <p>Use of force (4) An inspector is not entitled to use force to enter and inspect a place.</p> <p>Identification (5) An inspector shall, upon request, produce evidence of his or her appointment or designation.</p> <p>Powers of inspector (6) An inspector conducting an inspection may,</p> <ul style="list-style-type: none"> (a) examine a record or other thing that the inspector thinks may be relevant to the inspection; (b) require the production of a record or other thing that the inspector thinks may be relevant to the inspection; (c) remove for review and copying a record or other thing that the inspector thinks may be relevant to the inspection; (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally 	

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	<p>used in carrying on business in the place; and</p> <p>(e) question any person on matters the inspector thinks may be relevant to the inspection.</p> <p>Written demand (7) A demand that a record or other thing be produced must be in writing and must include a statement of the nature of the record or other thing to be produced.</p> <p>Obligation to produce and assist (8) If an inspector demands that a record or other thing be produced, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.</p> <p>Records and things removed from place (9) An inspector who removes a record or other thing under clause (6) (c) shall provide a receipt and return the record or thing to the person within a reasonable time.</p> <p>Copy admissible in evidence (10) A copy of a record that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value.</p> <p>Obstruction (11) No person shall, (a) hinder, obstruct or interfere with or attempt to hinder, obstruct or</p>	

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	<p>interfere with an inspector conducting an inspection;</p> <p>(b) refuse to answer questions on matters that an inspector thinks may be relevant to an inspection;</p> <p>(c) provide an inspector with information on matters the inspector thinks may be relevant to an inspection that the person knows to be false or misleading; or</p> <p>(d) prevent or attempt to prevent an inspector from making inquiries of any person separate and apart from another person under clause (6) (e).</p>	
6. Enforcement Powers & Penalties		
<p><u>TSSA</u></p> <p>Safety orders</p> <p>14. (1) A director may give a safety order to any person or class of persons with respect to any matter governed by this Act that pertains to safety.</p> <p>Same</p> <p>(2) The safety order may require that any thing or part of a thing, or class of things, be dealt with as set out in the order, including,</p> <p>(a) being shut down;</p> <p>(b) being used only in accordance with the order; and</p>	<p><u>CCPSA</u></p> <p>Recall</p> <p>31. (1) If the Minister believes on reasonable grounds that a consumer product is a danger to human health or safety, he or she may order a person who manufactures, imports or sells the product for commercial purposes to recall it.</p> <p>Notice</p> <p>(2) The order shall be provided in the form of a written notice and must include</p> <p>(a) a statement of the reasons for the recall; and</p>	<ul style="list-style-type: none"> • Again, most of the regulatory regimes identified in this analysis have enforcement authority. For ease of review, these have not all been excerpted. • Under both the USA/TSSA regime and the CCPSA regime, regulatory authorities have the power to: inspect, make orders, etc. Non-compliance can lead to prosecution. • Fines under the CCPSA regime can be higher. Additionally, there is provision for administrative monetary penalties, which do not require prosecution.

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<p>(c) not being used.</p> <p>Imminent hazard, safety order</p> <p>(2.1) Without limiting the generality of subsection (2), the safety order may,</p> <p>(a) authorize an inspector to take or cause to be taken in respect of a thing, part of a thing or class of things such measures as the director considers advisable to limit, reduce or remove an imminent hazard to public safety or the safety of any person; and</p> <p>(b) require an authorization holder, a former authorization holder or another person subject to this Act, who is responsible for the thing, part of a thing or class of things, in respect of which measures were taken or caused to be taken under clause (a), to pay the costs of the measures within the time specified in the order.</p> <p>...</p> <p>Inspection order</p> <p>21. (1) If an inspector finds that any provision of this Act, the regulations or a Minister's order is being contravened, or that a thing under this Act is unsafe or is not being operated or used in accordance with the authorization relating to it, the inspector may,</p> <p>(a) serve the person he or she believes to be the contravener or that</p>	<p>(b) the time and manner in which the recall is to be carried out.</p> <p>Taking measures</p> <p>32. (1) The Minister may order a person who manufactures, imports, advertises or sells a consumer product to take any measure referred to in subsection (2) if</p> <p>(a) that person does not comply with an order made under section 12 with respect to the product;</p> <p>(b) the Minister has made an order under section 31 with respect to the product;</p> <p>(c) the Minister believes on reasonable grounds that the product is the subject of a measure or recall undertaken voluntarily by the manufacturer or importer; or</p> <p>(d) the Minister believes on reasonable grounds that there is a contravention of this Act or the regulations in relation to the product.</p> <p>Measures</p> <p>(2) The measures include</p> <p>(a) stopping the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation of the consumer product or causing any of those activities to be stopped; and</p> <p>(b) any measure that the Minister considers necessary to remedy a non-compliance with this Act or the regulations, including any measure that relates to the product that the Minister considers</p>	<p>There is also power for Health Canada to recall a product.</p> <ul style="list-style-type: none"> It is noteworthy that because the USA/TSSA regime requires authorizations for certain activities, under that regime an additional power exists to put conditions on such authorizations or to revoke them. From a business operations perspective, this is significant. As noted above, the leveraging of enforcement powers is restricted to the matters covered by the regime in question. That means that CCPSA enforcement power is limited to the human health and safety focus of that Act, rather than the broader focus of the TSSA/USA regime.

