

# FLAME RETARDANT CHEMICALS IN UPHOLSTERED FURNITURE AND JUVENILE PRODUCTS

San Francisco Department of the Environment Regulations SFE-18-01-FR

## Regulation to adopt standards and process for establishments to apply for petition.

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

Regulation Effective Date: July 1<sup>st</sup> 2018

### A. Authorization

The Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products Ordinance, No. 211-17 ("Ordinance") was signed by the Mayor on November 3, 2017 and will go into effect on January 1, 2019. It is codified as Chapter 28 of the Environment Code. 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 (Department) promulgates these regulations pursuant to his/her authority to adopt rules necessary to implement this Ordinance pursuant to the Environment Code, Chapter 28, Section 2804.

### B. Scope

The purpose of this regulation is to provide guidelines for compliance and the petition process.

***These regulations do not duplicate the Ordinance and must be read together with the Ordinance.*** The Ordinance, Chapter 28 of the Environment Code, may be found at <https://sfgov.legistar.com/View.ashx?M=F&ID=5539758&GUID=CFBA7447-EE27-45D3-92A9-C7E2F5CF5D32>

### C. Interpretive Regulations and Guidelines

- 1) **Compliance.** Compliance with the Ordinance with respect to each Covered Product shall be determined in accordance with the following.
  - a) For Upholstered Furniture and Reupholstered Furniture,

- i) Establishments shall ensure that all upholstered furniture they sell is affixed with a label that (1) meets the requirements of Section 19094 of the Business and Professions Code, and (2) expressly states that the item does not contain Flame Retardant Chemical(s).
- b) For Upholstered Furniture containing electric/electronic components,
  - i) an Establishment may demonstrate compliance by retaining on file and making available for inspection upon the Department's request a written statement from the product supplier attesting that the Product or grouping of Products does not contain a Flame Retardant Chemical. The Department will make these requests in writing. The written statement from the product supplier must be submitted to the Department within 30 days from the date that the Department requested such information. An Establishment must also make such documentation available to a customer upon request.
- c) For each Juvenile Product,
  - i) an Establishment may demonstrate compliance by retaining on file and making available for inspection upon the Department's request a written statement from the product supplier attesting that the Juvenile Product or grouping of Juvenile Products does not contain a Flame Retardant Chemical. The Department will make these requests in writing. The written statement from the product supplier must be submitted to the Department within 30 days from the date that the Department requested such information. An Establishment must also make such documentation available to a customer upon request.
- d) For any Covered Product,
  - i) An Establishment, any person representing a group of establishments, product manufacturer, or person representing a group of product manufacturers may submit a request to the Department for alternate methods of compliance for either reupholstered upholstered furniture or juvenile product.

2) **Petitions and Waivers.** An Establishment or any person may petition for a waiver from strict compliance with the Ordinance and/or these regulations. A petitioner must demonstrate to the Department's satisfaction that strict compliance shall cause severe hardship or practical difficulty, or would not be feasible. A petitioner may submit a petition representing any number of establishments.

**a) Petition Process.** Those wishing to submit a petition shall include the following information in its petition and submit petitions to [FlameRetardants@sfgov.org](mailto:FlameRetardants@sfgov.org)

- i) Petitioner contact information (including name of point of contact, phone number, street address, and email address), and the Establishments (including the name of point of contact, phone number, street address, and email address for each) on whose behalf the petitioner is submitting the petition.
- ii) For each product for which a waiver is sought, detailed product information including Name of Product and Manufacturer of Product.
- iii) Chemical formula(s) and Chemical Abstract Service (CAS) Numbers of the flame retardant(s) in the product, specifically in what part(s) of the product flame retardants are used (e.g. specific components), and the concentration(s) of the flame retardants in each component. Concentrations can be reported in ranges or estimates.
- iv) Justification as to why flame retardant chemicals are necessary for the product, how long and what it would take to eliminate flame retardants from the product.

v) Any additional supporting documentation that substantiates the petitioner's request.

**b) Petition Deadlines.** Petition forms must be submitted by the following dates to be considered in advance of ordinance compliance deadlines. The Director may, at his or her discretion, accept petitions filed for good cause, where good cause is demonstrated, after this filing deadline. Petitioners are encouraged to submit petitions early.

- i) September 30, 2018 for all Covered Products except for those with electrical or electronic components.
- ii) February 28, 2019 for all Covered Products with electrical or electronic components.
- iii) The Department shall send a petitioner written confirmation that a petition has been received with a determination as to whether the petition is complete, within 10 business days. A petition that the Department has deemed complete and does not receive further response from the Department within 60 days from the date of the Department's completeness determination shall be deemed granted for a reasonable timeframe from the end of the initial 60-day period.
- iv) The Department may grant a waiver for a specified period of time. If a petitioner can demonstrate that strict compliance will continue to cause severe hardship or practical difficulty after that period of time has elapsed, or would not be feasible, the petitioner may petition for an extension of the waiver. Such application must be submitted at least 90 days before the initial waiver period expires.

**c) Considerations For Petition.** The Director of the Department or his/her designee will consider petitions on a case-by-case basis. When granting or denying a petition for waiver, the Department may take into consideration information including, but not limited to, the following:

- i) What hardship is the petitioner claiming? Has the petitioner provided substantial evidence of this?
- ii) Does strict compliance cause the establishment to be out of compliance with any Federal or state regulations? Has the petitioner provided sufficient evidence of this?
- iii) Are flame retardant chemicals only being used on wiring, circuit board and hard casing?
- iv) Are reactive, additive, or polymeric flame retardants being used?
- v) Has the petitioner provided an action plan to reduce or eliminate the use of flame retardants within a specified time frame?
- vi) Has a GreenScreen been conducted on the flame retardant chemical(s) used in the product or component? If so, which GreenScreen Benchmark score was assigned to the flame retardant(s)?

**d) Petitioner Filing on Behalf of Multiple Organizations.** One Establishment, person or manufacturer may file a petition on behalf of multiple Establishments, persons, or manufacturers seeking a waiver for the same Covered Product or grouping of similar Covered Products.

**e) Duration of Waiver.** The Director has discretion to grant a waiver for a reasonable duration based on the evidence submitted with the petition.

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

Approved:

A handwritten signature in blue ink that reads "Deborah O. Raphael". The signature is written in a cursive style with a large, prominent "D" at the beginning.

Deborah O. Raphael  
Director Department of the Environment  
Date: June 21, 2018