



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

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approved and signed.

BALLOT VOTE SHEET

Date: November 13, 2019

TO : The Commission
Alberta A. Mills, Secretary

THROUGH: J. Gibson Mullan, Acting General Counsel
Mary T. Boyle, Executive Director

FROM : Patricia M. Pollitzer, Assistant General Counsel
Barbara E. Little, Regulatory Affairs Attorney

SUBJECT : Draft *Federal Register* Notice: Withdrawal of Guidance Document on
Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in
Certain Consumer Products

BALLOT VOTE Due: Tuesday, November 19, 2019

The attached draft *Federal Register* notice announces that the Commission is withdrawing the guidance document published in the *Federal Register* on September 28, 2017: Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products (82 FR 45268).

Please indicate your vote on the following options:

I. Approve publication of the draft notice in the *Federal Register*.

(Signature)

(Date)

II. Approve publication of the draft notice in the *Federal Register*, with the specified changes.

(Signature)

(Date)

III. Do not approve publication of the draft notice in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* notice: “Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products; Withdrawal.”

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 2015-0022]

Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products; Withdrawal

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; withdrawal of guidance document.

SUMMARY: In the **Federal Register** of September 28, 2017, the Consumer Product Safety Commission (CPSC) published a guidance document concerning certain consumer products that may contain harmful organohalogen flame retardants in an additive form. The CPSC is withdrawing the guidance document.

DATES: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the notice published at 82 FR 452688, September 28, 2017 is withdrawn.

FOR FURTHER INFORMATION CONTACT: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7479; email: amills@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On June 30, 2015, a coalition of consumer advocates and health professionals petitioned the Commission to declare four categories of consumer products containing additive, non-polymeric organohalogen flame retardants (OFRs)¹ to be “banned hazardous substances” under the Federal Hazardous Substances Act (FHSA). The petitioners claim that due to their inherent

¹ For purposes of this document, “OFRs” refers to additive, non-polymeric chemicals only; it does not include reactive or polymeric OFRs.

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physical-chemical properties, OFRs, among other things, are toxic, migrate widely out of products regardless of how the products are used, bioaccumulate, and present a serious public health concern. On September 20, 2017, the Commission voted to grant the petition to initiate rulemaking under the FHSA and directed staff to convene a Chronic Hazard Advisory Panel (CHAP), pursuant to the procedures of section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to continue studying the effects of these OFRs as a class of chemicals on consumers' health.

On September 28, 2017, the Commission published in the Federal Register a guidance document (82 FR 45268), which:

- expressed the Commission's concerns regarding the potential toxicity of OFRs as a class of chemicals and the risks of exposure to the four product categories listed in the petition;
- requested that manufacturers of children's products, furniture, mattresses, and electronic casings eliminate the use of such chemicals in these products;
- recommended that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that such products do not contain OFRs; and
- recommended that consumers, especially those who are pregnant or with young children, inquire and obtain assurances from retailers that such products do not contain OFRs.

B. The NAS Study and Withdrawal of the CPSC Guidance

Due to the complexities of a rulemaking concerning a class of chemicals, CPSC staff asked NAS to develop a scoping plan to conduct a hazard assessment for OFRs as a chemical class. The first step is to determine whether a class approach to OFRs is viable for a hazard

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assessment. NAS convened a committee, the Committee to Develop a Scoping Plan to Assess the Hazards of Organohalogen Flame Retardants, and the committee prepared a report. You can find the NAS report here: <http://dels.nas.edu/Report/Class-Approach-Hazard-Assessment/25412>.

The NAS report states that the committee:

found that the OFRs cannot be treated as a single class for the purposes of a CPSC hazard assessment. The OFRs can, however, be divided into subclasses on the basis of chemical structure, physicochemical properties, and predicted biologic activity. The committee identified 14 subclasses that can be used to conduct a class-based hazard assessment and concluded that the best approach is to define subclasses as broadly as feasible for the analysis; defining subclasses too narrowly could defeat the purpose of a class approach to hazard assessment.

NAS report at p. 2.

CPSC continues work on OFRs. The Commission's FY 2020 Operating Plan states: "staff will continue to evaluate the completed NAS study, and develop proposals for methods to collect and analyze data and other information to perform risk assessment." Because staff is continuing to perform additional studies and evaluations, the Commission is removing the guidance from the CPSC website, and we are also removing FAQs related to the guidance document.

Dated: _____

Alberta E. Mills, Secretary
Consumer Product Safety Commission