

FLAME RETARDANT CHEMICALS IN UPHOLSTERED FURNITURE AND JUVENILE PRODUCTS

San Francisco Department of the Environment Regulations SFE-18-02-FR

Regulations for TB 133 furniture

Ordinance No. 211-17, Adopted December 3, 2017

Regulation Effective Date: October 3, 2019

A. Authorization

The Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products Ordinance, No. 211-17, codified in the San Francisco Environment Code Chapter 28, was signed by the Mayor on November 3, 2017, and became effective on December 3, 2017. The ordinance prohibits the sale of upholstered furniture and certain juvenile products ("Covered Products") that contain or are made with a flame retardant chemical at a level above 1,000 parts per million, and furniture reupholstered using soft material, including but not limited to fabric, padding, decking, barrier material, foam, and/or other resilient filling, that contains or is made with a flame retardant chemical at a level above 1,000 parts per million. For Covered Products with electrical or electronic components containing or made with a flame retardant chemical at a level above 1,000 parts per million, this sales ban will go into effect beginning July 1, 2019.

The Director of the Department of the Environment promulgates this regulation pursuant to her authority under Section 2804(a) - "The Director of the Department of the Environment may issue rules and regulations necessary or appropriate for the implementation and enforcement of this Chapter 28."

B. Scope

The purpose of this regulation is to clarify how furniture made to comply with California Technical Bulletin 133 (TB 133) will be addressed within Chapter 28 now that the state of California has repealed TB 133.

C. Interpretive Regulations and Guidelines

Section 2802, Chapter 28 defines "Reupholstered Furniture," "Upholstered Furniture," and "Covered Products," as follows:

"Reupholstered Furniture" means furniture whose original fabric, padding, decking, barrier material, foam, and/or other resilient filling has been replaced by an Establishment, that has not been sold since the time of such replacement, and that is required to meet the flammability standards set forth in California Technical Bulletin 117-2013 entitled "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture." Reupholstered Furniture shall not include products required to meet California Technical Bulletin 133.

“Upholstered Furniture” means new, not previously owned seating made with soft materials, including but not limited to fabric, padding, decking, barrier material, foam, and/or other resilient filling, that is required to meet the flammability standards set forth in California Technical Bulletin 117-2013 entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture.” Upholstered Furniture shall not include products required to meet California Technical Bulletin 133.

“Covered Product” means Upholstered Furniture, Reupholstered Furniture, or Juvenile Products, any component of which has been made with or contains a Flame Retardant Chemical at a level above 1,000 parts per million. Covered Products do not include (1) used or second-hand furniture that is not Reupholstered Furniture, or (2) used or second-hand Juvenile Products.

Chapter 28 subjects these Covered Products to its restriction on sales in Section 2803(a) “no Establishment may Sell a Covered Product.” Under the definitions of Upholstered and Reupholstered Furniture, items required to meet California Technical Bulletin 133 (TB 133) are not subject to the restriction in Section 2803(a).

Enacted in 1991, TB 133 set a flammability test procedure for furniture for use in public occupancies. Section 1374 of the California Code of Regulations required upholstered seating furniture sold for use in public occupancies that were not fully sprinklered to meet TB 133’s flammability standards. Section 1374(d) defined public occupancies as: jails, prisons, and penal institutions; hospitals, mental health facilities, and health care facilities; nursing homes, board and care facilities, and convalescent homes; child day care centers; public auditoriums and stadiums; and public assembly areas containing 10 or more articles of seating furniture and located in hotels, motels, and lodging houses.

On January 22, 2019, the California Office of Administrative Law made effective a California Bureau of Household Goods and Services (BHGS), formerly the Bureau of Electronic and Appliance Report, Home Furnishings and Thermal Insulation (BEARHFTI), regulatory action that amended California Code of Regulations Section 1374 of Article 13 to delete reference to Technical Bulletin 133 (TB 133). Under this regulatory action, as of January 22, 2019, there are no longer any products required to meet California Technical Bulletin 133.

When the San Francisco Board of Supervisors enacted Ordinance No. 211-17 in 2017, a portion of which became operative on January 1, 2019, it contemplated that furniture manufactured for use in public occupancies as defined in Section 1374 would be required to meet the flammability standards of TB 133. The San Francisco Board of Supervisors accordingly excluded this subset of products from Covered Products regulated by Chapter 28.

While BHGS’s regulatory action reflects a shift in State flammability standards, the City and County of San Francisco must implement Ordinance No. 211-17 in accordance

with the Board of Supervisors' intent at the time of the ordinance's final passage in November 2017.

The Director of the Department of Environment therefore promulgates this regulation to clarify the meaning of Ordinance No. 211-17 in furtherance of its implementation. Through December 31, 2019, San Francisco will continue to implement Chapter 28 to exclude from the definitions of Upholstered and Reupholstered Furniture products manufactured to meet TB 133, even though State regulation no longer requires such products to meet TB 133's flammability test.

The Director of the Department of the Environment hereby adopts these regulations as of the date specified below.

Approved:



Deborah O. Raphael
Director Department of the Environment
Date: 10/3/2019