

5/4/92

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
FIRE MARSHAL DIVISION

In The Matter Of The Proposed
Rules Of The State Fire Marshal
Relating To Furniture Flammability

STATEMENT OF
NEED AND
REASONABLENESS

General Statement

The State Fire Marshal Division is a division of the Department of Public Safety. The primary responsibility of the Fire Marshal is to promulgate and administer a uniform state fire code. The Uniform Fire Code for Minnesota is contained in Minnesota Rules, parts 7510.3100 to 7510.3280. In administering the Code, the Fire Marshal inspects hotels, motels, schools, correctional facilities, and health care facilities. The Fire Marshal also inspects many other types of occupancies at the request of various licensing agencies. The State Fire Marshal works in conjunction with local fire marshals by providing training in the Code and in Code inspections. The State Fire Marshal also conducts fire investigations and trains local fire marshals in investigation procedures.

In 1990, the Furniture Fire Safety Act was enacted into law in Minnesota. The Act makes the State Fire Marshal responsible for the enforcement of the Act. The Act applies to seating furniture in jails, prisons, hospitals, nursing homes, child day care centers, public auditoriums and stadiums, and public assembly areas of hotels and motels containing more than ten articles of seating furniture. These locations are referred to as public occupancies and include places where the movement of residents is restricted or limited and places where large numbers of people with limited familiarity congregate. Both types of places have an increased life safety hazard due to fire. The Act works to reduce this hazard by requiring seating furniture in public occupancies to meet flammability standards. The Act requires the Fire Marshal to adopt rules to enforce the Act, including rules that set the flammability standards for seating furniture.

The adoption of the Act was advocated by the Minnesota Professional Fire Fighters (MPFF) and the International Association of Fire Fighters (IAFF). The impetus for the MPFF and the IAFF included the large number of lives lost and the substantial amount of property damage from fires in public and commercial structures. Several catastrophic fires that involved the most loss of lives and property include the Beverly Hills Supper Club in Kentucky (1977/164 deaths), the DuPont Plaza Hotel in Puerto Rico (1986/96 deaths), and the MGM Grand Hotel in Las Vegas (1980/85 deaths). While there are many factors that contribute to the seriousness of fires, if the furniture in fires is less flammable or contributes less to the fuel for the fire, the seriousness of the fires will likely be reduced. The purpose of setting flammability standards for seating furniture is to help reduce, stop, or control the spread of fire until it can be extinguished.

The Fire Marshal encouraged public participation in the rulemaking in a number of ways. A Notice of Solicitation of Outside Information or Opinions was published in the State Register February 19, 1991, inviting all interested persons to submit data or views on flammability standards for seating furniture. The Fire Marshal convened a task force to advise on the development of the rules. From April to October 1991, the task force met six times in day-long meetings to discuss the many issues that arose regarding the rules. Task force members represented many of the constituencies that will be affected by the rules.

The Legislative Commission to
Review Administrative Rules

APR 23 1992

Public occupancy operators, furniture manufacturers, interior designers, and members of fire safety organizations provided a broad perspective of the issues and concerns that needed to be addressed and considered in the development of the rules. Those who participated in task force meetings include:

- Lynn Berglund, Wheeler Hildebrant & Associates
- Glen Bergstrand, State Fire Marshal Division
- Richard Driscoll, Steelcase, Inc.
- Christine Frisk, Alternative Designs/MIDLAC
- Sharon Gibbons, Lou Molnar Assoc./MIDLAC
- Jim Goetz, Flexsteel, Inc.
- Dan Hollermann, Tuohy Furniture Corp.
- Robert L. Imholte, State Fire Marshal Division
- Robert J. James, State Fire Marshal Division
- Bruce Johnson, Fire Marshals' Association of Minnesota
- Charles Kuhl, Minnesota Professional Fire Fighters
- Wendy Lerner, Arthur Shuster, Inc.
- Susan Lowry, DesignTex Fabrics, Inc.
- Linda Makinen, University of Minnesota Hospital & Clinic
- Marci Mandell, Steelcase, Inc.
- Kevin McGinty, Minnesota State Fire Chiefs Association
- Dave Orren, Department of Public Safety
- Laurie Pearson, Design Dimensions
- James Sadler, Minnesota Hotel & Motor Hotel Association
- Patrick Sheehan, State Fire Marshal Division
- Henry Spang, Professional Upholsterers Association of Minnesota
- Ed Tuohy, Tuohy Furniture Corp.
- Joe Ziolkowski, American Furniture Manufacturers Association/Upholstered Furniture Action Council

State Fire Marshal Thomas Brace and task force chairperson Patrick Sheehan appeared before many industry trade groups and associations and fire safety organizations to provide information and receive comments about the proposed rules. Mr. Brace and Mr. Sheehan also traveled to a national trade show for interior designers and furniture manufacturers held in Chicago to discuss the Minnesota Furniture Fire Safety Act and to meet with Gordon Damant, the author of the flammability standards adopted by these rules.

