
FREQUENTLY ASKED QUESTIONS (FAQs)

Assembly Bill 2998 (Bloom) – Consumer Products: Flame Retardant Materials

**BUREAU OF HOUSEHOLD GOODS AND SERVICES
Department of Consumer Affairs
State of California**

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IMPLEMENTATION

1. Q: When will AB 2998 be implemented?

A: All provisions of AB 2998 (Bloom, Chapter 924, Statutes of 2018) are effective on January 1, 2020. Accordingly, the Bureau of Household Goods and Services (Bureau) will begin pulling product for testing and enforcement on that date.

2. Q: What does AB 2998 require?

A: AB 2998 prohibits the sale and distribution of juvenile products, upholstered furniture, replacement components of reupholstered furniture, and the foam in mattresses (collectively referred to as “covered products”) that contain covered flame-retardant (FR) chemicals at levels above 1,000 parts per million (ppm) in California on and after January 1, 2020.

This bill requires the Bureau to extend the testing required by SB 1019 (Leno, Chapter 862, Statutes of 2014) for upholstered furniture to covered products. Testing will be to determine if there are FR chemicals at levels above 1,000 ppm. The Bureau is required to post a list identifying covered products that are found to be in violation of AB 2998 on its website.

This bill authorizes the Bureau to issue a fine to any manufacturer, importer, wholesaler, or retailer that continues to sell or distribute a covered product that the Bureau identifies as in violation of AB 2998 on its website.

This bill requires the International Sleep Products Association (ISPA) to conduct a survey of all mattress producers to report materials and methods used to meet flammability standards. The ISPA must submit survey results to the Bureau no later than January 31, 2020, and every three years thereafter, including a list of mattress producers that fail to respond.

3. Q: Is AB 2998 applicable to products manufactured before January 1, 2020?

A: Yes. On and after January 1, 2020, covered products are prohibited from being sold or distributed in California if they contain FR chemicals at levels above 1,000 ppm, irrespective of the manufacture date. This bill was signed in September 2018 and is not effective until January 1, 2020. The delayed implementation date was enacted to give industry time to liquidate non-compliant inventory or designate it for sale outside of California.

4. Q: Who is responsible for compliance with AB 2998?

A: It is the responsibility of all who sell or distribute covered products to ensure those products do not contain FR chemicals at levels above 1,000 ppm. For the purposes of enforcement, responsibility may lie with the manufacturer, importer, wholesaler, retailer, or *all* parties in the chain of distribution.¹

¹ Business and Professions Code (BPC) [§ 19072](#).

5. Q: Will the prohibition from sale or distribution of products containing flame-retardant chemicals above 1,000 ppm be applicable in any other states?

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

6. Q: Does enactment of AB 2998 mean SB 1019 is no longer applicable?

A: AB 2998 did not amend or repeal SB 1019. Thus, all labeling, documentation, testing, and other requirements of SB 1019 remain valid and enforceable.

7. Q: What is the difference between AB 2998 and SB 1019?

A: SB 1019 requires a label to indicate whether FR chemicals were added to the product. To determine the point at which FR chemicals were added, documentation requirements were enacted under SB 1019.

AB 2998 prohibits the sale and distribution of products containing FR chemicals at levels greater than 1,000 ppm. Because the violation of AB 2998 resides in the sale or distribution, additional labeling and documentation is not required.

8. Q: If a non-compliant covered product is sold before January 1, 2020, can it be delivered after that date?

A. Distribution of a Bureau-identified non-compliant product is prohibited effective January 1, 2020, so delivery must be made by December 31, 2019.² BPC [§ 19103\(b\)\(2\)\(B\)](#) states a person may be subject to fines, “If a person continues to sell *or distribute* products in commerce in this state belonging to the same stock keeping unit (SKU) as products that do not comply with § 19101, after notice of the violation is posted on the bureau’s Internet Web site, the bureau may assess fines against the person for the continued sale *or distribution* of those products...” [emphasis added].

9. Q. If a covered product is financed, is it considered sold when the customer takes possession of it, when an initial payment is made, or when a final payment is made?

A. None of the above. Section [1802.19\(a\)](#) of the California Civil Code essentially states once an installment agreement is reached between buyer and seller, a product is legally considered sold regardless of whether the contract is paid off. Therefore, an item would be considered sold if the buyer and seller agree before AB 2998 takes effect. However, the item must also be delivered before January 1, 2020, as stated in question eight.

² BPC [§ 19101\(a\)](#).

GENERAL APPLICABILITY AND SCOPE

10.Q: What does “upholstered furniture” mean for the purposes of AB 2998?

A: “Upholstered furniture” subject to the provisions of AB 2998 includes any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin (TB) 117-2013, entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*.³

11.Q: Does AB 2998 include an exemption for products subject to TB 133?

A: TB 133 was [repealed](#) on January 22, 2019, which renders any exemption for products subject to TB 133 ineffectual.

12.Q: Does AB 2998 apply to residential furniture only?