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<p>person's supervisor or employer, or both, with an order in writing directing compliance with the provision or authorization and may require that the terms of the order be carried out forthwith or within such other time specified in the order; or</p> <p>(b) seal anything to which this Act or the regulations apply where there is or may be a demonstrable threat to public safety, whether or not the thing is subject to an authorization.</p> <p>Same</p> <p>(2) An inspector who has reason to believe that there is a contravention of this Act, the regulations or a Minister's order that does not present an immediate hazard may serve the contravener or a person who has authority to correct the contravention with a written order directing that the correction be carried out within the time specified in the order.</p> <p>...</p> <p>Director's order, public safety</p> <p>31. In cases where there is or may be a demonstrable threat to public safety, a director may make an order with respect to the following matters if they have not otherwise been provided for in this Act, the regulations or a Minister's order:</p> <ol style="list-style-type: none"> 1. Requiring and establishing the form and location of notices, markings or other forms of identification to be used in conjunction with 	<p>necessary in order for the product to meet the requirements of the regulations or to address or prevent a danger to human health or safety that the product poses.</p> <p>Notice</p> <p>(3) The order shall be provided in the form of a written notice and must include</p> <p>(a) a statement of the reasons for the measure; and</p> <p>(b) the time and manner in which the measure is to be carried out.</p> <p>Recall or measures taken by Minister</p> <p>33. If a person does not comply with an order made under section 31 or 32 within the time specified, the Minister may, on his or her own initiative and at that person's expense, carry out the recall or measure required.</p> <p>Use of force</p> <p>(3) In executing a warrant issued under subsection (2), the inspector may not use force unless they are accompanied by a peace officer and the use of force is authorized in the warrant.</p> <p>...</p> <p>Offence</p> <p>41. (1) A person who contravenes a provision of this Act, other than section 8, 10, 11 or 20, a provision of the regulations or an order made under this Act is guilty of an offence and is liable</p>	

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
<p>equipment or other things that are prescribed.</p> <p>2. Regulating, governing and providing for the authorization of the design, fabrication, processing, handling, installation, operation, access, use, repair, maintenance, inspection, location, construction, removing, alteration, service, testing, filling, replacement, blocking, dismantling, destruction, removal from service and transportation of anything, whether new or used, or a part of a thing and any equipment or attachment used in connection with it.</p> <p>Minister's orders</p> <p>33. (1) The Minister may make orders,</p> <p>(a) requiring the use of notices, markings and other forms of identification in conjunction with equipment or other things that are prescribed;</p> <p>(b) respecting and governing the granting, term, renewal, posting, transfer and reinstatement of authorizations;</p> <p>...</p> <p>(e) establishing the qualifications for inspectors upon consideration of any advice that may be obtained from directors;</p> <p>...</p>	<p>(a) on conviction on indictment, to a fine of not more than \$5,000,000 or to imprisonment for a term of not more than two years or to both; or</p> <p>(b) on summary conviction, for a first offence, to a fine of not more than \$250,000 or to imprisonment for a term of not more than six months or to both and, for a subsequent offence, to a fine of not more than \$500,000 or to imprisonment for a term of not more than 18 months or to both.</p> <p>Defence of due diligence</p> <p>(2) Due diligence is a defence in a prosecution for an offence under subsection (1).</p> <p>Offence – fault</p> <p>(3) A person who contravenes section 8, 10, 11 or 20 or who knowingly or recklessly contravenes another provision of this Act, a provision of the regulations or an order made under this Act is guilty of an offence and is liable</p> <p>(a) on conviction on indictment, to a fine in an amount that is at the discretion of the court or to imprisonment for a term of not more than five years or to both; or</p> <p>(b) on summary conviction, for a first offence, to a fine of not more than \$500,000 or to imprisonment for a term of not more than 18 months or to both and, for a subsequent offence, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years or to both.</p> <p>Sentencing considerations</p>	

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
<p>(i) requiring distributors to file proposed safety procedures, directors to establish safety procedures and distributors to comply with those procedures;</p> <p>(l) establishing the form of labels required or authorized to be affixed to upholstered or stuffed articles, or any class of them, adopting labels affixed under the laws of any other designated jurisdiction and designating jurisdictions for that purpose.</p> <p>Offences</p> <p>37. (1) Every person who,</p> <p>(a) contravenes or fails to comply with any provision of this Act, the regulations or a Minister's order;</p> <p>(b) knowingly makes a false statement or furnishes false information under this Act, the regulations or a Minister's order;</p> <p>(c) contravenes or fails to comply with a term or condition of an authorization;</p> <p>(d) contravenes or fails to comply with an order or requirement of a director or an inspector, or obstructs an inspector,</p> <p>is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both, or, if the person is a body</p>	<p>(4) A court that imposes a sentence shall take into account, in addition to any other principles that it is required to consider, the harm or risk of harm caused by the commission of the offence and the vulnerability of individuals who use the consumer product.</p> <p>Offences by corporate officers, etc.</p> <p>42. If a person other than an individual commits an offence under this Act, any of the person's directors, officers, agents or mandataries who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to the offence and is liable on conviction to the punishment provided for by this Act, even if the person is not prosecuted for the offence.</p> <p>Offences by employees, agents or mandataries</p> <p>43. In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by any employee, agent or mandatary of the accused, even if the employee, agent or mandatary is not identified or is not prosecuted for the offence.</p> <p>Continuing offence</p> <p>44. If an offence under this Act is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.</p> <p>...</p> <p>Commission of violation</p>	

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
<p>corporate, to a fine of not more than \$1,000,000.</p> <p>Duty of director or officer</p> <p>(2) Every director or officer of a body corporate has a duty to take all reasonable care to prevent the body corporate from committing an offence under subsection (1).</p> <p>Offence</p> <p>(3) Every director or officer of the body corporate who has a duty under subsection (2) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both.</p> <p>Separate offence</p> <p>(4) Where a person contravenes any of the provisions of this Act, the regulations, a Minister's order or any notice or order made under them on more than one day, the continuance of the contravention on each day shall be deemed to constitute a separate offence.</p> <p><u>USA Regulation</u></p> <p>Destruction of article</p> <p>21. Subject to sections 12 and 22 of the Act, an inspector or the local medical officer of health may, by order in writing, require the destruction of an upholstered or stuffed article being offered for sale by a dealer, if he or she believes on reasonable grounds that it is a</p>	<p>49. Every person who contravenes an order that is made under section 31 or 32 or reviewed under section 35 commits a violation and is liable to the penalty established in accordance with the regulations.</p> <p><u>Consumer Protection Act, 2002</u></p> <p>False, misleading or deceptive representation</p> <p>109. (1) If the Director believes on reasonable grounds that any person is making a false, misleading or deceptive representation in respect of any consumer transaction in an advertisement, circular, pamphlet or material published by any means, the Director may,</p> <p>(a) order the person to cease making the representation; and</p> <p>(b) order the person to retract the representation or publish a correction of equal prominence to the original publication.</p> <p>...</p> <p>Offences</p> <p>116. (1) A person is guilty of an offence if the person,</p> <p>(a) fails to comply with any order, direction or other requirement under this Act; or</p> <p>(b) contravenes or fails to comply with,</p> <p>...</p>	

