

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC-XXX-XXXX]

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

AGENCY: Consumer Product Safety Commission.

ACTION: Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products.

SUMMARY: The Commission announces that it has approved a statement that provides guidance for manufacturers, importers, distributors, retailers, and consumers of certain consumer products that may contain harmful organohalogen flame retardants in an additive form. To protect consumers and children from the potential toxic effects of exposure to these chemicals, the Commission recommends that manufacturers of children's products, upholstered furniture sold for use in residences, mattresses (and mattress pads), and plastic casings surrounding electronics refrain from intentionally adding non-polymeric, organohalogen flame retardants ("OFRs") to their products. Further, the Commission recommends that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that such products do not contain OFRs. Finally, the Commission recommends that consumers, especially those who are pregnant or with young children, inquire and obtain assurances from retailers that such products do not contain OFRs.

FOR FURTHER INFORMATION CONTACT: DeWane Ray, Deputy Director, Safety Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7547, or e-mail: JRay@cpsc.gov.

SUPPLEMENTARY INFORMATION: The text of the guidance document is as follows:

Guidance for Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products

SUMMARY: The U.S. Consumer Product Safety Commission issues this guidance to manufacturers, importers, distributors, retailers, and consumers to protect consumers (particularly children) from exposure to additive, non-polymeric organohalogen flame retardants (“OFRs”)¹ found 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.² OFRs, also referred to as halogenated flame retardants, typically are added to foams, textiles, and polymers before, during or after production in theory to improve their resistance to fire. OFRs are not chemically bound to the substrate and may be released from the product, thereby leading to potential human and environmental exposures. On June 30, 2015, a coalition of consumer advocates and health professionals petitioned the Commission to declare four categories of consumer products containing OFRs to be “banned hazardous substances” under the Federal Hazardous Substances Act (FHSA). The petitioners claim that due to their inherent 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

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

² This guidance is not a binding or enforceable rule and would not change any person’s rights, duties, or obligations under the Federal Hazardous Substances Act or any other Act administered by the Commission.

Commission voted to grant the petition to initiate rulemaking under the FHSA and directed the staff to convene a Chronic Hazard Advisory Panel pursuant to the procedures of section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to further study the effects of these OFRs as a class of chemicals on consumers' health. In the meantime, based on the overwhelming scientific evidence presented to the Commission to date, the Commission has serious concerns regarding the potential toxicity of OFRs, and the risks of exposure, particularly to vulnerable populations, to OFRs, from the four categories of products listed in the petition. Accordingly, the Commission requests that manufacturers of children's products, furniture, mattresses, and electronics casings eliminate the use of such chemicals in these products. The Commission also recommends that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that such products do not contain OFRs. Finally, the Commission recommends that consumers, especially those who are pregnant or with young children, inquire and obtain assurances from retailers that such products do not contain OFRs.

HAZARD: Scientific evidence to date demonstrates that OFRs, when used in non-polymeric, additive form, migrate from consumer products, leading to widespread human exposure to mixtures of these chemicals. Exposures to OFRs occur because of the semi-volatile property of these chemicals that results in migration of the chemicals and the chemicals' absorption into household dust and other surfaces where they persist in the indoor environment. At this time, there is no known way to direct consumers to use affected products in a manner that would guarantee reducing exposures to the American population to an acceptable level. Numerous peer-reviewed, published studies show that

the vast majority of consumers have measurable quantities of OFRs in their blood. The known adverse health effects of these chemicals to consumers include: reproductive impairment (e.g., abnormal gonadal development, reduced number of ovarian follicles, reduced sperm count, increased time to pregnancy); neurological impacts (e.g., decreased IQ in children, impaired memory, learning deficits, altered motor behavior, hyperactivity); endocrine disruption and interference with thyroid hormone action (potentially contributing to diabetes and obesity); genotoxicity; cancer; and immune disorders. These chemicals have a disproportionately negative health effect on vulnerable populations, including children.

GUIDANCE: Under the FHSA, 15 U.S.C. 1261(g) and (f)(1)(A), any substance or mixture of substances which is toxic, i.e., that has the capacity to produce illness through ingestion, inhalation, or absorption through any bodily surface, and may cause substantial injury or illness during or as a proximate result of customary or reasonably foreseeable handling or use is a “hazardous substance.” A product intended or packaged for household use containing a hazardous substance may be required to have precautionary labeling under the FHSA (15 U.S.C. 1261(p)), but if labeling is not adequate to protect against the potential hazard, or if an article intended for use by children is a hazardous substance or bears or contains a hazardous substance, the Commission may declare the product banned. (15 U.S.C. 1261(q)(1)).

To date, the Commission has not banned household product containing OFRs or required precautionary labeling for such products. However, on September 20, 2017, based on the overwhelming scientific evidence presented to date, the Commission voted to grant the petition to initiate rulemaking under the FHSA and directed the staff to

convene a Chronic Hazard Advisory Panel pursuant to the procedures of section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to further study the effects of OFRs as a class of chemicals on consumers' health. Much of the evidence currently before the Commission suggests OFRs, as a class of chemicals, present a serious public health issue. Therefore, the Commission has serious concerns regarding the potential toxicity of OFRs, and the risks of exposure, particularly to vulnerable populations, to OFRs, from the four categories of products listed in the petition.

For these reasons, the Commission considers the use of OFRs in children's products, upholstered furniture sold for use in residences, mattresses and mattress pads, and plastic casings surrounding electronics to be ill-advised and encourages manufacturers to eliminate using them in such products. Further, the Commission recommends that, before, purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that such products do not contain OFRs. Finally, the Commission recommends that consumers, especially those who are pregnant or with young children, inquire and obtain assurances from retailers that such products do not contain OFRs.

Dated: September __, 2017

[INSERT SECRETARY], Secretary
U.S. Consumer Product Safety Commission