Statutory Authority

The Furniture Fire Safety Act (Minnesota Statutes, sections 299F.840 to 299F.848) requires seating furniture used in public occupancies to conform to the applicable flammability standard and labeling requirement of the Act. Section 299F.844 of the Act states that the "state fire marshal shall adopt rules necessary for the enforcement of sections 299F.840 to 299F.848"

Small Business Considerations

Minnesota Statutes, section 14.115, requires the Department of Public Safety to consider the effect on small businesses when it adopts rules. The rules will have a direct effect on small businesses engaged in operating public occupancies and small businesses engaged in manufacturing or reupholstering seating furniture for use in public occupancies.

Section 14.115, subdivision 2, states in part:

"When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses . . . , the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule."

Specific methods for reducing the impact of the rules on small businesses have been considered. In general, the rules are drafted to impose as small a burden as possible on all businesses, including small businesses. The following are examples of ways that the impact of the rules is reduced:

- a. Less stringent compliance or reporting requirements. The rules adopt by reference the standards of California Technical Bulletin 133 (TB 133). The most important reason for adopting TB 133 is, of course, the fact that it provides an adequate standard for measuring the flammability of seating furniture. Another important reason for adopting TB 133, however, is the fact that it is being considered for adoption by many states and local jurisdictions around the country. TB 133 is the leading flammability test for seating furniture and will likely become a national standard. The burden of compliance will be reduced for any small business that sells furniture in more than one jurisdiction if there is a common flammability standard that the manufacturer has to meet instead of a different standard for each jurisdiction.
- b. Less stringent schedules or deadlines for compliance or reporting requirements. The legislature mandated that the rules necessary for the enforcement of the Furniture Fire Safety Act were to be adopted six months before the January 1, 1992, effective date of the Act. (See Minnesota Statutes, section 299F.844.) Because of efforts to ensure input from interested parties, the process of developing and adopting the rules has taken longer than anticipated. The rules will likely be effective no sooner than June of 1992. The Fire Marshal has, however, followed legislative intent by including approximately a six month lead-in period before the enforcement date of the rules when public occupancies and manufacturers have to comply with the rules. (See parts 7510.5510, 7510.5530, and 7510.5540, subpart 2, that set January 1, 1993, as the enforcement date.)
- c. Consolidation or simplification of compliance or reporting requirements. The Fire Marshal charged the task force with the duty to develop a rule that will meet the intent of the law while at the same time minimizing the burden of compliance on public occupancies and furniture manufacturers. Members of the task force

came up with many suggestions for doing this that are incorporated in the rules. The rules as proposed are the final culmination of the work of the task force and were arrived at by consensus of the task force. As an example, the rules allow a manufacturer to use a classification system to determine compliance for its product line, rather than requiring that a sample of every individual product be tested. The classification system is based on testing a worst-case product (one most likely to fail the test). If the worst-case product meets the standards, then other products that it represents and that would perform better in the test than the worst-case product also meet the standards.

- d. Establishment of performance standards instead of design or operational standards. TB 133 is a performance standard. TB 133 requires an article of seating furniture to meet certain standards when the article is subjected to a flame source. TB 133 does not tell manufacturers how to design furniture or operate a businesses. Instead, manufacturers are able to decide how best to build furniture so that it performs up to the standards of TB 133.
- e. Exemption of small businesses. The rules present exemptions for certain reupholstered products and specialty items of furniture. Many reupholsterers and manufacturers of specialty items are small businesses. These exemptions will in turn reduce the burden of the rules on public occupancies, many of which are small businesses, while still protecting public safety.