Upholstered and Stuffed Articles Regulation	Other Acts and Regulations	Analysis
<p>danger to public health and cannot be satisfactorily treated, and the article,</p> <ul style="list-style-type: none"> (a) has been in contact with a person suffering from a communicable disease; (b) is soiled; (c) is in such condition that it is likely to adversely affect the health of any person; (d) contains vermin; or (e) shows signs of corrosion or other degradation. 	<p>(ii) in respect of Part III, Unfair Practices, subsection 17 (1),</p> <p>Same</p> <p>(2) A person who contravenes or fails to comply with a provision of a regulation made under this Act is guilty of an offence.</p> <p>Corporation</p> <p>(3) An officer or director of a corporation is guilty of an offence if he or she fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) or (2).</p> <p>Attempt</p> <p>(4) Any person who attempts to commit any offence referred to in subsection (1) or (2) is guilty of an offence.</p> <p>Penalties</p> <p>(5) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, and a corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000.</p> <p>Limitation</p> <p>(6) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the Director.</p>	

7 Policy Framework

7.1 Objectives

Objective 1: Promoting public safety:

The purpose of the *Technical Standards and Safety Act*, as set out in its purpose provision, is to enhance public safety in Ontario by providing for the efficient and flexible administration of technical standards with respect to, amongst other technical areas, upholstered and stuffed articles.

Enhancing public safety cannot be an absolute; rather, the inherent dangers associated with the regulated areas (fuels, elevators, etc.) must be balanced against their necessity. Therefore, enhancing public safety becomes an exercise in reducing risk, based on rigorous risk assessments, utilizing data, science, and best practices.

Objective 2: Becoming a modern regulator:

In January 2012, Ontario's Open for Business program released the "Alternatives to Regulation: Developing Smarter Policy Approaches," to support the Government of Ontario's regulatory modernization efforts to create a streamlined and focused regulatory environment that delivers results for business and other stakeholders while protecting the public interest. This approach acknowledges that regulatory options must be interpreted within the applicable risk framework, but that to act as a modern regulator, governments "must find the right balance between allowing market forces to operate independently and intervening strategically to change behaviour."

Within this policy objective, the joint ministry and TSSA Regulatory Renewal Steering Committee also identified that regulations should enable business to thrive and be flexible enough to adapt to changes in the marketplace over time.

Objective 3: Reducing the burden on business:

As identified by the Regulatory Renewal Steering Committee, regulations should take into account risk trade-offs with other public benefits and impact on business, while also reducing unnecessary burden on business that is not required to maintain public safety. Examples of this may be to reduce intergovernmental duplication or overlap and to encourage harmonization with other jurisdictions.

Source: The Ministry of Government of Consumer Services

7.2 Definitions

Definition of safety hazards:

Permanent injury: an injury sustained by an individual that partially or permanently impairs the normal abilities of that individual for the rest of his/her expected, remaining life.

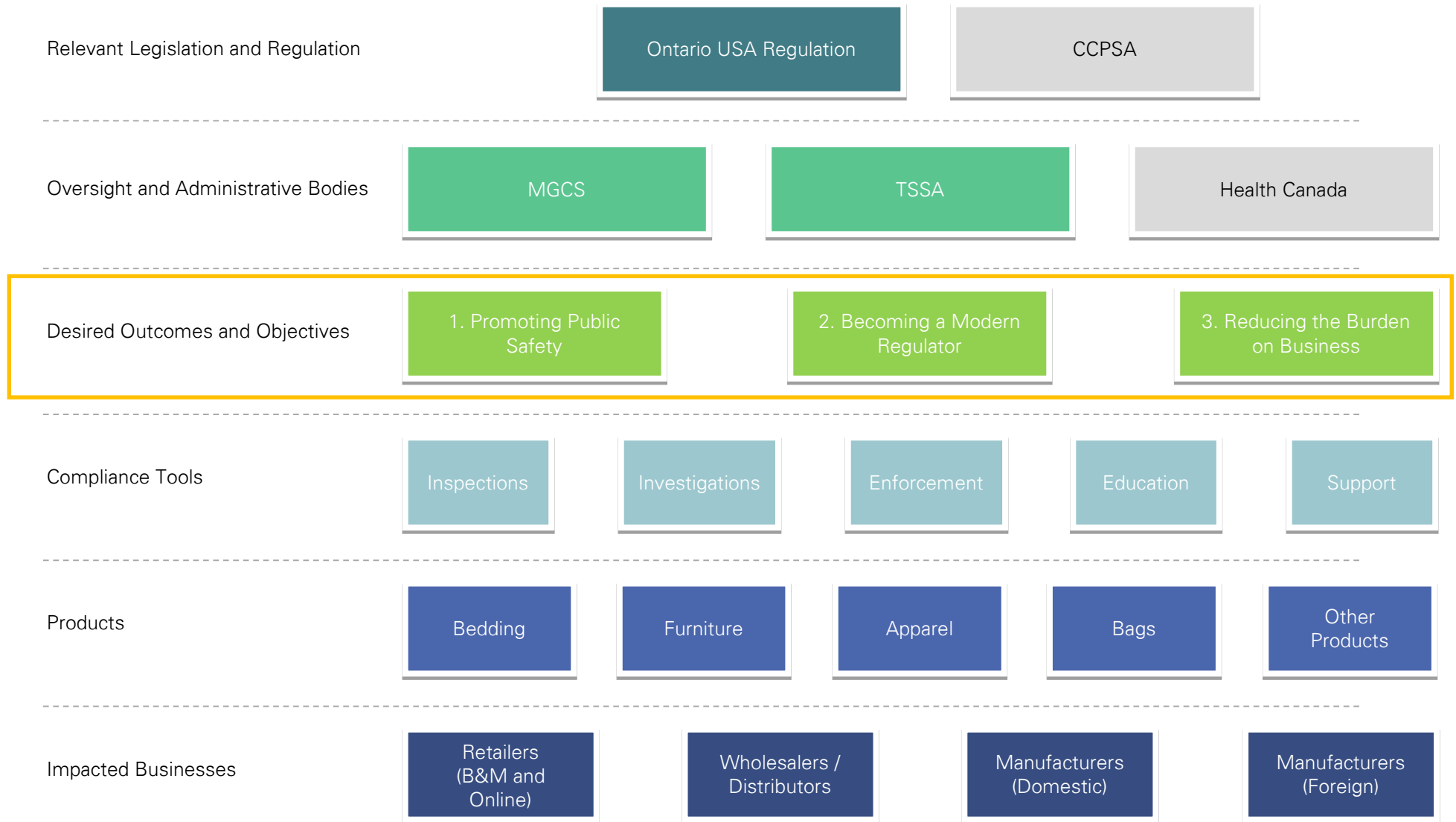
Non-permanent injury: the consequence of an incident occurrence wherein there was an observed health impact that was estimated to be non-permanent based on the nature of the injury and its associated severity using a methodology developed by the World Health Organization (WHO). A non-permanent injury has no significant impact on the individual's life expectancy at the time of injury.

