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RESPONSE TO PUBLIC COMMENTS ON PROPOSED NEW REGULATION

310 CMR 78.00: BAN OF COVERED PRODUCTS CONTAINING CERTAIN FLAME RETARDANTS

REGULATORY AUTHORITY:
M.G.L. c. 21A, §§ 2, 8, 16 and 28 and M.G.L. c. 111, § 2C.

5/9/2025

MassDEP filed the proposed new regulation 310 CMR 78.00: *Ban of Covered Products Containing Certain Flame Retardants* with the Massachusetts Secretary of the Commonwealth on September 16, 2022. MassDEP held one public hearing on October 11, 2022, and accepted written comments on the proposed regulation until October 25, 2022, in accordance with M.G.L. Chapter 30A. On September 16, 2022, MassDEP published in two newspapers, the Boston Globe and the Worcester Telegram & Gazette, notice of the public hearing and public comment period on the proposed regulation. The public hearing notice was also published in the Massachusetts Register on September 2, 2022, and interested parties were notified via electronic mail. A list of commenters is included at the end of this Response to Comments document.

After considering the comments received, MassDEP is finalizing the regulations with one substantive change, for the reasons explained in this response to comment. This document summarizes and responds to comments that were received during the public comment period.

Comments and Responses

Due to the number of comments received, this document does not include each comment made, but rather summarizes the comments and provides MassDEP's response to those comments. Comments may have been paraphrased and in many cases several people made similar comments.

Commercial Window Treatments

- 1. Comment:** Several commenters asked whether the definition of “window treatments” in the regulations includes both residential and commercial products. (Bright Window Coverings, Inc; Draper, Inc; Futureguard Building Products, Inc.; System Seven) Some commenters pointed to the definition of “Covered Product” in the statute (M.G.L. c. 21A, § 28) as “bedding, carpeting, children’s product, residential upholstered furniture or window treatment” for support that the term “residential” applies to both “upholstered furniture” and “window treatment.” (3G Mermet Corporation; Hunter Douglas) Another commenter stated that they believed the Legislature intended commercial window treatments to be included and that the issue with the “Covered Product” definition was a matter of a missing Oxford comma after the word “furniture”. (Kalin Associates, Inc.) Some commenters requested MassDEP exclude commercial window treatments from the regulation due to a lack of alternatives to antimony trioxide and other flame retardant chemicals that are on the list of prohibited chemicals in M.G.L. c. 21A, § 28 and the proposed regulations at 310 CMR 78.00.

Response: MassDEP believes the definitions of “Residential Upholstered Furniture” and “Window Treatment” in M.G.L. c. 21A, § 28 clearly show that the Legislature intended the statute to apply to both residential and commercial window treatments. The statute that implemented the flame retardant requirements is M.G.L. c. 21A, § 28. That statute defines “Window treatment” as “curtain materials, blinds or shades.” The definition does

not include the word “residential” or any other word or term that infers it is limited to residential window treatments only. By contrast, in the same statute, the Legislature included a definition of another type of product, namely upholstered furniture. That definition, “Residential Upholstered Furniture,” uses specific wording that makes clear that this type of product is limited to residential products only. M.G.L. c. 21A, § 28 defines “Residential upholstered furniture” as “seating or other upholstered products intended for indoor or outdoor use in or at a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or other textile.” The defined term itself uses the word “residential” and the definition includes the phrase “at a home or other dwelling intended for residential occupancy.” With these definitions, the Legislature made clear that if it had intended to limit the covered window treatments to only residential products, the Legislature knew how to make that limitation clear. In addition, the comments reference to the definition of “Covered Product” does not change the definition of the term “Window Treatment.” The definition of “Covered Product” lists the types of products that are intended to be covered by the statute, but each of these terms is defined in the statute. Pointing to the use of the word “residential” in the “Covered Product” definition does not mean that that word applies to the rest of the products listed, because the word “residential” is clearly only included because it is part of the defined term for “Residential Upholstered Furniture.” Therefore, MassDEP cannot exclude commercial window treatments in the regulations. In the final regulation, MassDEP added the words “residential” and “commercial” to the definition of “window treatment” to clarify the meaning of this term. As discussed later in this document, MassDEP also clarified in the final regulation that the definition of “window treatment” applies only to products intended for indoor use. The definition in the final regulation reads as follows: Window Treatment. Curtain materials, blinds or shades **intended for indoor residential or indoor commercial use.**