Fiscal Impact

Many local public bodies operate public occupancies such as nursing homes, hospitals, and jails. New seating furniture purchased for use in these public occupancies will have to meet the standards set by the Furniture Fire Safety Act and these rules. Initially, seating furniture that complies with these standards will likely be more expensive than furniture that does not. Thus, these standards will have a fiscal impact on local public bodies that operate public occupancies. There may also be an impact on any jail or prison industry that manufactures seating furniture for sale in public occupancies. It is important to note, however, that the rules merely implement the Act. Any increases in costs associated with these rules arise primarily from the statutory requirements. In any event, the rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

The Act requires the Fire Marshal to consider TB 133 when adopting rules. The Fire Marshal did this, and in response to the recommendation from the task force, has incorporated TB 133 into these rules. Thus, the costs associated with manufacturing complying furniture arise primarily from the Act.

The rules, in fact, lessen or minimize some of the costs that could have been associated with the Act. For instance, allowing a classification system for determining that furniture meets TB 133 will greatly reduce the fiscal impact of the rules on all public occupancies, including those operated by local public bodies.

Further, the long-term cost of the Act will be mitigated by two factors. One factor is that the furniture manufacturing industry will almost certainly develop new and less costly methods of meeting the requirements of the Act through better components and processes. The other factor is that loss of life, personal injuries, and property damage due to fire will be reduced due to safer furniture.

Incorporations By Reference

These rules incorporate by reference Technical Bulletin 133 of the state of California, "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies," published in January 1991 by the California Bureau of Home Furnishings and Thermal Insulation. The Revisor has approved this incorporation.

Other Statutory Requirements

Minnesota Statutes, section 16A.128, subdivisions 1a and 2a, do not apply because the rules do not fix fees. Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land. Minnesota Statutes, sections 115.43, subdivision 1, 116.07, subdivision 6, and 144A.29, subdivision 4, do not apply to these rules.

Witnesses

If these rules go to a public hearing, it is anticipated that the agency will call witnesses. A list of witnesses will be submitted to the Administrative Law Judge as required and sent to all persons who requested a copy of the Statement of Need and Reasonableness.

Rule-By-Rule Analysis

7510.5500 Purpose. This part states the purpose of parts 7510.5500 to 7510.5570. It is reasonable to do this so that the purpose of the rules is clear.

7510.5510 Scope. This part states the scope of parts 7510.5500 to 7510.5570. As part of this, it states that the rules apply to seating furniture manufactured on or after January 1, 1993. This is a departure from the statute. The reasons why this is necessary and reasonable are contained in the discussion of part 7510.5530.

7510.5520 Definitions.

Subpart 1. This subpart sets forth the scope of the definitions.

Subpart 2. This subpart defines the term "child day care center." This is necessary because the term is used in Minnesota Statutes, section 299F.841, subdivision 6, as one type of public occupancy, but the term is not defined elsewhere.

The definition of "child day care center" contains two attributes: one, that it is required to be licensed by the Department of Human Services under parts 9503.0005 to 9503.0175; and, two, that it is classified as a Group E, Division 3, Occupancy under the Minnesota Uniform Fire Code.

Licensing under parts 9503.0005 to 9503.0175 is for large, institutional child care centers, and not in-home day care facilities. Members of the task force who were involved in the passage of the legislation behind the rules stated that it was clearly the intent of the

legislature to include the large, institutional child care centers and not the in-home day care facilities. Further, the large centers buy institutional furniture. Institutional furniture that meets TB 133 will be readily available. In-home facilities use regular household furniture, of which little if any is available that meets TB 133.

A Group E, Division 3, Occupancy is defined in pertinent part as: "Any building used for child day-care purposes for more than ten children" The definition of child day care center is tied to a classification under the Fire Code and the State Building Code because the fire marshal is charged with enforcing these rules and with enforcing the Fire Code. Tying the two together will make enforcement easier because it uses a definition that fire marshal inspectors are already familiar with.

Subpart 3. This subpart adopts the definition of "filling material" from Minnesota Statutes, section 299F.841, subdivision 4.

Subpart 4. This subpart adopts the definition of "Group I Occupancies" from section 9.117 of the Minnesota Uniform Fire Code, as adopted in part 7510.3120.

Subpart 5. This subpart adopts the definition of "hotel." It is necessary to define hotel because the term is used in Minnesota Statutes, section 299F.841, subdivision 6, as one type of public occupancy, but the term is not defined elsewhere. A hotel is a building where rooms are rented by guests for sleeping purposes. However, if the definition is left at that, it could be construed to include dormitories and apartments. There is no indication from the legislation that this was intended so it is reasonable to specifically exclude dormitories and apartments from the definition of hotel.

