



Department of Environmental Protection

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Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

Date: April 29, 2021

Re: **AN ACT TO PROTECT CHILDREN, FAMILIES, AND FIREFIGHTERS FROM HARMFUL FLAME RETARDANTS**

Massachusetts General Laws, Chapter 21A, Section 28
Retailer Requirements

Announcement to Retailers:

On January 1, 2021, Governor Baker signed into law [Chapter 261 of the Acts of 2020 \(malegislature.gov\)](https://malegislature.gov/Acts/Details.aspx?Title=21A&Section=28) - An Act to Protect Children, Families, and Firefighters from Harmful Flame Retardants. The Massachusetts Department of Environmental Protection (MassDEP) believes this law may be pertinent to your organization and is providing the following information to help you understand the law and determine whether it applies to your organization.

Flame retardant refers to a diverse set of chemicals added to various products to decrease ignitability and inhibit the combustion process. Test data and monitoring studies in humans and the environment have demonstrated that certain flame-retardant chemicals can persist in the environment, bioaccumulate in people and animals, and have been shown to cause adverse developmental effects in animals.

Retailer Requirements

The law requires that: *A manufacturer or retailer shall not sell, offer or manufacture for sale, distribute in commerce or import into the commonwealth a covered product, except for inventory manufactured prior to December 31, 2021, that contains any of the following chemical flame retardants or a chemical analogue the total weight of which exceeds 1,000 parts per million for any component part of the covered product.*

MassDEP recommends retailers that sell Covered Products contact their suppliers, distributors, wholesalers and manufacturers to make arrangements to ensure that Covered Products offered for sale after December 31, 2021 are done so in compliance with this law.

Covered Products

Covered Products are defined under the law to include *bedding, carpeting, children's products, residential upholstered furniture, or window treatments*. Please refer to the statute for definitions of each of these Covered Products. The law does not apply to: products in motor vehicles, watercraft, aircraft, all-terrain vehicles, off-highway motorcycles or any component parts; the sale, or purchase of any previously owned product containing a chemical flame retardant prohibited under this law; electronic devices; and electronic components of Covered Products. In addition, the law does not apply to Covered Products that contain prohibited chemicals due to the presence of recycled materials used during the manufacture of the product covered.

List of Flame Retardants Chemicals Covered Under the Law

1. *Tris(1,3-dichloro-2-propyl)phosphate (TDCPP) (Chemical Abstracts Service number 13674-87-8);*
2. *Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number 115-96-8);*
3. *Antimony trioxide (Chemical Abstracts Service number 1309-64-4);*
4. *Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number 25637-99-4);*
5. *Bis(2-Ethylhexyl)-3,4,5,6- tetrabromophthalate (TBPH) (Chemical Abstracts Service number 26040-51-7);*
6. *2-Ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB) (Chemical Abstracts Service number 183658- 27-7);*
7. *Chlorinated paraffins (Chemical Abstracts Service number 85535-84-8);*
8. *Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service number 13674-84-5);*
9. *PentaBDE (Chemical Abstracts Service number 32534-81-9);*
10. *OctaBDE (Chemical Abstracts Service number 32536-52-0);*
11. *Tetrabromobisphenol A (TBBPA) (Chemical Abstracts Service number 79-94-7)*
12. *Any other chemical flame retardants specified by the department pursuant to subsection (c).*

Addition of Flame Retardant Chemicals

The law instructs MassDEP to review, identify and recommend, if applicable, other chemical flame retardants that should be prohibited based on a determination that the flame retardant is anticipated to present a toxic hazard to people. This review is required to take place not less than every three years.

Penalties

A manufacturer or retailer who violates the law, or any regulations promulgated pursuant to it, shall be subject to the following civil penalties:

- For the first violation, a fine of not more than \$100 per Covered Product, not to exceed a total of \$5,000;
- For the second violation, a fine of not more than \$250 per Covered Product, not to exceed a total of \$25,000; and

- For the third or subsequent violation, a fine of not more than \$1,000 per Covered Product, not to exceed a total of \$50,000.
- For purposes of calculating a penalty under the law a collection of Covered Products that are sold as a set shall constitute 1 Covered Product.
- A manufacturer or retailer who knowingly violates the law shall be subject to a civil penalty equal to 3 times the amount of the fine imposed for such violation.
- A civil penalty for a violation shall be waived if the department determines that a manufacturer or retailer acted in good faith to be in compliance, pursued compliance with due diligence and promptly corrected any noncompliance after discovery of the violation.

No later than July 1, 2021, manufacturers of Covered Products that contain prohibited chemical flame retardants in excess of 1000 parts per million are required to notify retailers and other persons that sell Covered Products in the commonwealth of the passage of the law and its contents.

MassDEP anticipates issuing draft regulations regarding the law in Fall 2021, but regulated parties should be aware that the law took effect as of April 1, 2021 and is enforceable by MassDEP. Questions regarding the law or MassDEP's administration of the law can be directed to flame.retardants@mass.gov. For more information, please visit our website at <https://tinyurl.com/ma-flame-retardants>.