



## Authors



**K. Russell LaMotte**  
Managing Principal  
(202) 789-6080  
[rlamotte@bdlaw.com](mailto:rlamotte@bdlaw.com)



**Ryan J. Carra**  
Associate  
(202) 789-6059  
[rcarra@bdlaw.com](mailto:rcarra@bdlaw.com)

## CPSC Announces Intent to Restrict Halogenated Flame Retardants in Consumer Products

This week, the U.S. Consumer Product Safety Commission (CPSC) voted to form an advisory panel and begin drafting a rule to restrict the use of halogenated flame retardants in four consumer product categories:

- children's products;
- furniture;
- mattresses; and
- the casing of electronics.

CPSC also voted to develop non-binding industry guidance regarding the use of these flame retardants in consumer products. The votes came during a hearing to address a March 2015 petition, supported by various NGOs, asking CPSC to ban the use of halogenated flame retardants in these product types.

### Statutory Framework

The Federal Hazardous Substances Act empowers CPSC to designate chemicals as "hazardous substances" if they are toxic and may cause injury or illness resulting from customary or reasonably foreseeable handling or use. CPSC may ban hazardous substances upon a determination that the protection of public health and safety can only be served by banning the substance (as opposed to merely requiring a warning label). CPSC classifies substances as "banned hazardous substances" through notice and comment rulemaking.

### CPSC Vote and Next Steps

The March 2015 NGO petition claimed that continued use of additive organohalogen flame retardants in several product categories and parts would result in future illness and injury. In a May 2017 memorandum, CPSC staff recommended that the Commission deny the petition as insufficiently supported by toxicological and exposure data. This month's votes overruled the staff recommendation.

It is possible that CPSC will reverse course when it switches to a Republican majority next month. If it does not, an advisory panel will gather data and begin the rulemaking process. Any such process would involve a number of opportunities for industry input, including on the advance notice of proposed

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rulemaking and on the proposed rule. Any final rule would need to be accompanied by a CPSC finding that the standards it is imposing are the “least burdensome requirements” that address the identified risk. Potentially persuasive topics for industry to raise might include:

- consumer safety benefits of halogenated flame retardants;
- toxicity of halogenated flame retardants currently in use;
- exposure of consumers to these chemicals;
- availability of replacement chemicals;
- the potential economic impacts of regulation on industry and consumers; and
- available less burdensome methods to address the identified risk.

We will continue to monitor further CPSC developments on halogenated flame retardants.

*Beveridge & Diamond assists clients with regulatory requirements under a wide variety of statutes as they relate to consumer products. We counsel clients on the growing number of chemical-specific requirements that affect consumer products. For more information on issues related to chemicals in products, please contact the authors or any member of our [Consumer Products Practice](#).*