Subpart 6. This subpart adopts the definition of "manufacturer." The term is defined in Minnesota Statutes, section 299F.841, subdivision 5, as "a person or the person's employee or agent who makes an article of seating furniture in whole or in part." During the course of task force discussions, the question was raised whether a reupholsterer is considered a manufacturer. It is necessary, therefore, to clarify the definition of manufacturer. The definition under subpart 6 adds the words "or reupholsters" to the statutory definition so that it is clear that a reupholsterer is considered a manufacturer. This is reasonable because a reupholsterer makes furniture in part. Further, to not include reupholsterers as manufacturers could defeat the purpose of the Furniture Fire Safety Act by allowing a public occupancy to have a potentially large number of articles of furniture that do not meet any fire safety standards.

Subpart 7. This subpart adopts the definition of "public assembly area of a hotel." It is necessary to define this term because it is used in Minnesota Statutes, section 299F.841, subdivision 6, as one type of public occupancy, but the term is not defined elsewhere. This definition is reasonable because it includes areas that are commonly understood to be available for the public to assemble.

Subpart 8. This subpart adopts the definition of "public auditorium." It is necessary to define public auditorium because the term is used in Minnesota Statutes, section 299F.841, subdivision 6, as one type of public occupancy, but the term is not defined elsewhere. The description of the type of building and its use is reasonable because it describes what is commonly understood to be a public auditorium. The number 50 was chosen as the threshold capacity for being a public auditorium because this is the smallest number by which a public occupancy of this type is defined in the Minnesota Uniform Fire Code and the State Building Code.

Subpart 9. This subpart adopts the definition of "public occupancies." This term is defined in Minnesota Statutes, section 299F.841, subdivision 6, but it needs to be clarified because the terms used to define public occupancies are not themselves defined. Subdivision 6 defines public occupancies to be:

- "(1) jails, prisons, and penal institutions;
- (2) hospitals, mental health facilities, and similar health care facilities;
- (3) nursing care and convalescent homes;
- (4) child day care centers;
- (5) public auditoriums and stadiums; and
- (6) public assembly areas of hotels and motels containing more than ten articles of seating furniture."

The terms used in clauses (4), (5), and (6) have already been defined in subparts 2, 8, 10, and 7 of the rules. These terms are included under items B, C, and D of subpart 9.

The terms used in clauses (1), (2), and (3), namely jails prisons, and penal institutions, hospitals, mental health facilities, and similar health care facilities, and nursing care and convalescent homes, are included under item A of subpart 9 as "Group I Occupancies." This is reasonable because all of the buildings described in clauses (1), (2), and (3) are Group I Occupancies as defined in the Minnesota Uniform Fire Code and the State Building Code. Further, all Group I Occupancies are arguably public occupancies as defined in section 299F.841, subdivision 6. The fire marshal is charged with enforcing the Fire Code. It is reasonable to use a Fire Code definition to define a term in these rules because fire marshal inspectors are already familiar with the term.

Subpart 10. This subpart adopts the definition of "public stadium." It is necessary to define public stadium because the term is used in Minnesota Statutes, section 299F.841, subdivision 6, as one type of public occupancy, but the term is not defined elsewhere. The description of the type of building and its use is reasonable because it describes what is commonly understood to be a public stadium. The number 50 was chosen as the threshold capacity for being a public stadium because this is the smallest number by which a public occupancy of this type is defined in the Minnesota Uniform Fire Code and the State Building Code.

Subpart 11. This subpart adopts the definition of "reupholster." This term is used in subpart 6 to define manufacturer. It is necessary to narrow the definition of this term to keep it in line with the purposes of the Furniture Fire Safety Act. The definition limits reupholster to mean "replace filling material or material encasing or covering filling material" It specifically does not include replacing or repairing structural components of the article of seating furniture, nor does it include repairing fabric or filling material where the fabric or filling material is not replaced. This definition is reasonable because it includes the parts of an article of furniture that contribute the most to the fire load and excludes parts that contribute the least or that do not constitute "making" an article of furniture in part.

Subpart 12. This subpart adopts the definition of "seating furniture" from Minnesota Statutes, section 299F.841, subdivision 3. This definition is not intended to include mattresses.

Subpart 13. This subpart adopts the definition of "sell" from Minnesota Statutes, section 299F.841, subdivision 2.

Subpart 14. This subpart adopts the definition of "sufficient cause to believe." This is necessary so that there is an objective standard for the grounds upon which the fire marshal can act when enforcing these rules under part 7510.5570. This standard is reasonable because it is similar to the definition of this term used in part 7503.0100 and other Public Safety rule parts.

