



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

**STATEMENT OF COMMISSIONER ELLIOT F. KAYE
ON THE PETITION ON ORGANOHALOGEN FLAME RETARDANTS**

September 20, 2017

Today, the Commission voted 3 to 2 to grant a petition regarding the use of additive, non-polymeric organohalogen flame retardants (OFRs)¹ in certain consumer products and to direct staff to convene a Chronic Hazard Advisory Panel (CHAP) pursuant to the procedures set forth in section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to assess and issue a report on the risks to consumers' health and safety from the use of OFRs, as a class of chemicals, in the following products: (1) durable infant or toddler products, children's toys, child care articles or other children's products (other than children's car seats); (2) upholstered furniture sold for use in residences; (3) mattresses and mattress pads; and (4) plastic casings surrounding electronics.

I voted to grant the petition and convene a CHAP because the overwhelming evidence received by the Commission to date indicates that OFRs are toxic and the exposure to them through certain consumer products may pose serious health risks to humans, especially pregnant women, young children and socioeconomically vulnerable populations. Parents and caregivers deserve to know that their household furniture, electronics and children's products are not exposing them and their families to toxic chemical dust.

For these reasons, I also was pleased to join Commissioners Adler and Robinson in voting to publish guidance in the Federal Register cautioning manufacturers, importers, distributors, retailers and consumers against certain products that might contain OFRs. One of the presenters last week said it perfectly: We should act based on what we know – not what we do not know. And at this point, the Commission

¹ For purposes of this statement and my votes, the term "OFRs" refers to additive, non-polymeric organohalogen fire retardant chemicals and does not include reactive or polymeric chemicals.

has received a tremendous amount of data with respect to the toxicity of these chemicals as a class and their potential for widespread exposure. One of the nation's – if not the world's – most knowledgeable toxicologists in this area, Dr. Linda Birnbaum, Director of the National Institute of Environmental Health Sciences at the National Institutes of Health and Director of the National Toxicology Program at the U.S. Department of Health and Human Services, has now twice appeared before the Commission to urge us to address the toxicological and health hazards associated with OFRs. In Dr. Birnbaum's expert judgment, OFRs are, of all the chemicals out there, among the riskiest in her mind, and all members of the proposed class of OFRs in the petition that have been studied have significant health concerns. Other leading scientists have submitted scientific evidence demonstrating exposure to OFRs from certain products covered by the petition.

We have a professional and moral duty as safety regulators to caution the public now based on the information that we possess. Contrary to my colleagues' objections, the guidance that we voted to issue today is not a rule, nor an attempt to forgo or replace formal rulemaking on this subject. And there is not any inconsistency in our guidance and the idea that we are a data-driven agency. In fact, it is the opposite. The data that have been presented from the petition to the first public hearing to now is overwhelming, and I cannot in good faith ignore it.

As a policy maker, and more importantly, as a parent, I am horrified and outraged at how chemicals are addressed in this country. It is completely irrational that we wait for children to be poisoned before the government is allowed to step in. Rational and thoughtful public policy in this area would involve the government and industry coming together to agree which chemicals are safe for human exposure, especially for pregnant women and children, and which ones are not. And more importantly, rational and thoughtful public policy would have these assessments occur before these chemicals are permitted to come onto the market. Waiting to assess the safety of chemicals after they are already in consumers' homes and our children's bloodstreams is totally irrational public policy.

Unfortunately, this is the reality we currently face.

Short of the ideal, at a minimum, the government agencies entrusted with keeping consumers safe should be organized and adequately funded to quickly make those assessments and act to protect public health as necessary, even after chemicals are on the market. If we are going to tolerate a system where chemicals come on the market before we have a sense of their potential health effects, especially on vulnerable populations, it seems fair to expect the government to be equipped to

move more quickly to make determinations on the safety of those chemicals and to have the authority to take action as warranted to protect us all.

The CPSC is too small and as an agency has too few funds to solve the larger public policy failure, but I remain committed to positioning the agency to play as meaningful and effective a role as we can to bring some clarity to the issue of toxic chemicals in consumer products. I believe that the Federal Hazardous Substances Act (FHSA) gives the CPSC such authority.

With respect to OFRs in particular, in undertaking any rulemaking under FHSA, I believe we have authority to address OFRs as a class of chemicals. Further, I believe that in order to treat OFRs as a “hazardous substance” under the FHSA, we need only determine whether OFRs, as a class of chemicals, have the *capacity* to produce illness through ingestion, inhalation or absorption through any bodily surface, and *may* cause substantial illness as a result of any customary or reasonably foreseeable handling or use of those products. *See* 15 U.S.C. 1261(f)-(g). In fact, down the road, should we need it, the FHSA also gives us the flexibility to create an exemptions process. *See* 15 U.S.C. 1262(a)(d). I believe the FHSA provides us with a very workable standard and I look forward to seeing the results of the CHAP and finding a way forward, quickly.

I want to thank the petitioners for bringing this important issue to our attention, and to the CPSC staff for their great work on it. I also very much appreciated reviewing and hearing all of our commenters’ submissions and testimony and thank them for their tireless advocacy and willingness to share their lifelong work with us, as well as their personal stories.

Addressing chronic hazards in consumer products is not an easy task, but it is a necessary undertaking. We are never going to have perfect information. The essence of this body is to make reasoned judgments based on the best available information to protect the public. That is our mission. And with less than perfect information, but certainly enough at this juncture, we should always choose to protect children over protecting chemicals.