A: No. TB 133, the flammability standard for upholstered furniture in public occupancies, was repealed effective January 22, 2019. All upholstered and reupholstered furniture must now meet [TB 117-2013](#). Because this bill applies to products required to meet TB 117-2013, upholstered and reupholstered furniture intended for use in public occupancies is also subject to AB 2998.

13.Q: Does AB 2998 apply to outdoor upholstered furniture?

A: Cushions and pads intended solely for outdoor use are exempt from meeting the requirements of TB 117-2013.⁴ Consequently, AB 2998 also does not apply.

14.Q: Does AB 2998 apply to customer owned materials?

A: Yes. All replacement materials listed in BPC [§ 19094\(a\)\(1\)](#) that are used by a custom upholsterer to repair, reupholster, recover, restore, or renew upholstered or reupholstered furniture must meet the AB 2998 flame-retardant chemical content standard.⁵ For manufacturers, AB 2998 applies to all components of covered products, regardless of who supplies the material.

15.Q: Does AB 2998 apply to mattresses?

A: Yes, AB 2998 applies to the foam in mattresses and all components of toddler mattresses, crib mattresses, and all other infant sleep products. Specific exemptions are provided for electronic components, the associated casings of electronic components, and the thread or fiber used for stitching together mattresses.⁶

³ BPC [§ 19100\(h\)](#) and [§ 19094\(a\)\(2\)](#).

⁴ California Code of Regulations (CCR), Title 4, Division 3, [§ 1374.2\(a\)](#).

⁵ BPC [§ 19101\(b\)](#). and [§ 19094\(a\)\(1\)](#).

⁶ BPC [§ 19101\(c\)\(1\)](#) and [§ 19101\(c\)\(3\)](#).

16.Q: Does AB 2998 apply to box springs?

A: No. While box springs are not specifically exempted, AB 2998 uses the federal definition of “mattresses” to determine the scope of the Bureau’s enforcement. That definition, found in [16 CFR § 1632.1](#), specifically excludes mattress foundations.⁷ Consequently, the term “mattress” as applied to AB 2998 also excludes mattress foundations. Further, box springs do not qualify as upholstered furniture, reupholstered furniture, or juvenile products for the purposes of enforcing AB 2998. Therefore, box springs and mattress foundations are not considered “covered products”.

17.Q: Does AB 2998 apply to juvenile bedding?

A: Yes, AB 2998 applies to juvenile bedding, including pillows, comforters, etc., as well as any other juvenile product that is within the Bureau’s jurisdiction, such as toddler mattresses and crib mattresses.

18.Q: If filling material is constructed of many components, which layer must comply with AB 2998?

A: All inside resilient filling materials must comply with AB 2998. The flame-retardant chemical contents restriction applies to all products subject to TB 117-2013, which includes all filling materials and cover fabrics.⁸

19.Q: Which materials in juvenile products, upholstered furniture, reupholstered furniture, and mattresses are subject to AB 2998?

A: Juvenile Products: All components of juvenile products are subject to AB 2998, unless exempted. Exemptions are provided for electronic components of juvenile products and their associated casings per BPC [§ 19101\(c\)\(1\)](#).

Upholstered Furniture: Components of upholstered furniture, defined by BPC [§ 19094\(a\)\(1\)](#) as “separate constituent parts of upholstered furniture sold in California, as identified in TB 117-2013, specifically cover fabrics, barrier materials, resilient filling materials, and decking materials” are subject to requirements of AB 2998. Components not named by § 19094 are exempt from AB 2998 per BPC [§ 19101\(c\)\(2\)](#).

Reupholstered Furniture: Replacement components are subject to AB 2998. Replacement components not named in the BPC [§ 19094\(a\)\(1\)](#) definition of “component” are exempt per BPC [§ 19101\(c\)\(2\)](#).

Mattresses: Only the foam in adult mattresses is subject to AB 2998. All components of toddler mattresses, crib mattresses, and infant sleep products are also subject to AB 2998.

⁷ BPC [§ 19100\(f\)](#).

⁸ CCR, Title 4, Division 3, [§ 1374\(a\)](#).

JUVENILE PRODUCTS

20.Q: What does “juvenile product” mean for the purposes of AB 2998?

A: “Juvenile product” is defined by BPC [§ 19100\(d\)](#) as “a product *subject to this chapter* and designed for residential use by infants and children under 12 years of age, including, but not limited to, a bassinet, booster seat, changing pad, floor playmat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, playpen side pad, playard, portable hook-on chair, stroller, and children’s nap mat [emphasis added].” Bedding products, comforters, pillows, and upholstered furniture are examples of products that are “subject to this chapter”, that may be subject to AB 2998 when manufactured for use by children under 12 years of age.⁹

21.Q: Which “juvenile products” are not covered under AB 2998?