7510.5530 Performance Standards Adopted By Reference. Part 7510.5530 adopts the standards of California Technical Bulletin 133 (TB 133) for seating furniture used in public occupancies in Minnesota.

Part 7510.5530 is necessary because the statutes require the fire marshal to set flammability standards for seating furniture used in public occupancies. Minnesota Statutes, section 299F.845, prohibits the sale or use of new seating furniture in public occupancies if the furniture "fails to conform to the applicable flammability standard and labeling requirement provided under sections 299F.840 to 299F.848, or rule of the state fire marshal adopted under section 299F.844" Since sections 299F.840 to 299F.848 do not set flammability standards, the fire marshal is required to set these standards by section 299F.844 which says "the state fire marshal shall adopt rules necessary for the enforcement of sections 299F.840 to 299F.848"

The legislation that mandates rules, namely Minnesota Statutes, section 299F.844, also states that "the fire marshal, in adopting rules, shall consider the testing and labeling procedures and requirements set forth in Technical Bulletin 133 of the state of California" One of the main responsibilities given to the task force by the fire marshal was to review TB 133 and make a recommendation as to whether it should be incorporated into the rules. The task force considered TB 133, extensively discussed it, and endorsed it. Some of the factors that the task force considered are:

- Minnesota does not have the resources to develop a new test, so the task force looked nationally for a test that will adequately measure or characterize the fire hazards of furniture.
- TB 133 measures the carbon monoxide levels during combustion which other tests do not. This is important because carbon monoxide is the most common toxic gas contained in the products of combustion.
- TB 133 was developed by Gordon Damant of the California Bureau of Home Furnishings and Thermal Insulation. Mr. Damant is a nationally recognized expert (if not the preeminent national expert) in the area of testing furniture for flammability.
- The Fire Marshal wants standards that can be met by furniture manufacturers in a way that will be affordable to public occupancies. The task force recognized that most furniture manufacturers sell to regional or national markets. Production costs will be lower if a manufacturer has to meet only one set of standards for all states in which it sells furniture. Conversely, production costs will be higher if the manufacturer has to meet a different set of standards for each state in which it sells furniture.
- TB 133 appears to be the test favored by most jurisdictions that are considering adopting standards. Currently, California, Illinois, Massachusetts, Minnesota, New Jersey, Ohio, and Washington are in the process of adopting TB 133. It is expected that others will follow. The city of Boston has adopted its own furniture flammability standards, but that appears to be the one exception to the use of TB 133 by other jurisdictions. However, Boston will accept TB 133 as conforming to its requirements.
- TB 133 also appears to be the test favored by fire safety organizations and furniture manufacturing or safety organizations that are considering endorsing standards. The Minnesota Professional Fire Fighters strongly support the Minnesota Furniture Fire Safety Act and are working closely with the International Association of Fire Fighters to

promote the adoption of a single national standard based on TB 133. TB 133 is supported by the Business and Institutional Furniture Manufacturer's Association (BIFMA). The Upholstered Furniture Action Council (UFAC) promotes the use of one national standard for seating furniture in public occupancies. While UFAC considers TB 133 to be onerous, UFAC considers it a good standard. The National Institute of Standards Testing has also found TB 133 to be a viable test. The American Society for Testing and Materials (ASTM) is in the process of adopting TB 133 as a test standard.

Based upon the factors considered by the task force and the recommendation of the task force, it is reasonable for the fire marshal to adopt the standards of TB 133 for seating furniture used in public occupancies in Minnesota.

Minnesota Statutes, section 299F.844, refers to the version of TB 133 "published in April 1988" but also requires the fire marshal to consider "the deletions, revisions, and updates" of TB 133. The version of TB 133 that is being adopted is the one published in January 1991. This is the most recent version of TB 133. The fire marshal is adopting a specific version of TB 133 rather than automatically including all future updates to TB 133 because the fire marshal wants to consider any updates and determine whether they are appropriate to Minnesota before adopting them.

Part 7510.5530 makes the standards applicable to seating furniture manufactured after January 1, 1993. The reason for phasing in the rules is to allow furniture manufacturers and the owners of public occupancies time to make the adjustments necessary to meet the standards set forth in the rules. This is in keeping with the intent of the Furniture Fire Safety Act, which requires rules to be adopted six months before the enforcement date of the Act. Minnesota Statutes, section 299F.844.

7510.5540 Exempt Articles. This part sets out the exemptions that will be made to the standards of parts 7510.5500 to 7510.5570. These exemptions include the statutory exemption, exemptions that reflect small business considerations for the reupholstery industry, and exemptions that take into account considerations for furniture with limited and special uses in public occupancies.