Definition of a risk:

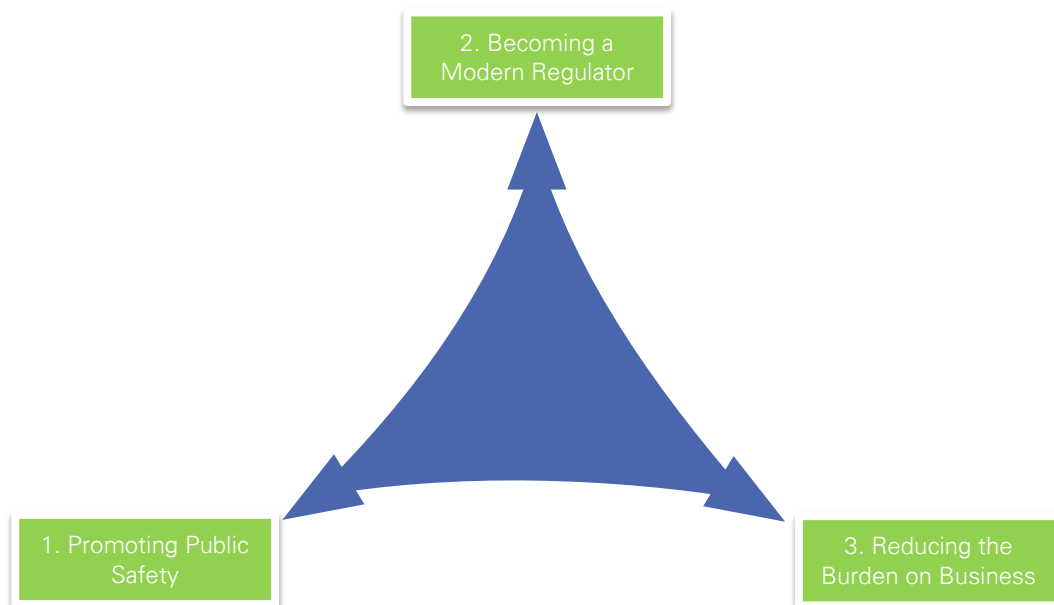
TSSA employs a definition of risk based on international guidelines, and is defined in their Annual Safety Performance Report as follows: "Risk is the combination of the *probability of occurrence of harm* from a thing or a class of things [regulated under the Act] and the *severity of that harm*." (Italics added) Additionally, the TSSA defines "Risk of Injury or Fatality" as the "injury burden predicted over a time period by combining the probability of occurrence and the harm to someone interacting or exposed to TSSA regulated things, and the severity of that harm."

Source: TSSA

7.3 Overarching Regulatory Framework



7.3.1 Desired Outcomes and Objectives



	Overall Objectives	Guidance in Options Evaluation
1. Promoting Public Safety	<ul style="list-style-type: none"> To protect Ontarians from potential health and safety hazards associated with the use of upholstered and stuffed articles. 	<ul style="list-style-type: none"> Need to maintain adequate protection against health and safety risks. Need to have mitigating factors in place, if risks are to emerge and escalate. Need to fulfill consumers' trust that products are free and clear of dangerous substances. Need to determine other mechanisms that may prevent hazards.
2. Becoming a Modern Regulator	<ul style="list-style-type: none"> To support the Government of Ontario's regulatory modernization efforts to create a streamlined and focused regulatory environment that delivers results for business and other stakeholders, while protecting the public interest. 	<ul style="list-style-type: none"> Need to find the right balance between allowing market forces to operate independently and intervening strategically to change behaviour. Need to enable business to thrive and be flexible enough to adapt to changes in the marketplace over time.
3. Reducing the Burden on Business	<ul style="list-style-type: none"> To take into account risk trade-offs with other public benefits and impact on business, while also reducing unnecessary burden on business that is not required to maintain public safety. 	<ul style="list-style-type: none"> Need to reduce barriers to manufacturing, retailing, and trading USA goods. Need to keep Ontario competitive with other provinces and states.

7.3.2 Consumer Protection

Stakeholder interviews and analysis of the USA regime suggested that consumer protection was an important dimension of the USA regulation. Consumer protection is broadly defined as measures that prevent false, misleading, or deceptive representation of products and services, and define rights and obligations of parties in commercial transactions. As per the scope of this engagement, KPMG was not tasked with analyzing the USA regulation from the consumer protection lens. However, given stakeholder views and general support for information provision that facilitates consumer decisions (labeling in this case), aspects of regulation that aim to protect consumers need to be further explored by the ministry and TSSA in making changes to the regime.