A: Per BPC [§ 19100\(e\)](#), “juvenile products” not covered by AB 2998 are:

- (1) Products that are not primarily intended for use in the home, such as products or components for motor vehicles, watercraft, aircraft, or other vehicles.
- (2) Products subject to [Part 571](#) of Title 49 of the Code of Federal Regulations regarding parts and products used in vehicles and aircraft.
- (3) Products required to meet state flammability standards in Technical Bulletin 133, entitled “Flammability Test Procedure for Seating Furniture for Use in Public Occupancies.”
- (4) Consumer electronic products that do not fall under the bureau’s jurisdiction for flammability standards.

22.Q: What criteria is used to determine if a product is a juvenile product?

A: Whether a product is considered a juvenile product depends on each product’s attributes and determinations are made on a case by case basis. The Bureau recommends using the federal standard – [16 CFR § 1200.2](#) – which directs the Consumer Product Safety Commission (Commission) to use four factors to determine whether a product is a children’s product, as guidance:

- (i) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.
- (ii) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.
- (iii) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.
- (iv) The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

⁹ This list is intended to provide examples and therefore, is not exhaustive. Please refer to the Act, Bureau regulations, and technical bulletins for more information on products subject to Bureau jurisdiction.

COVERED FLAME RETARDANT CHEMICALS

23.Q: What is a “flame retardant chemical”?

A: A “flame retardant chemical” is any chemical or chemical compound for which a functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire.

24.Q: What flame retardant chemicals are prohibited by AB 2998?

A: AB 2998 does not prohibit the use of any FR chemical. AB prohibits the sale or distribution of covered products that contain covered FR chemicals in amounts greater than 1,000 ppm.

25.Q: Is there a list of covered flame-retardant chemicals?

A: There is not a list of chemicals, but there are criteria that is used to determine whether an FR is classified as a “covered flame retardant chemical” for the purposes of enforcing AB 2998. Those criteria are found in the BPC:

[§ 19100\(c\)\(1\)](#): Covered flame-retardant chemical means any chemical that meets both of the following criteria:

- (A) A functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire, including, but not limited to, any chemical for which the term “flame retardant” appears on the Occupational Safety and Health Administration substance safety data sheet pursuant to [subdivision \(g\) of § 1910.1200 of Title 29](#) of the Code of Federal Regulations as it read on January 1, 2019.
- (B) The chemical is one of the following:
 - (i) A halogenated, organophosphorus, organonitrogen, or nanoscale chemical.
 - (ii) A chemical defined as a “designated chemical” in [§ 105440](#) of the Health and Safety Code.
 - (iii) A chemical listed on the Washington State Department of Ecology’s list of [Chemicals of High Concern to Children](#) in § 173-334-130 of Title 173 of the Washington Administrative Code as of January 1, 2019 and identified as a flame retardant or as a synergist to flame retardants in the rationale for inclusion in the list.”

To summarize, a covered flame retardant chemical would be a chemical or synergist used to resist or inhibit the spread of fire and one of the following: 1) a halogenated, organophosphorus, organonitrogen, or nanoscale chemical, 2) listed as a “designated chemical” in Health and Safety Code § 105440, or 3) listed by Washington State as a Chemical of High Concern to Children.

If a chemical meets criterion A or B, but not both, it is not a covered FR chemical and would not subject those in the chain of distribution to Bureau enforcement under AB 2998.

DOCUMENTATION and LABELING REQUIREMENTS

26. Q: What type of documentation must the manufacturer/supplier provide the Bureau?

A: Because AB 2998 prohibits the sale and distribution (not the manufacture) of covered products containing flame-retardant chemicals at levels above 1,000 ppm, manufacturers and suppliers are not required to establish the point in the production at which flame-retardant chemicals were added. Therefore, there are no additional documentation requirements under AB 2998.¹⁰

27. Q: Does AB 2998 require an additional label for the covered products?

A: There are no additional labeling requirements under AB 2998. However, manufacturers must still follow the specific wording required by BPC [§ 19094](#), which was implemented by SB 1019, on labels for upholstered furniture products required to meet TB 117-2013.

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

A: Yes, but not to comply with AB 2998. The labeling requirements of BPC [§ 19094](#), which was added by SB 1019, are still effective. Therefore, if a product contains flame-retardant chemicals that would constitute marking “Yes” on the SB 1019 label, it should still be marked as such; however, because products with FR chemicals at levels above 1,000 ppm are prohibited from sale or distribution in California as of January 1, 2020, there should not be a product with a label marked “Yes” that is for sale.

SUMMARY OF UPDATES TO FAQ – October 2019

Entire Document: Minor edits throughout to standardize format and style.

Table of Contents: Added new questions (8, 9, 14, and 16); made corresponding edits such as question renumbering, page updates, and font adjustment. Added links to allow one-click navigation to the corresponding response in the document.

Implementation: Added questions 8 and 9.

General Applicability and Scope: Added a link to the TB 117-2013 standard for question 12; added questions 14 and 16; expanded the answer to question 18 to give a more complete response; and moved the exemptions for mattresses in question 19 to the footnote.

Juvenile Products: Added a footnote for question 20.

¹⁰ Manufacturers and suppliers still must meet the documentation requirements of BPC [§ 19094](#).