Subpart 1 refers to the exemptions of Minnesota Statutes, section 299F.842. It is reasonable to include a reference to these exemptions in the rules so that all exemptions are together for ease of understanding by those who have to comply with these rules.

Subpart 2 provides a transitional set of standards for furniture that is in a public occupancy before the enforcement date of these rules and that is reupholstered after the enforcement date of these rules. Under subpart 2, such an article of furniture is exempt from meeting the standards of TB 133 when it is reupholstered if the article has never met the standards of TB 133, if replacement filling material is fire retardant, and if all filling material is encased in a flame blocker.

Subpart 2 lessens the impact of the rules on small businesses while at the same time improving fire safety. Some public occupancies and most reupholsterers are small businesses. For many public occupancies, it often makes economic sense to reupholster furniture that has become worn, damaged, or outdated, thereby extending the useful life of the furniture. Without an exemption for furniture that has never met TB 133, a reupholsterer would have to test the article of furniture or a similar article of furniture to show that the reupholstered article meets the standards of TB 133. TB 133 is a destructive test. Since reupholstery is often done in small numbers or even one item at a time, the

requirements of TB 133 would for all practical purposes prohibit the reupholstery of furniture that has never met TB 133.

Subpart 2 will improve the fire safety of any item exempt under it. By definition, an item that is exempt under subpart 2 has never met the requirements of TB 133. If the item is reupholstered meeting the requirements of subpart 2, you have taken an item that has met no previous flammability requirements and you have made it into an item that has fire retardant replacement filling material and a flame blocker encasing all filling material. It is reasonable to make an exemption to the rules if the exemption improves fire safety.

Performance standards are generally favored over design standards in rulemaking. See Minnesota Statutes, section 14.115, subdivision 2, paragraph (d). This is because performance standards generally result in lower costs to the person being regulated. Even though this subpart sets out design standards, it does not run counter to the directive of section 14.115 because a reupholsterer can always choose to use the performance standards of TB 133 if that would be more economical.

The task force spent many hours discussing the flammability standards that should be applied to reupholstered furniture. During the discussion, furniture was divided into two main groups. One group was furniture in place before the enforcement date of the rules that is reupholstered after the enforcement date of the rules. The other group was furniture that meets the standards of TB 133 and that is later reupholstered.

For furniture in place before the enforcement date of the rules, the task force was unanimous in endorsing the exemption granted by subpart 2 because it will improve fire safety.

For furniture that meets the standards of TB 133, the task force could not come up with any satisfactory criteria for an exemption that would guarantee that fire safety would be maintained or improved. It was theorized that using fire retardant filling material and encasing it in a flame blocker would ensure that an item meets the standards of TB 133. Even though this theory seems plausible, no data is available to either prove or disprove it. The task force was not willing to recommend an exemption to the standards of TB 133 without data to support it.

Further, the task force was not convinced that an exemption is needed for reupholstering furniture that already meets TB 133. If an item of furniture is labeled as meeting TB 133, test data is available to show that a similar article was tested in conformance with TB 133 and that the labeled article would meet TB 133 by comparison to the tested article. It is possible that a reupholstered item may be shown to meet TB 133 by a comparison to the data that demonstrated that the item met TB 133 before reupholstery.

Subpart 3. In some public occupancies, there are specialty items of furniture that are necessary to provide an important service to the occupants. In certain circumstances, it may be difficult for the public occupancy to obtain such items of furniture that meet the requirements of these rules. It is important to consider exempting these items of furniture if it can be done while still maintaining safety because these items add to the quality of life of the occupants by providing needed services in a convenient manner.

For example, some nursing homes have a small beauty and barber shop in the building to provide service to the nursing home residents who cannot easily travel outside the home. The huge majority of beauty and barber shops, however, are not in public occupancies so it is likely that few if any beauty or barber chairs will be commonly made to

comply with TB 133. The expense of custom ordering a chair to comply with TB 133 rules out doing this for most nursing homes.

Other examples of specialty items of furniture include health care furniture such as exam chairs or physical therapy equipment which are important to the patients at a hospital or the residents of a nursing home. In some circumstances, it is possible that such furniture meeting TB 133 is not commonly available.

Subpart 3 allows for the exemption of an article of furniture from compliance with these rules if the article is necessary to provide an important service, if a complying article is not commonly available, and if the noncomplying article does not unreasonably compromise fire safety.