8 USA Regulatory Options

8.1 Overview of Three Proposed Options



8.2 Option 1 – Increase Stringency of the USA Regulation

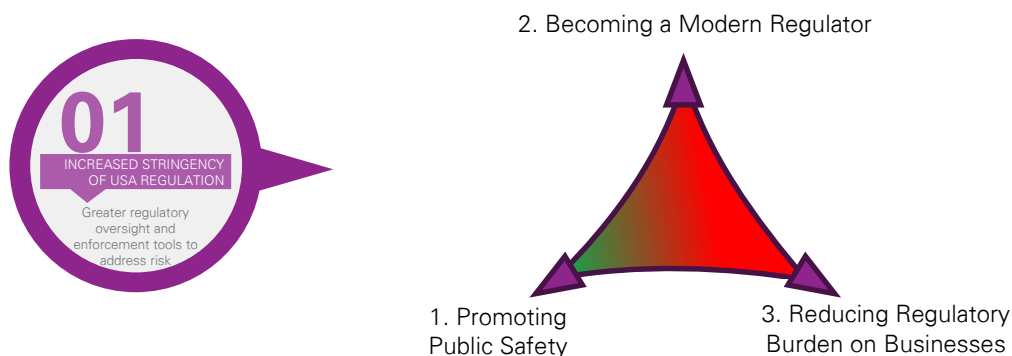
8.2.1 Description of the Options

This option involves increasing compliance and enforcement activities of the regime in order to reduce the probability and impact of health hazards associated with USA goods.

Several variations could be employed to make the regime more stringent. These could include:

- Implementing the highest regulatory standards and directives among all of the reviewed jurisdictions.
- Allocating greater inspection and investigation resources.
- Seeking greater penalties for non-compliance.

Objectives Heat Map



8.2.2 Analysis and Considerations

In order to set the highest regulatory standard for USA goods in North America, Ontario may choose to expand its enforcement activities and range of regulatory tools to mitigate safety hazards relating to upholstered and stuffed goods.

This would entail adoption of the most stringent regulations on upholstered and stuffed articles across North America. It may further involve an increase in proactive enforcement in certain areas of upholstered and stuffed articles (such as Ohio's focus on second-hand goods). The potential for overlaps in provincial and federal product safety oversight may grow, although proactive enforcement would identify cases of non-compliance earlier than the issue-driven regime administered by Health Canada. A clear case for change would need to be developed to convince stakeholders of the need for greater regulatory oversight of USA products, including a substantial basis of evidence of health and safety risks.

At this point, evidence of prominent hazards and risks related to USA goods is lacking. It would be incumbent on the ministry and TSSA to gather sufficient data on the risks associated with USA goods prior to proceeding with this option. High risk levels and growing trends would support the implementation of this option. However, at present time, no elevated risk levels and no growing trends exist that would necessitate the implementation of this option.

8.2.3 Benefits

With a greater range of enforcement powers, a more stringent regulatory regime is likely to identify a larger incidence of non-compliant activities. It is unclear, however, whether this will directly contribute to better safety outcomes in the province.

For certain high-risk products, Ontario may become the standard for regulation and oversight, setting a high bar not only for the rest of Canada, but for North America, as well.

8.2.4 Risks/ Drawbacks

Greater stringency will likely come with a higher burden on businesses operating in the USA sector. Oversight and enforcement have an inherent cost, and this additional focus will probably result in cost escalation, which will need to be passed on to retailers and manufacturers through higher registration fees. Furthermore, other costs associated with compliance are likely to escalate.

Current lack of evidence of health and safety hazards may make it difficult to justify a more stringent regulatory regime. Unless empirical evidence linking USA goods with health risks is identified, the case for this option will remain weak.

The ministry and TSSA may face significant stakeholder resistance in implementing this option. No industry stakeholders suggested increasing the stringency of the regime, hence the ministry should anticipate strong push back to the introduction of additional regulatory measures.

A more stringent regime may make Ontario less attractive for manufacturing and importation of USA goods. The ministry will need to find the right balance of safety oversight and economic development in selecting the option to pursue as the result of this study.

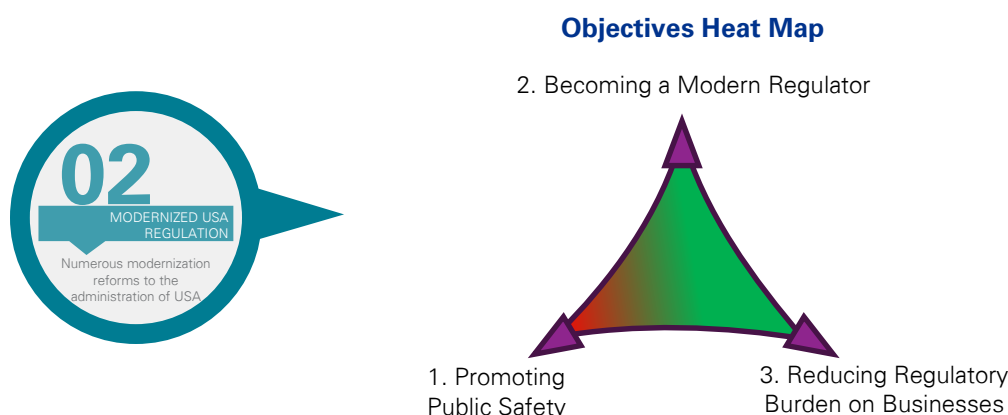
8.3 Option 2 – Modernization of the USA Regulation

8.3.1 Description of Option

This option involves a variety of regulatory reforms to bring the USA regulations in line with modern manufacturing, sourcing, and retailing practices.

Several variations could be employed to improve the efficiency and effectiveness of the program while addressing the key objectives of the government. These could include:

- An evidence-based, risk-informed approach to ensuring compliance.
- A rationalized list of products covered by the regulation.
- Registration fee schedule changes.
- Harmonization of provincial/federal regulations.



8.3.2 Analysis and Considerations

Several stakeholders believe that the USA regulation plays an important role in mitigating potential safety hazards (e.g., toxic exposure, poisoning, asphyxiation, allergic reaction, etc.), but it can be modernized to fit the modern retail and product sourcing context. However, none of these hazards have been observed and documented in recent years in relation to USA goods.