Antimony Trioxide

2. **Comment:** Several commenters requested MassDEP consider removing antimony trioxide from the list of prohibited flame retardant chemicals included in 310 CMR 78.00 or allow window treatment manufacturers additional time to find an alternative chemical. (3G Mermet Corporation; ACC NAFRA; Bright Window Coverings, Inc; CMC Shades and Specialties LLC; Hunter Douglas; Phifer Incorporated; Spring Window Fashions, LLC/MechoShade Systems, LLC; Yusen/Illuminate/AVLS; System 7). Several commenters noted the lack of available alternatives to antimony trioxide that can be used in commercial window treatments to allow those products to meet applicable federal and/or state flammability standards (3G Mermet Corporation; ACC NAFRA; Hunter Douglas; Phifer Incorporated; Spring Window Fashions, LLC/MechoShade Systems; WCMA) and/or contractual obligations to customers. (Bright Visual)
- Several commenters noted that Massachusetts is the first state to ban antimony trioxide in window treatments (Rollease Acmeda Inc.; WCMA); and the first state to include window treatments in their flame retardant law (ACC NAFRA; Spring Window Fashions, LLC/MechoShade Systems, LLC). One commenter stated antimony trioxide should be removed from the regulations because it does not pose a risk to consumers and its use as a flame retardant synergist saves lives. (I2a) One commenter suggested requiring a

consumer warning label on products regarding potential risks of a product rather than banning antimony trioxide. (Rollease Acmeda, Inc.)

Two commenters stated that window treatment manufacturers have had sufficient notice of the ban on antimony trioxide to bring products into compliance and that compliant window treatment products are on the market that meet federal flammability standards. (Clean Water Action; Kalin Associates, Inc.)

Several commenters stated that a ban on antimony trioxide will cause economic hardship. (3G Mermet; Bright Visual Products: CMC Shades and Specialties, LLC; MCS Drapery Service; Phifer, Inc; Rollease Acmeda, Inc; Spring Window Fashions; LLC/MechnoShade Systems, LLC; System 7; Yusen/Illuminate/AVLS)) Some noted the time and expense of finding alternatives will increase the costs of window treatments (3G Mermet Corporation; Hunter Douglas); result in lost business (Spring Window Fashions, LLC/ MechnoShade Systems, LLC; WCMA), layoffs (MCS Drapery Service) and supply challenges (WCMA; 3G Mermet Corporation). One commenter stated that upwards of ninety percent (90%) of the window treatment products they sell in Massachusetts contain antimony trioxide (Yusen/Illuminate/AVLS). Another commenter stated that available commercial window treatment alternatives that do not include antimony trioxide may not meet flammability standards, are not durable and may end up being discarded sooner, thereby increasing the amount of waste disposed at landfills (Bright Visual Products), Another commenter stated that approximately a dozen compliant fabrics exist in the market but that would not be sufficient at this time to meet window shade manufacturer demand (CMC Shades and Specialties LLC).

Response: MassDEP did not make any changes to the final regulation based on these comments. The Legislature clearly intended to ban antimony trioxide in covered products, as antimony trioxide is listed as a banned chemical at M.G.L. c. 21A, § 28(b)(iii). Although the statute gives MassDEP the authority to create a labeling program for products that meet the statutory requirements, it did not authorize continued use of a chemical with a warning label. MassDEP understands the concerns raised regarding the prohibition of antimony trioxide and the impact of the statute and regulations on the window treatment industry, but this ban was passed into law by the Legislature and became effective on April 1, 2021. It will remain in place unless or until the Legislature amends the statute. MassDEP will attempt to work with the regulated community to address these concerns.

Applicability

3. **Comment:** The definition of “covered product” in the regulations includes “residential upholstered furniture.” Is commercial upholstered furniture, such as that used in restaurants, hotels, and office buildings, also included in the definition? (Leif Petersen, Inc.)

Response: Commercial upholstered furniture is not included in the definition of “covered product” and therefore is not subject to the regulations. The definition of “covered product” in 310 CMR 78.00 is the same as in the statute (M.G.L. c. 21A, Section 28) and reads as follows:

Covered Product. Bedding, carpeting, children’s product, residential upholstered furniture or window treatment.

The definition of "Residential Upholstered Furniture" in both the statute and 310 CMR 78.00 also reflects that commercial upholstered furniture is not subject to either the statute or regulations:

Residential Upholstered Furniture. Seating or other upholstered products intended for indoor or outdoor use in or at a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or other textile.

