



Steve Troxler  
Commissioner

## North Carolina Department of Agriculture and Consumer Services

March 9, 2017

Mr. Tom Vitaglione  
Senior Fellow  
NC Child  
3109 Poplarwood Court, Suite 300  
Raleigh, NC 27604

RE: Petition to the Board of Agriculture

Dear Mr. Vitaglione,

On January 4, 2017, you submitted a petition for rulemaking to the North Carolina Board of Agriculture (the "Board") on behalf of NC Child. (Attached hereto as Exhibit A) In your petition you proposed a new rule that would address "toxic" with regard to flame retardants in bedding.

The Board held its meeting on February 15, 2017, at 2 p.m. in the Martin Building on the N.C. State Fairgrounds in Raleigh, North Carolina. The Petition for Rulemaking was the third item on the agenda. You were given the opportunity to speak first and present the petition and reasoning to the Board. Following your presentation, Jim Burnette, Director of the Structural Pest Control and Pesticides Division, addressed the Board. Mr. Burnette explained to the Board that the Sleep Products Section is under his division and presented the research his division had done regarding the petition. To help illustrate this research, Mr. Burnette gave each member of the Board a summary of that information. (Attached hereto as Exhibit B) After Mr. Burnette concluded his comments, the public was allowed to speak and address the Board. Four members of the public signed up to speak and address the Board. They were: Chris Hudgins, International Sleep Products Association; Stephanie Lormand, Moms Rising; Michael Powers, AAC; and Elizabeth Robinson, N.C. Retail Merchants Association. Throughout all these presentations, the Board asked questions as needed.

After hearing from the public and upon motion, the Board went into executive session to consult with its attorney. Upon going back into open session, there was more discussion on the petition. Subsequently, after considering the whole record, the Board denied your petition for rulemaking. There was one dissent.

Pursuant to N.C. Gen. Stat. 150B-20(c), this letter will set forth the reasons for denying the petition:

1. There is no universal federal standard that is currently in place to help guide the State in this process. The U.S. Environmental Protection Agency is currently assessing flame retardant chemicals to determine if they pose health risks. This is a very involved and time-consuming process involving expert testimony and evidence. Without an opinion or recommendation by EPA, it would be very difficult and duplicative for this Board to move forward with rulemaking.
2. The Consumer Product Safety Commission provides no direct guidance to the State on this issue. It is currently considering a petition regarding toxic flame retardants.



3. While the federal government with the aid of experts determines what flame retardants, if any, are toxic, there are avenues currently available to the consumer if they wish to know whether their bedding contains flame retardants. Consumers may contact the product manufacturer or check the tag on the product. (See Exhibit B) Since California now requires this information to be on its labels, any company that sells its products in California has this information on its labels. It is estimated that 70-80% of the manufacturers currently doing business in North Carolina have this label.
4. Twelve states and the District of Columbia have passed **legislation** banning or restricting various flame retardants in various products. It was noted during your presentation that the proposed rule would go further than any other state's rule.
5. One of the members of the Board was a former Commissioner on the Rules Review Commission. She had served on the RRC for eight years. Based on her experience on the RRC, she expressed concern that the RRC would deny the proposed rule for the following reasons:
  - a. Some of the terminology in the proposed rule is broad and not defined: "ozone depleting substances" and "volatile organic compounds."
  - b. Causal connection between birth defects and flame retardants in mattresses and decrease in third-grade-level reading and flame retardants in mattresses unclear. Does not take into account other contributing factors.
  - c. Unclear as to the research/standard with regard to flame retardants.
6. The requirements in the rule are those of CertiPur-US. There are other companies that test for a variety of materials. There is concern that the standard is unclear, and that by adopting one company's standard over other companies' standards, the Board could be opening itself up to potential future litigation.
7. The cost to the industry, to the consumer and to the Department is unclear.
8. All other definitions from the Article on Bedding are contained in legislation, not rule. N.C. Gen. Stat. § 106-65.95 lists definitions.

For all of the above reasons and based on the information gathered from the whole record as follows: petition (Exhibit A, Mr. Vitaglione's presentation, Mr. Burnette's presentation and research (Exhibit B), public comments and Board discussion, the Board denied your petition for rulemaking.

With best regards, I am

Sincerely,



Steven W. Troxler

Commissioner

Chairman, N.C. Board of Agriculture

(2) Attachments: Exhibit A/Exhibit B

cc: Members of the N.C. Board of Agriculture  
Tina Hlabse, Secretary  
Anne Brown, Attorney