To arrive at a balanced modern approach to regulating USA goods, the ministry, working with TSSA, may need to clearly define what constitutes a “health and safety risk” and conduct a risk assessment to determine product / segment / supply chain categories with the greatest / lowest hazard potential.

Policy outputs of such risk assessment could form sub-options within Option #2:

- Rationalized set of products regulated under the USA regulation, based on the health risk potential. For example, if deemed a potential health risk, bedding products may be inspected more frequently than luggage products, if evidence suggests a lower level of risk for the latter product category. A definitive review of product safety studies (or in the absence of the above, an original study involving medical professionals) may need to be commissioned to understand the potential harm from the upholstery and stuffing components of USA-covered products. KPMG has not been made aware of any such studies to date.
- Relaxed technical labeling requirements, where labels are allowed if they display general composition information in a reasonable format. This type of leeway is practiced in some US jurisdictions and also lends to informal harmonization. Labeling requirements could also be aligned

with the provisions of the federal *Textile Labeling Act*, denoting the internal composition of the product in addition to the surface textile materials. With these options, labeling requirements would be driven by the spirit and intent of the regulation, rather than strict interpretation of label sizes / legibility.

- Exclusion of some sectors (e.g., large vs. small retailers, online vs. brick and mortar, new / use articles, etc.) from enforcement activities depending on the risk factors identified.
- Adoption of a different compliance / enforcement model, where a more reactive approach is taken for lower risk product and sectors.

Ontario could also modify its revenue model towards a volume-based scheme, thereby requiring larger retailers / wholesalers / manufacturers to pay a more commensurate share of the fee. This could be done through the establishment of revenue tiers, with particular registration fees. For example, companies selling 0-\$1M / \$1M-10M / \$10M+ could be subjected to a varied range of fees to account for a greater degree of oversight required.

Ontario could collaborate closer with Health Canada to reduce/eliminate regulatory overlaps. Using information gathered by Health Canada on health and safety risks, Ontario could focus on sectors that appear to be prone to danger, while still falling under the federal threshold of a safety hazard. One such area could be children's toys, as they are explicitly covered by the CCPSA legislation. This would eliminate the overlaps between the two regimes and establish a complementary regulatory system. Further collaboration (in the form of a jurisdictional committee, technology platform sharing, and permitting process standardization, among other forms) could also be explored with the other two provinces with USA-type regulations in place.

Ontario could also change its regulatory regime to mirror one of the US jurisdictions, such as Ohio, Pennsylvania, or California. By requiring businesses to operate in this province in adherence to one of these standards, Ontario will move closer to harmonizing the regulation across North America to a narrower set of regulations, thereby lowering compliance costs for manufacturers, importers, and international retailers.

8.3.3 Benefits

A regulatory regime with the variations proposed under this option would take into consideration the actual health and safety risk factors in undertaking compliance and enforcement activities. Thus, program choices will be made on evidence and data that points to the greatest areas of exposure in the USA market.

Volume-based registration fees would be a fairer method of funding the program, as greater range and volume of products likely necessitates a higher degree of oversight from the regulator. Volume information would have to be obtained from retailers/manufacturers, likely on a self-reporting basis, as is done in Pennsylvania and other similar regimes.

This option helps the ministry and TSSA to become modern regulator entities related to the administration of the USA regime, as proposed regulatory changes will provide focus, improve efficiency, and enhance fairness of the regime.

8.3.4 Risks/ Drawbacks

A reallocation of resources from the current compliance approach could potentially introduce a greater degree of risk into the USA sector. If the number of inspections is reduced and products are removed from oversight, over time risks within these product categories may emerge. The nature of such risks is currently unknown.

A registration fee restructuring may have a disproportionately negative impact on larger retailers / manufacturers, if the revised scheme is to remain revenue neutral. If smaller businesses are to have their fees reduced, larger ones will have to pay more for regulatory oversight. Furthermore, such a scheme may unfairly target larger companies, who reportedly already have significant product oversight practices

in place, as opposed to smaller players, who may lack quality management maturity, and therefore, be more likely to be non-compliant.

Harmonization of products / regulatory requirements with U.S. jurisdictions may introduce additional burdens on companies. An example of such regulation is Proposition 65, which requires businesses to notify Californians about significant amounts of chemicals in the products they purchase, in their homes or workplaces, or that are released into the environment. While this measure has brought benefits, it has also *“come at a cost for companies doing business in the state. They have incurred expenses to test products, develop alternatives to listed chemicals, reduce discharges, provide warnings, and otherwise comply with this law.”*⁸ The implications of such regulations in other jurisdictions should be carefully considered prior to any standardization efforts.

If a volume-based scheme is adopted, it would introduce additional administrative burden on retailers / manufacturers, as they would need to account for and report sales of USA goods to the regulator.

Some stakeholders, who expect a full repeal of the legislation may not see this change as going far enough in dealing with the current issues related to USA goods.

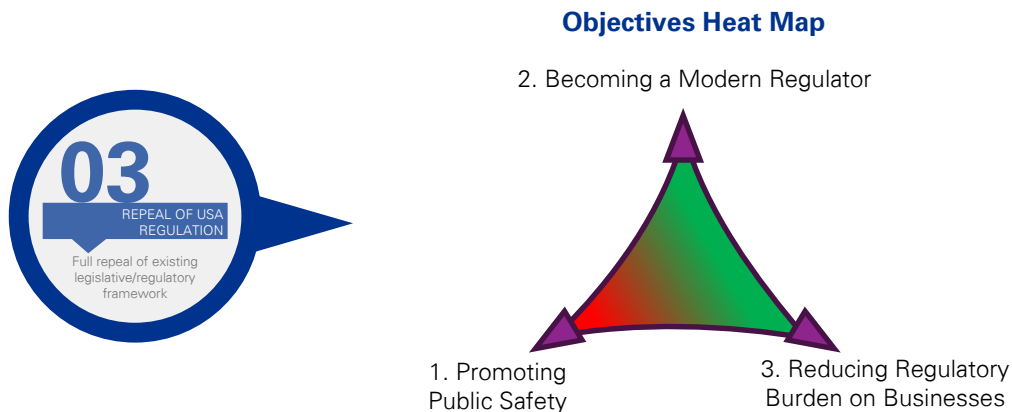
⁸ Source: <http://oehha.ca.gov/prop65/background/p65plain.html>

8.4 Option 3 – Repeal of USA Regulation

8.4.1 Description of the Option

This option entails the repeal of the USA regulatory framework currently in place to govern the manufacture, renovation, and retail of upholstered and stuffed articles in Ontario. This implies that:

- Labeling requirements would no longer be in place.
- Registration and licensing would not be required.
- Compliance and enforcement activities by TSSA would no longer be carried out.