This definition clearly limits covered upholstered furniture products to residential products only and does not include commercial upholstered furniture.

4. **Comment:** Does the statute apply to exterior window treatment installations? (Futureguard Building Products, Inc.)

Response: No. MassDEP believes the Legislature intended the definition of "window treatments" to refer to products used inside only, and not those used outside. The definition for Residential upholstered furniture" in M.G.L. c. 21A, § 28 states that it includes "seating or other upholstered products intended for indoor or outdoor use." The fact that the Legislature explicitly chose to clarify that "residential upholstered furniture" included products intended for outdoor use but did not do so in the case of "window treatments" demonstrates that the Legislature did not intend "window treatments" to include products intended for exterior use. MassDEP amended the definition in the final regulations as follows to be explicit:

Window Treatment. Curtain materials, blinds or shades **intended for indoor residential or indoor commercial use.**

5. **Comment:** Do privacy curtains that hang between beds in hospital rooms fall under the definition of 'window treatment' in the regulations? (Architex)

Response: Privacy curtains that hang between beds are not used on windows, therefore, MassDEP does not consider them to fall under the definition of 'window treatment' in M.G.L. c. 21A, § 28 or 310 CMR 78.00.

6. **Comment:** The proposed regulation bans "chemical flame retardants or chemical analogues listed in CMR 78.04(3)." Does that mean that the eleven (11) flame retardants listed are the entirety of the banned chemicals? Or does that mean that any non-listed chemicals that could be considered a chemical analogue to the listed chemicals are also banned? (Green Science Policy Institute)

Response: The eleven (11) chemicals listed in 310 CMR 78.04(3) are the entirety of chemicals included in the regulation at this time. As stated in 310 CMR 78.04(4), MassDEP shall, at least every three years, review, identify and recommend, if applicable, other chemical flame retardants that should be prohibited in covered products. In accordance with 310 CMR 78.04(4), if MassDEP determines additional chemicals should be added to the list, MassDEP will amend the regulations to include them.

7. **Comment:** On page four of the Background Document that accompanied the draft regulations, the exemption that includes motor vehicles is listed as follows:

covered products contained in motor vehicles, watercraft, aircraft, all-terrain vehicles, off-highway scramblers or any component parts;

The words "contained in" should not have been included. Those words are not included in the exemption in the statute. This law was written to exempt cars, not things contained within cars such as car seats. There have been numerous attempts by industry groups to

make car seats exempt from flame retardant regulations and one way to do that is language such as this that talks about things contained in cars. I ask that the background document be corrected, and any future communications clearly communicate on that point. (Clean Water Action)

Response: MassDEP agrees the words “contained in” should not have been included and that removeable car seats are not subject to the exemption. MassDEP directs the regulated community to refer to the exemption language in the regulations which is correct and accurately reflects the statute. Accordingly, 310 CMR 78.03 of the regulations reads, in pertinent part, as follows:

The following products are exempt from the requirements of 310 CMR 78.00:... (2) motor vehicles, watercraft, aircraft, all-terrain vehicles, off-highway motorcycles or any component parts...

Merriam-Webster on-line dictionary defines “component part” as "something (as a building or part of a building) that cannot be removed without substantial damage to itself or to the immovable property to which it is attached." A removeable car seat is not a “component part” of a motor vehicle and, therefore, is not exempt from 310 CMR 78.00.

8. **Comment:** The Department is encouraged to maintain the exemption for motor vehicles and components, including child restraint systems (“CRS”), which are essential life-saving infant car seats required to be available to families across the Commonwealth. A limited number of infant and booster car seats do not use flame retardants to meet federal flammability standards and those car seats cost substantially more. If car seats are required to meet the requirements of 310 CMR 78.00, the state’s most vulnerable population will be disproportionately impacted. (JPMA)

Response: As stated in response comment #7 above, removeable car seats are not component parts of motor vehicles and, therefore, are not exempt from either the statute (M.G.L. c. 21A, § 28) or from 310 CMR 78.00. MassDEP understands the concerns that vulnerable parts of the population may be disproportionately impacted. MassDEP will attempt to work with the regulated community and affected consumers to address these concerns.

Other Comments

9. **Comment:** MassDEP received several comments requesting clarification on the effective date of the flame retardant law. (Brite Visual; IA Interior Architects; Isgenuity)

Response: An Act to Protect Children, Families, and Firefighters From Harmful Flame Retardants, was signed into law on January 1, 2021, and took effect 90 days later on April 1, 2021.

