



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
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**STATEMENT OF COMMISSIONER ROBERT ADLER ON
VOTE TO GRANT PETITION HP 15-1 REGARDING ORGANOHALOGEN FLAME RETARDANTS**

SEPTEMBER 20, 2017

I am thrilled that the Commission voted today to grant the petition (HP 15-1) submitted to the Commission on June 30, 2015 by a coalition of public health groups and consumer groups to ban the use of additive, non-polymeric organohalogen flame retardants, as a class, with respect to four specific product categories. In the interest of brevity, I refer to the additive, non-polymeric organohalogen flame retardants as “OFRs.”

The specific product categories identified in the petition are: (1) durable infant or toddler products, children’s toys, child care articles or other children’s products, (2) upholstered furniture sold for use in residences, (3) mattresses and mattress pads, and (4) plastic casings surrounding electronics.

Today’s vote to grant the petition consisted of two elements: we directed staff to convene a Chronic Hazard Advisory Panel (CHAP) and to issue guidance to the public on the hazards of OFRs.

Our first action directed staff to convene a CHAP pursuant to the procedures set forth in section 28 of the Consumer Product Safety Act to assess the risks to consumer health and safety of OFRs as a class of chemicals, and to have the CHAP report its findings to the Commission. On this point, we directed the CHAP to review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies, and, where limited or no data are available, to use any generally accepted scientific methodology to fill in the data gaps, as appropriate. In addition, as part of its assessment, we directed the CHAP to consider that consumers are exposed not just to a single OFR, but rather to mixtures of the chemicals.

I am well aware that CPSC staff recommended that we deny the petition. Let me address what I perceive to be the staff's main objections and explain why I came out differently. As a starting point, let me say that I have little serious disagreement with staff on the science aspect of the issues. To the extent that there was disagreement, it was over the legal and policy issues arising from the science. I note that a large part of staff's recommendation rested on their misgivings about treating OFRs as a broad class of chemicals given OFRs' differing levels of toxicity and exposure to which consumers are subject. I grant staff's point about the differing levels of toxicity for these flame retardants. But what I have not heard from staff, nor from any of the witnesses at our hearings, is credible evidence demonstrating that there are any "safe" organohalogen flame retardants. There are certainly a number of OFRs where we have no studies to provide us with proof of harm, but years of experience confirm that every time we get sufficient data to evaluate the risk of harm of any specific OFR, we always find it to be so toxic that we start to remove it from our products. In other words, the more evidence that accumulates, the stronger we see the case against the use of these chemicals.

The fact is that additive, non-polymeric organohalogens carry a set of common characteristics found in every member of the family, and those characteristics so far turn out to be unreasonably hazardous. I see no indication that we will ever find results to the contrary. Among other things, OFRs pass into cells freely, don't metabolize easily, inhibit a cell's defense system, bioaccumulate, and cause various forms of harm due to their chemical structure. On this point, I remind everyone that Dr. Birnbaum, Director of the National Institute of Environmental Health Sciences, and undoubtedly the nation's preeminent toxicologist, repeatedly stated that, of the numerous OFRs she has studied, she knows not one that has not been shown to cause potential health problems.

Moreover, I believe it to be a useless exercise to try to determine precisely the exposure of consumers to each and every OFR in the environment given their ubiquitous nature and their existence in mixtures of things like household dust. Again, I note that Dr. Birnbaum and almost all other witnesses stressed the impossibility of addressing OFR risks other than as a class. There are simply too many of these chemicals in the market – and entering the market – to regulate them one-by-one. I repeat: it defies common sense to do a one-by-one approach given the reality that consumers, especially children, encounter OFRs as mixtures, not as individual chemicals.

Having listened carefully to the testimony of the witnesses at last week's hearing – and having read and re-read the law – I am convinced that the FHSA permits us to use scientifically approved methods of analyzing known data to fill in any data gaps regarding OFR risks. The FHSA was never meant to be a straitjacket barring us from adequately protecting the public. To

the contrary, the courts remind us again and again to read public health statutes broadly to effectuate their safety goals.

Thus, while I am delighted to defer to staff's judgment on the science of OFR hazards, I believe that the issue of assessing whether we have adequate information regarding exposure and risk is one of law and policy. And, having reviewed the FHSA, I have little doubt that the Commission has the legal authority to address OFR risks as a class.

Given my conclusion about the hazards associated with OFRs, I believe that the most efficient and effective way to address the issue is by convening a CHAP pursuant to the procedures in section 28 of CPSA. The mandate to the CHAP is straightforward and consists of three elements:

1. Direct staff to convene a CHAP pursuant to the procedures set forth in section 28 of the Consumer Product Safety Act to assess and issue a report on the risks to consumer health and safety from the use of additive, non-polymeric organohalogen flame retardants as a class of chemicals in the four product categories set forth in the petition;
2. Instruct the CHAP to review all relevant data, including the most recent, best-available peer-reviewed scientific studies, and, where limited or no data are available, to use any generally accepted scientific methodology to fill in the data gaps, as appropriate, and;
3. Instruct the CHAP to consider consumer exposure to mixtures of OFRs, not just exposure chemical-by-chemical.

Our second action was to instruct staff to publish a Federal Register notice that provides guidance to the public on the hazards of OFRs in the four product categories identified in the 2015 petition.

I am delighted that the Commission voted to grant the petition and to convene a CHAP. In the meantime, however, it seems necessary and appropriate to alert the public to the identified risks of OFRs. As we all know, the work of a CHAP to deal with issues like those before us will take many months, if not years. Accordingly, I am delighted that the Commission approved a guidance document for manufacturers, distributors, retailers, and consumers in which we advise manufacturers to refrain from adding OFRs to their products and urge distributors, retailers, and consumers to inquire about the existence of OFRs in the products they buy and to avoid purchasing such products.

Let me address an objection that was raised at our meeting. In essence, it was how can we undertake the convening of a CHAP with the likely outcome being a rule to ban OFRs when the Commission has already staked out a position that OFRs are too hazardous to use? The simple answer is that a guidance document is just that – guidance. It is not a rule; it imposes no obligations on anyone to do anything or to refrain from doing anything. It is simply advice to

the public about our carefully measured conclusion that OFRs are too hazardous to put in certain consumer products. On this point, I note that the Commission has issued similar guidance documents before: on lead in consumer products and on hazardous chemicals in children's products. In these cases, the Commission did exactly what we propose to do here – indicate the agency's belief that the use of certain chemicals is "ill-advised" and encourage members of the public to avoid using them.

I would remind everyone that one of the four stated purposes of the Consumer Product Safety Act is "to assist consumers in evaluating the comparative safety of consumer products." I would also remind everyone that we have a talented Office of Communications whose everyday job is to provide information to the public similar to what is in this guidance document to carry out this part of our mission. This document is fully consistent with the work that office does and with our obligation to provide meaningful information to the public.

Having listened carefully to the unanimous testimony of some of the most distinguished governmental and academic scientists on the subject, I have concluded that we must not sit idly by and wait for data on the safety of OFRs that all evidence to date suggests will never come. As one of the witnesses at our hearing pointed out, if we took the tobacco industry's word on cigarette safety, we would still be waiting. Similarly, we have waited for years for our friends in the chemical industry to provide us with credible evidence that there are safe OFRs. I have little doubt that we will still be waiting for many more years, to no avail.

In short, the guidance document will serve to alert the public to a serious hazard and will encourage them to exercise their freedom of choice to avoid this hazard.