8.4.2 Analysis and Considerations

Some stakeholders voiced concerns that the regulation is outdated and no longer necessary. Some suggested explicit product exclusions, while others took issue with the regulation overall. However, most stakeholders acknowledge that there is an expectation on the part of consumers that some government/regulatory organization is looking after their well-being when it comes to upholstered and stuffed articles.

The lack of data on health and safety hazards associated with USA goods may suggest low risk levels. While the lack of data may not be an appropriate indicator of low risk levels, one could reasonably assume that some information about health hazards would have emerged if upholstered and stuffed articles caused a high number of permanent or non-permanent injuries. No fatalities or significant permanent injuries were reported to KPMG in the course of this engagement. Conducting independent safety incidence data research was not part of the scope of this assignment.

Ten provinces and territories in Canada do not have regulations governing USA goods and BC and Nova Scotia have found no basis of evidence to institute such laws. They may, however, be receiving a tangential benefit from Ontario having this regulation in place. If the regulation is repealed, Ontario and the rest of Canada could continue to receive spillover effects from Manitoba, Quebec, California and other highly regulated US jurisdictions, although the magnitude of these effects is unknown at this time.

Health Canada is mandated to mitigate significant safety hazards relating to a broad range of products, which include upholstered and stuffed goods. In the event of a significant health and safety hazard emerging, Health Canada is likely to address it through its enforcement tools. Stakeholders have noted, however, that some risks associated with USA goods are unlikely to meet Health Canada's hazard thresholds, such as serious permanent injury and death. Thus, if less significant health risks (such as a

mild allergic reaction or discomfort) were to emerge, and the USA regulation was repealed, they would most likely not be addressed by the CCPSA and its regulations.

8.4.3 Benefits

Businesses (some local and some based overseas) will no longer need to register under the program, potentially saving \$20-\$400 annually, and either absorbing those savings or passing them on to consumers, depending on the competitiveness of the industry.

Manufacturers will no longer need to customize and allocate products for the Ontario market, saving on labeling, inventorying, and segregating Ontario-bound products from the rest of the North America-bound merchandise.

Local retailers will benefit from lower internal compliance costs, due to not having to undergo inspections and product labeling adjustments.

The competitive landscape between “brick and mortar” and pure online retailers would equalize, as they would be subjected to identical enforcement requirements (or lack thereof in this case).

8.4.4 Risks/ Drawbacks

Without an enforcement regime for USA articles, the risks of unclear, unsafe, and misrepresented items may rise, as manufacturers and retailers will no longer be subjected to inspections and investigations. This risk may be mitigated by internal quality assurance practices employed by retailers and manufacturers, the product safety requirements in the CCPSA, as well as by efforts to maintain high degree of reputation and customer satisfaction. Given the lack of data on existing injuries related to USA goods, it is not possible to definitively project risk levels in the event of regulatory repeal. It is possible that current enforcement activities are preventing injuries, and without a regime in place, adverse health effects may appear. It is just as possible that low risk levels are a feature of USA goods, now that modern manufacturing, transportation, and storage practices have reduced the potential for injury to negligible levels. One anecdotal data point relates to padded undergarments, which were exempted from regulation in 2008. Given that no illicit health effects have been observed or documented since the exemption came into force, one could in retrospect conclude that, in that product category, risks were low and consumers were unaffected by the lack of regulation. However, extrapolating that example onto all product categories is not possible without further study. Consequently, without sufficient data, control environments, and a reasonable time horizon to observe the effects of regulation, KPMG is unable (and has not been mandated) to estimate the rise in health risks due to the potential repeal of USA regulation.

Consumers may be confused as to how to deal with issues associated with USA articles, if they appear to pose a safety risk. Without provincial oversight, the complaint and resolution channels will likely be ambiguous. This risk is likely low in likelihood and impact. To mitigate it, the government would need to communicate to the public what the avenues of recourse are under the CCPSA as part of any announced change to the regulation. Thus, the province could promote to consumers (e.g., via “how to” info on regulator websites) how they can raise product concerns with the federal government, and monitor specific consumer complaints for any evidence of escalating risk. The province could also ban unsafe activities (e.g., if there is evidence of a high risk in a particular product type, such as mattress refurbishment).

8.5 High-Level Options Evaluation Against Objectives



1. Promoting Public Safety

This option is likely to either maintain or improve safety outcomes. However, this may come at a cost to the regulator and the industry through higher compliance costs.

This option is likely to have a minimal effect on public safety outcomes, if the risk assessment driving compliance activities is properly developed. Areas of highest risk would receive the highest degree of focus, scrutiny, and resource allocation.

This option may escalate risks related to the manufacture and retail of USA goods. The extent of this risk appears to be low, however, due to the low incidence of hazards identified and attributed to upholstered and stuffed articles.

2. Becoming a Modern Regulator

This option will only achieve modern regulator objectives if the increased stringency approaches and tools are based on evidence that suggests a deteriorating and riskier trend among USA goods.

This option is highly aligned with the notion of a modern regulator, as it would incorporate evidence, facts, and data in determining the most effective and efficient ways of enhancing compliance.

This option may not fully meet the objectives of becoming a modern regulator, as there will be no provincial oversight in the absence of USA legislation. However, this option would remove any regulatory burden on the USA sector, which does align with the policy objective.