10. **Comment:** MassDEP received several comments stating there was a lack of outreach by the Legislature and MassDEP to both the window covering industry’s trade association and individual members of the association regarding the new flame retardant statute and regulations. (Hunter Douglas; Spring Window Fashions, LLC / MechoShade Systems, LLC; Yusen/Illuminate/AVLS; WCMA) One commenter explicitly noted that, due to the lack of outreach, they were delayed in seeking an alternative to antimony trioxide until they became aware of the new statute. (Hunter Douglas)

Response: Multiple public notices of the statute and the content of a MassDEP regulation to implement the statutory ban on listed flame retardants in specified products were published. After *An Act to Protect Children, Families, and Firefighters From Harmful*

Flame Retardants was signed into law, the final statute was published on the website of the General Court. After the effective date of the statute, MassDEP sent notifications on April 28 and November 16, 2021, regarding when the ban on flame retardant chemicals specified in the statute would take effect to a list of stakeholders and posted these notifications on MassDEP's website. After distribution of notifications to known stakeholders and posting of a notice of the meeting on the agency website, MassDEP held a stakeholder meeting on August 26, 2021, to discuss the statute's implementation and take comment on draft regulations that had not yet been released for public comment. In addition, in accordance with M.G.L. c. 30A, MassDEP published notice of the proposed regulations in the Massachusetts Register and in two newspapers, held a public hearing and solicited public comment.

11. **Comment:** I am aware of the proposed regulations banning antimony trioxide in window treatments. I was wondering if you could point me to the section in the state building code or fire code pertaining to flame retardants in window treatments? Does the current code permit antimony trioxide? What is the minimum standard of flame retardants for window treatments required to be compliant with the building/fire code? (Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.)

Response: MassDEP does not generally opine on other agencies' regulations. Links to the current state building code and fire code are listed below.

<https://www.mass.gov/massachusetts-state-building-code-780-cmr>

<https://www.mass.gov/service-details/massachusetts-fire-code>

12. **Comment:** According to National Fire Protection Association data from 2015 to 2019, although upholstered furniture was the first item ignited in only 1% of house fires, it accounted for 16% of deaths and 6% of injuries from house fires. Our organization suggests keeping track of these relevant fire statistics following implementation of the regulations to ensure that the restrictions on flame retardants in upholstered furniture do not have the unintended effect of causing more destructive house fires. (ACC NAFRA)

Response: MassDEP appreciates the comment. MassDEP does not track this information but welcomes any ongoing information to better assess the impacts of the legislation and corresponding regulations.

13. **Comment:** The law has been on the books since January 2021; therefore, window treatment manufacturers had sufficient notice. Some manufacturers are making inherently flame retardant materials for window treatments without using any chemical flame retardants and it is appropriate for the entire industry to be held to that standard. (Clean Water Action)

Response: Thank you for your comment.

14. **Comment:** As an interior designer, I have studied the effects of materials on human health. I understand that it is challenging and costly for manufacturers and retailers to comply with new standards and third-party certifications, however it is a matter of life and human health. (Interior Elements, WBE)

Response: Thank you for your comment.

15. **Comment:** I encourage transparency in the implementation of this law and that MassDEP provide information about the number of inspections conducted and the violations found. (Clean Water Action)

Response: MassDEP is diligent about complying with the public records law. Once finalized, MassDEP enforcement actions are public record.

18. **Comment:** Since the introduction of strict fire safety standards in the United States, which includes the use of flame retardants, fires have been reduced by over 50 percent, from 734,000 in 1980 to 38,000 in 2021. (I2a)

Response: Thank you for your comment.

List of Commenters

3G Mermet Corporation

American Chemistry Council (ACC) North American Flame Retardant Alliance (NAFRA)

Architex

Bright Visual Products

Bright Window Coverings, Inc.

Clean Water Action

CMC Shades and Specialties LLC

Draper, Inc.

Futureguard Building Products, Inc.

Green Science Policy Institute

Hunter Douglas

International Antimony Association (I2a)

IA Interior Architects

Interior Elements, WBE

Isgenuity

Juvenile Products Manufacturers Association (JPMA)

Kalin Associates, Inc.

Leif Petersen, Inc.

MCS Drapery Service

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Phifer Incorporated

Rollease Acmeda Inc

Spring Window Fashions, LLC / MechoShade Systems, LLC

System 7

Window Coverings Manufacturing Association (WCMA)

Yusen/Illuminate/AVLS