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Via Regulations.gov

Todd Stevenson
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

**Re: Petition Requesting Rulemaking on Products Containing Organohalogen
Flame Retardants (Docket No. CPSC–2015–0022)**

Dear Mr. Stevenson:

On behalf of the Fashion Jewelry & Accessories Trade Association (FJATA), we are pleased to submit comments regarding the petition filed by Earthjustice, among others, requesting rulemaking by the U.S. Consumer Product Safety Commission (CPSC) to ban the use of organohalogen flame retardants in four broad consumer product categories, including children's products.¹ As manufacturers and retailers of children's jewelry and accessories, which are children's products,² and other jewelry and accessories, FJATA's members would be affected by a Commission determination to pursue rulemaking on the basis of this petition.

FJATA's membership includes more than 200 companies, consisting predominately of small businesses that manufacture or distribute fashion jewelry in the United States. FJATA and its members are committed to consumer safety and support sensible and effective safety standards, including, where appropriate, testing and reporting requirements. Through the

¹ See CPSC, *Petition Requesting Rulemaking on Products Containing Organohalogen Flame Retardants*, 80 Fed. Reg. 50,238 (Aug. 19, 2015) (Petition HP 15–1, available at <https://www.cpsc.gov/Global/Regulations-Laws-and-Standards/Petitions/PetitionHP151RequestingRulemakingProductsContainingOrganohalogenFlameRetardantsJuly12015.pdf>); CPSC, *Petition Requesting Rulemaking on Products Containing Organohalogen Flame Retardants; Notice of Extension of Comment Period; Notice of Opportunity for Oral Presentation of Comments*, 80 Fed. Reg. 65,174 (Oct. 26, 2015).

² See 16 C.F.R. § 1200.2(a)(1) (definition of children's products).

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association's leadership, and with the support and collaboration of manufacturers, consumer advocates, and representatives of the U.S. Consumer Product Safety Commission (CPSC), a comprehensive children's jewelry safety standard, ASTM F2923-14, was published by ASTM International, addressing not only cadmium but all known hazards relating to children's jewelry. FJATA fully supports and joins the comments filed today by the National Association of Manufacturers (NAM). We submit these comments on FJATA's behalf to offer the Commission the benefit of the jewelry industry's experience, particularly in connection with recent sets of rulemakings at the CPSC. The industry is mindful of the precedent of beginning a rulemaking on the basis of this petition, and of the likely effects should the petition be approved in the form of direct and indirect added burdens on industry and the potential reduction in overall safety benefits to those sectors that may use flame retardants to enhance fire resistance of products where necessary.

We stress at the outset that jewelry producers do not use organohalogen or any other type of flame retardants. There is simply no need to do so. But we believe that the Federal Hazardous Substances Act (FHSA)³ requires the Commission to evaluate the effect of the petitioners' proposed general ban on overall product safety in those categories of products which do use organohalogen chemicals to enhance fire resistance, as well as unintended consequences of a ban. FJATA believes that consumer safety policies must both (1) advance overall safety and (2) be grounded in sound scientific analysis and robust evidence. While FJATA members share the petitioners' concern about the safety of children, particularly avoiding exposure to substances that are likely to cause them significant harm in the near or far term, granting this petition would serve neither objective. The evidence that petitioners present can largely be characterized as a limited set of evidence from which petitioners would ask that the Commission extrapolate a broad set of determinations that would culminate in a ban on an entire category of chemicals, irrespective of actual risks of harm, or larger safety benefits. In considering the properties of a broad class of specific chemicals, the Commission must consider the actual properties of specific chemicals. It cannot "guess." The "read across" policy approach urged by petitioners – which asks that the Commission extrapolate from chemicals that are mostly not in use to a set of chemicals with different risk profiles, different uses, and a different set of scientific evidence – is neither scientifically valid nor the basis of a sound policy approach. For this reason alone, the petition should not be granted.

³ Pub. L. 86-613, 74 Stat. 372 (July 12, 1960) (codified at 15 U.S.C. §§ 1261-78).

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Our more specific concern, however, relates to unintended consequences and costs of a categorical ban of a type of chemical in all children's products. A CPSC-mandated categorical ban on all organohalogen flame retardants in all children's products would establish a regulation, ban or standard and would directly affect children's jewelry and accessories. Fire retardants serve no purpose in children's jewelry, and are not expected to be present. A regulatory ban in response to petitioners' request, however, would translate into requirements that *all* children's product producers test *all* components of *all* children's products, regardless of materials used. This would require testing by accredited third party laboratories to confirm the *absence* of organohalogen flame retardants in all children's products. Each manufacturer or importer would also be required to issue children's product certificates establishing compliance with such a ban, standard or regulation, backed by such third party tests. For the small companies that make up most of FJATA's members, this cost could run to the many thousands of dollars for a single product line, and be multiplied hundreds of times over for the many product lines that a single jewelry company will develop and market in a single year. This burden alone will be a heavy one for the Commission to analyze and justify under the FHSA § 3.

In sum, FJATA respectfully submits that the Commission would be ill-advised to grant this petition. The petition is not well grounded in science. It does not meet statutory requirements for granting such petitions because it is overbroad. Finally, the Commission would be hard-pressed to meet the statutory mandate to show both that a categorical ban on use in all children's products results in expected benefits that "bear a reasonable relationship to its costs" and that a ban would be "the least burdensome requirement" to address the alleged injuries.

Sincerely,



Sheila A. Millar
Partner

cc: Brent Cleaveland, Fashion Jewelry and Accessories Trade Association