3. Reducing the Burden on Business

This option is likely to have a negative effect on businesses, imparting higher compliance costs and making it more cumbersome to meet the new, more stringent regulatory requirements.

With an appropriate risk assessment framework, the burden on less risky businesses should decrease, while the compliance requirements for higher risk segments/products should increase.

This option is likely to have a positive impact on businesses as it eliminates all compliance costs.

9 Appendix A: Interview Guide

KPMG has been engaged in by MGCS to conduct a review to identify potential options and key insights to modernize and streamline the USA (Upholstered and Stuffed Articles) regulation in response to a growing global economy. The options need to strike the right balance between addressing public safety risk, and minimizing trade restrictions for Canadian businesses.

The purpose of this discussion is to understand your individual perspective on the USA regulation and to inform the formulation of modernization options. To prepare for your interview, we kindly ask that you review the following questions. These questions are meant to guide the conversation, and will inform our work products on this review.

1. What public safety risks have you observed related to upholstered and stuffed articles in Canada? Do the current USA provincial regulations address these risks?
2. What other laws or regulations, which mitigate public safety risks, apply to these articles?
3. What are the market mechanisms and commercial practices that mitigate public safety risks? Are they sufficient without provincial regulations?
4. What elements of your supply chain are most affected (e.g., costs, timelines, quality, etc.) by the existing USA regulation in Ontario? Are these impacts incremental to the compliance needs of other North American jurisdictions (e.g., California, Pennsylvania, New York, etc.)?
5. Have you undergone inspections of your products under the USA regulation? If so, what were the results of those inspections? Have you had your products tested for compliance? Do these tests differ from requirements of other North American jurisdictions?
6. What changes to the USA regulation are required in your view? What are the implications of those changes (costs, benefits, risks, etc.)?
7. How has the Canada Consumer Product Safety Act (CCPSA) affected the regulatory environment in this province? Are you aware or have you filed any incident reports under the CCPSA?
8. How have new retail channels (i.e., online commerce) affected consumers, businesses, compliance tools, etc.?
9. What jurisdictions should be researched in order to inform potential changes to the Ontario USA regulation? Consider those that have extensive USA-type regulation and those that have limited or no regulatory framework in place.
10. What sources of industry data could be helpful in our review?
11. Is there any other information that we should be aware of for this review?

10 Appendix B: Jurisdictional Interviews

Jurisdiction	Representative	Title	Organization
Ontario	Various Sources	Various Sources	Ministry of Government and Consumer Services, TSSA
Manitoba	Jacques Lafournaise	Manager of Enforcement and Dispute Resolution	Consumer Protection Office Manitoba Tourism, Culture, Heritage, Sport, and Consumer Protection
Quebec	Gérald Lescot	Conseiller en politique commerciale	Direction de la politique commerciale Ministère de l'Économie, de l'Innovation et des Exportations (MEIE)
California	Said Nurbakhsh, Ph.D.	Flammability Research Test Engineer	Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation
Pennsylvania	Evelyn Madenford	Government Representative	Bedding and Upholstery Department Pennsylvania Department of Labor & Industry
Ohio	Rick Selegue, CPM	Chief Bedding Inspector	Ohio Department of Commerce Division of Industrial Compliance
British Columbia	Dustin Dunlop	Director, Stakeholder Relations	Consumer Protection BC
British Columbia	Frank Do	Leader, Stakeholder Engagement	BC Safety Authority
Nova Scotia	Joel Baltzer	Manager, Policy and Research	Service Nova Scotia
Nova Scotia	Consumer Information Representative	Consumer Information Representative	Consumer Information Nova Scotia
Nova Scotia	Alex Robertson	Director, Corporate Affairs	Walmart Canada
United States (federal)	Carla Coolman	Communications	Consumer Product Safety Commission
United States (federal)	Heather Eggerstorfer	Compliance Officer	Consumer Product Safety Commission
United States (federal)	Michelle Jack, CPM	President	International Association of Bedding and Furniture Law Officials
United States (federal)	Ryan Trainer	President	International Sleep Products Association
Canada (federal)	Paul Chowhan	Manager	Risk management strategies divisions Health Canada

11 Appendix C: Stakeholder Interviewees

Interviewee	Organization
Alison Ardinger	Amazon
Jacques Shore	Gowlings (Amazon)
Bob Kirke	Canadian Apparel Federation
Plamen Petkov	Canadian Federation of Independent Business
Ken Whitehurst	Consumers Council of Canada
Mel Fruitman	Consumers' Association of Canada
Pierre Richard	Quebec Furniture Manufacturers' Association
Karl Litter	Retail Council of Canada
Catherine Mitchell	Shimano Canada
Ben Farber	Benchmade Leatherworks Inc. (TSSA USA Advisory Council)
Leena Khawaja	Ikea (TSSA USA Advisory Council)
Lloyd Hall	Simmons (TSSA USA Advisory Council Chair)
Mike Burden	Hartz Canada Inc. (TSSA USA Advisory Council)
Virginia Clement	Mattel Canada (TSSA USA Advisory Council)
Jane L. McCarthy	TSSA USA Advisory Council /TSSA Consumers Advisory Council Chair
Elizabeth Nielson	TSSA Consumers Advisory Council
Karen Abel	TJX (Retail Council of Canada Member)
Sherry Casey	Loblaws (Retail Council of Canada Member)
Stephen Lawson	Hudson's Bay Company (Retail Council of Canada Member)
Peter Siller	Hudson's Bay Company (Retail Council of Canada Member)
Ken Wootton	Canadian Tire (Retail Council of Canada Member)
Kathy Varga	Walmart (Retail Council of Canada Member)
Scott Hardwood	Sears (Retail Council of Canada Member)
Gérald Lescot	Ministère de l'Économie, de l'Innovation et des Exportations (MEIE) (Québec)
Jacques Lafournaise	Manitoba Tourism, Culture, Heritage, Sport, and Consumer Protection

Additionally, the project sponsors, the Ministry of Government and Consumer Services and the Technical Standards and Safety Authority were interviewed.



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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