Items of furniture exempted under subpart 3 are normally small in number in any public occupancy. Since these types of items are used to provide a service, they are usually used under the supervision of a staff member in a separate room that is closed and sometimes locked when not in use. All of these factors indicate that the contribution to the fire load by these items would be relatively small. Further, if there is a fire, these items would likely be isolated in a room separated from the occupants of the building, which would slow the spread of the fire. This would minimize any threat to fire safety and is in line with the underlying policy behind the Furniture Fire Safety Act.

Before a noncomplying item can be used in a public occupancy, the fire marshal must determine that the item will not unreasonably compromise fire safety. This adds an extra measure of protection in making sure that the exemption does not defeat the purpose of the rules.

Based on these factors, the exemption granted by subpart 3 is reasonable.

7510.5550 Labeling Requirements. The state or local fire marshal who inspects public occupancies must be able to readily determine whether an item of seating furniture meets the standards of the rules. Part 7510.5550 meets this need by requiring labels on articles of seating furniture that are in compliance with the rules.

In general, requiring a label is reasonable because it is the most expeditious way of identifying items of seating furniture that meet the standards. A label is easily seen by the inspector. Labels are now routinely attached to items of furniture by manufacturers and requiring certain language will not impose a burden on manufacturers. The reasonableness of each separate labeling requirement is discussed with the requirement's respective subpart.

Subpart 1. The task force recommended using a universal label useable across the country instead of a label unique to Minnesota. The reasons for this are similar to the reasons for having a single set of flammability standards instead of having a different set of standards for each state. Many furniture manufacturers are nation-wide or region-wide companies. It would place an unnecessary burden on a manufacturer to have a different label for each state that its furniture is shipped to, especially if the flammability standards are the same from state to state.

The wording of the label required by subpart 1 is taken from the labels required in California and Illinois. See, California Flammability Regulations, Title 4, Chapter 3, part 1374.3(c) and the Illinois Furniture Fire Safety Act (Public Act 86-631). California and

Illinois have adopted the flammability standards of TB 133. Both states also mandate that complying furniture must be labeled.

The required labels from both California and Illinois require a first sentence that states: "THIS ARTICLE IS MANUFACTURED FOR USE IN PUBLIC OCCUPANCIES AND MEETS THE FLAMMABILITY REQUIREMENTS OF CALIFORNIA BUREAU OF HOME FURNISHINGS TECHNICAL BULLETIN 133." However, the second sentence of the California label differs slightly from the Illinois label. California requires: "CARE SHOULD BE EXERCISED NEAR OPEN FLAME OR WITH BURNING CIGARETTES." Illinois requires: "HOWEVER, CARE SHOULD BE EXERCISED NEAR OPEN FLAME AND WITH BURNING CIGARETTES."

The California and Illinois labels allow a person to readily determine whether an item of seating furniture meets the standards of TB 133. Further, these are the only labels in the nation that the Fire Marshal's Office is aware of that indicates compliance with TB 133.

Subpart 1 is written in such a way that the California label and the Illinois label will both be acceptable in Minnesota. It is reasonable to write subpart 1 this way because the label will meet the need of the fire marshal to readily determine whether an article of furniture complies with TB 133 and because a manufacturer will not need a separate label for furniture sold in Minnesota.

Subpart 2. All of the reasons for labeling new furniture apply to reupholstered furniture. Since the rules governing reupholstering are unique to Minnesota, the wording of the label does not need to be the same as anywhere else. Hence, the reference in the label to a specific part of Minnesota Rules is reasonable.

Subpart 3 sets out the size of the label and the size of the type used in the label. These dimensions are identical to those for the labels prescribed by California and Illinois. As discussed in subpart 1, it is reasonable to require label dimensions identical to those required by other jurisdictions.

7510.5560 Testing; Documentation. TB 133 is a destructive test. An item of seating furniture is destroyed or seriously damaged by fire in the process of determining whether the item meets the standards of TB 133. Concern was raised by task force members who are furniture manufacturers about how much testing will be needed to demonstrate compliance with these rules. They were concerned that the rules might require testing of an article that is nearly identical to a labeled article in style, size, filling material, fabric, color, and other attributes. It is therefore necessary to clarify the amount of testing that will be required to comply with the standards and the documentation that will be required to prove compliance.

