

January 4, 2017

HAND DELIVERED

To: Commissioner Steve Troxler  
NC Department of Agriculture and Consumer Services

From: Tom Vitaglione   
Senior Fellow

Re: Petition to the Board of Agriculture

Enclosed is a petition to the Board of Agriculture regarding the regulation of toxic flame retardants in bedding sold in North Carolina. We note that the Board meets on February 16, and hope that the petition can be scheduled for public consideration at that time.

If there are questions or a need for clarification, please feel free to contact me at the address below, by phone at 919-834-6623 Ex 238, or by email at [Tom@ncchild.org](mailto:Tom@ncchild.org).

Best wishes for the new year.

CC: Tina Hlabse



Petition to the NC Board of Agriculture for a Rule regarding G.S. 106-65.97

Submitted by: Tom Vitaglione, Senior Fellow, NC Child *Tom Vitaglione*

Date: January 4, 2017

## Background

**G.S. 106-65.97 Manufacture Regulated** reads as follows: All materials used in the manufacture of bedding in this State or used in manufactured bedding to be sold in this State shall be free of toxic materials and shall be made from new materials.

Currently, "toxic materials" is not defined by rule. The proposed rule would address "toxic" with regard to flame retardants in bedding.

## Proposed Rule

### Designated Toxic Flame Retardants Prohibited

- a.) Effective January 1, 2018, all bedding products containing flexible polyurethane foam sold in this State shall:
  - be manufactured without the use of ozone depleting substances.
  - not contain polybrominated diphenyl ethers (PBDEs); tris (1,3-dichloro-2-propyl) phosphate (TDCPP); tris (2-chloroethyl) phosphate (TCEP); mercury (Hg); lead (Pb); formaldehyde; or phthalates regulated by the Consumer Product Safety Commission.
  - emit volatile organic compounds (VOCs) at a concentration of less than 0.5 parts per million using test methods specified in ISO parts 9 and 11.
- b.) Manufacturers may meet the requirements in Part a) by providing to the Department verification of product testing, or by submitting certification from a nationally-recognized non-profit product testing organization.

## Rationale

There is a growing body of research and literature indicating an association between certain flame retardants and cancer, genetic defects, damage to fertility or the unborn child, and impaired childhood cognitive development.

A Globally Harmonized System has been created to develop an evidence-based consensus on which flame retardants are associated with the above negative outcomes. That consensus is reflected in the specific list in Part a).

In accordance with the proposed rule, manufacturers may meet the requirements by submitting verification of their own testing for the designated toxic materials, or by submitting certification from a nationally-recognized non-profit testing organization. The best know such organization is CertiPUR-US.

CertiPUR-US is a non-profit organization that tests flexible polyurethane foam and certifies it as free from the toxic flame retardants identified by the Global Harmonized System.

Over 450 companies sell bedding products in the US containing foam certified by CertiPUR-US. Since these include major manufacturers (such as Sealy, Serta, Simmons, Kingsdown, etc.), an estimated seventy percent of the bedding products sold in North Carolina are already certified by CertiPUR-US.

Adoption of this rule would help level the requirements for all companies wishing to sell bedding products in our State, thus enhancing the protection of our residents (and especially our children) from the toxic materials that would be prohibited by this rule.

Twelve states\* have adopted statutes regulating selected toxic flame retardants, and each bears the expense of testing and enforcement. Adoption of the proposed rule for North Carolina would cover a broader list of chemicals deemed toxic in bedding flame retardants, would use a certification system with which the industry is familiar, and would be almost cost-free for the Department of Agriculture and Consumer Services to implement. (Product testing would be verified by the manufacturer or through certification by an organization such as CertiPUR-US. The Department would need only to monitor compliance.)

The proposed rule responds to two major initiatives adopted by the NC General Assembly; to reduce infant mortality and morbidity, and to improve grade-level reading by third grade.

Though progress has been made in recent decades, the 2015 infant mortality rate in North Carolina was 7.3 per 1,000 live births. This is up from 7.0 deaths per 1,000 live births in 2013. North Carolina ranks 42<sup>nd</sup> among the states in this critical indicator.

In addition, the fetal death rate was 7.0 per 1,000 live births in 2015, up from 6.5 deaths per 1,000 live births in 2013.

Though progress has been made in the past decade, just 76% of public school third-graders in North Carolina met reading proficiency standards in 2014-2015. This is down from 79% in 2013-2014.

As noted above, toxic flame retardants have been implicated with adverse pregnancy outcomes as well as compromised ability to learn. Thus, decreasing exposure to these toxics would assist in improving the two major indicators of well-being adopted by the NC General Assembly

Comprehensive plans are being developed to attain both goals; the Perinatal Health Strategic Plan, and Pathways to Grade-Level Reading. Both plans already contain objectives to reduce exposure to toxic chemicals, particularly in children. Dramatically reducing toxic flame retardants in bedding, with which children come in contact daily, would be a significant contribution to attaining the state's goals.

This petition is endorsed by:

NC Child Fatality Task Force (legislative study commission)

NC Child

Toxic Free NC

MomsRising

(Other organizations have endorsement under consideration)

\*The twelve states are: California, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New York, Oregon, Rhode Island, Vermont, Washington.