The testing requirements of subpart 1 and the documentation requirements of subpart 2 are based on comments from Gordon Damant, the person who developed TB 133. In a letter dated June 24, 1991, Mr. Damant states:

"It is the position of our office that manufacturers do not have to test every single product or style they make, and every variation of every style. It is possible for a manufacturer to classify products and test worse-case styles and worse-case fabrics. The results of a limited number of worse-case conditions can represent many products made by the same manufacturer. We have worked with a number of manufacturers to help them put together a classification scheme and in many

instances we have found that if a manufacturer makes, for example, a hundred styles or so, all of those styles can be represented by not more than five or six Technical Bulletin 133 tests. Therefore, manufacturers should not be made to feel that every style must be tested, with ever cover fabric and every variation of every cover fabric. There are ways of classifying furniture which will significantly limit the amount of testing which needs to be done. In any event, a manufacturer would be required, at least by California law, to put a label on each product stating that it is in compliance and an enforcement agency could certainly go back to the manufacturer and ask to see the manufacturer's classification system and the basis upon which they are making the claim the product is in compliance."

Members of the task force who manufacture furniture agreed with Mr. Damant that testing representative samples within a classification of furniture would be sufficient to prove compliance with TB 133. The requirements of subparts 1 and 2 are reasonable because they are in line with the opinion of Mr. Damant. Further, these requirements represent a small business consideration in that allowing testing on representative samples imposes a lesser burden on manufacturers than a more broad based requirement of testing every variation of furniture, while still maintaining a minimum level of safety.

The requirement of documentation does not specify that the documentation has to be written. This is intentional so that documentation can be either on hard copy or electronic media.

7510.5570 Enforcement. Minnesota Statutes, section 299F.843, states "the state fire marshal shall enforce sections 299F.840 to 299F.848 . . ." Part 7510.5570 details how the state fire marshal will enforce these sections.

Subpart 1 requires the state or local fire marshal to order proof of compliance or removal of an article of furniture when it cannot be readily determined that the article complies with these rules. In some areas of the state and as a practical matter, enforcement of the state fire code and other fire safety measures is done primarily by the local fire marshals. It is reasonable, therefore, to use both the state and local fire marshals to enforce these rules.

The fire marshal, in inspecting furniture to determine compliance, will first look for the label that indicates the article of furniture complies. If the label is damaged, missing, or obscured, the fire marshal will allow the owner to provide proof that the article complies as opposed to requiring the immediate removal of the article. The article will only have to be removed if proof of compliance is not provided within a reasonable time period. This procedure is reasonable because it allows the owner to show that the furniture complies before there is a burden of removing the article imposed on the owner. This method is consistent with current state fire code enforcement procedures.

Subpart 2 requires the state fire marshal to inspect the testing and classification records of a manufacturer's product line when the fire marshal believes that the manufacturer's seating furniture does not comply with parts 7510.5500 to 7510.5570. This situation would come up when there is a fire and a labeled article of furniture burns in a manner inconsistent with what is expected of a complying article. In this situation, it is reasonable that the state fire marshal should investigate to make sure that the manufacturer is in fact complying with these rules as indicated on the label of the article in question.

Subpart 2 also requires the manufacturer to permit the state fire marshal to inspect the testing of the manufacturer's furniture and review the manufacturer's documentation of compliance. A failure to open up records would allow the state fire marshal to obtain an

injunction under subpart 3 to prevent the sale in Minnesota of the articles of furniture in question. This requirement is reasonable because it allows the manufacturer the opportunity to show compliance with these rules before the state fire marshal takes an action detrimental to the manufacturer.

Subpart 3 sets out two conditions for the state fire marshal to begin an action to enjoin the sale of an article of furniture. One is where the article does not comply with these rules and the other is where the state fire marshal is unable to verify that the article complies because the manufacturer does not permit inspection of its records when requested under subpart 2. It is reasonable to prevent the sale of a noncomplying article because the article is unsafe. It is also reasonable to prevent the sale of an article which is believed to be noncomplying and which cannot be verified to comply because it is likely that the article is unsafe.

Subparts 2 and 3 specifically limit the enforcement to the state fire marshal. This is different than in subpart 1 which is enforceable by either the state fire marshal or a local fire marshal. This is because the verification of compliance of individual articles of furniture is a local matter, whereas the accuracy or truthfulness of a manufacturer's classification and testing data is an extremely complex issue and is one that affects public occupancies throughout the state. This type of issue is more appropriately handled on a state level by a single lead agency, namely the state fire marshal.

Conclusion

Based on the foregoing, the proposed rules governing flammability standards for seating furniture are both necessary and reasonable.

4/21/92
Date

Thomas R. Brace
Thomas R. Brace
State Fire Marshal