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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

APR 16 1975

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Mr. John M. Snow
Executive Vice President
National Association of
Furniture Manufacturers, Inc.
8401 Connecticut Ave.
Washington, D. C. 20015

Dear Mr. Snow:

Commissioner Pittle has asked me to respond to your inquiry of February 6, 1975 in which you requested information on the feasibility of the Commission's appointing an Ad Hoc Committee to consider possible solutions to the fire hazards of cigarettes. As you correctly indicate in your letter, the Commission has previously determined that it does not have jurisdiction to regulate cigarettes as an ignition source (39 FR 37802, October 24, 1974). In view of this determination, this office does not believe the Commission has the authority to consider possible solutions to the fire hazards of cigarettes insofar as such solutions relate to the regulation of cigarettes.

You have indicated you believe the Commission should study cigarettes as an ignition source as part of the responsibility of the Commission under the Flammable Fabrics Act to be certain that any flammability standard adopted is reasonable and appropriate. This issue was addressed in part in the Commission's denial of the petition concerning a self-extinguishing cigarette. In denying that petition, the Commission concluded that "in view of the information already available about cigarettes as an ignition source and the requirement of the Flammable Fabrics Act for a continuing study of flammable fabrics incidents, the Commission concludes that a separate study of cigarettes as an ignition source of upholstered furniture fires is not necessary."

ADVISORY OPINION

Any flammability standard promulgated under the Flammable Fabrics Act will be promulgated in accordance with the requirements of that Act. Section 4(b) of the Flammable Fabrics Act specifies that any flammability standard promulgated under that Act must be based on findings that such standard "is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, [and] is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks...." In the view of this office, the Flammable Fabrics Act requires that regulatory activity be limited to products, fabric and related materials as defined in the Act.

In regard to your suggested amendment to section 3(a)(1) of the Consumer Product Safety Act, the Commission has previously submitted to Congress a recommended legislative package which includes a provision to amend section 3(a)(1) of the Consumer Product Safety Act by adding the following provision:

> "Except for the regulation of fireworks and components thereof under the Federal Hazardous Substances Act, the Commission shall have no authority under the Acts and functions transferred pursuant to Section 30 of this Act, to regulate any product or article described in sub-paragraph (B) or (E) of this paragraph."

As you are aware, subparagraph (B) pertains to tobacco and tobacco products.

The Commission, under section 5 of the Consumer Product Safety Act, would, in this office's opinion, have the authority to conduct educational campaigns which include information alerting the public to ignition sources of fires including the identification of cigarettes as an ignition source.

Sincerely,

Michael A. Brown
General Counsel

OM THE WASHINGTON OFFICES OF THE
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RNITURE MANUFACTURERS, INC.

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February 5, 1975

Commissioner David Pittle
U.S. Consumer Product Safety Commission
1750 K Street N.W.
Washington, D.C. 20207

Dear Commissioner Pittle:

You may recall our conversation at the Advisory Committee meeting on Wednesday, January 29, 1975, regarding an Ad Hoc Committee of CPSC appointed by CPSC to consider possible solutions to the fire hazards of cigarettes. I asked you whether such a committee would have meaningful staff support and other necessary funding in the light of the Commission's decision that it does not have jurisdiction to regulate cigarettes.

You suggested that legal opinion would be necessary on this question. I would now like to request that the Commission seek such an opinion from its own counsel or from the GAO. The Commission has the responsibility to be certain that any standards promulgated under the Flammable Fabrics Act be reasonable and appropriate. The reasonableness of a flammability standard designed to reduce or eliminate a hazard necessarily depends upon whether any alternative solution is more reasonable. It is not reasonable to "lower the river" simply because CPSC does not have jurisdiction to "raise the bridge." In short, I think a distinction can be made between the spending of taxpayer's funds by CPSC for purposes of studying the feasibility of regulating cigarettes and the spending of taxpayer's funds by CPSC and purposes of meeting its responsibility to assure that a Flammability Standard adopted is a reasonable solution to an existing hazard. Similarly a distinction can be made between the spending of taxpayer's funds to educate the public regarding the fire hazards of cigarettes as an ignition source and the spending of funds for purposes of regulating cigarettes. We are, of course, aware of the GAO opinion resulting from the cigarette industries' efforts to avoid

regulation by CPSC. However, the GAO opinion was not addressed to the question of spending funds to study cigarettes as an ignition source as part of the responsibility of CPSC under the Flammable Fabrics Act to be certain that any flammability standard adopted is reasonable and appropriate.

We also discussed our desire to see the CPS Act amended by Congress so as to clearly give CPSC jurisdiction to regulate cigarettes as an ignition source. This could be accomplished by relatively simple legislation redefining the exemption in Section 3 (a) (1) (B) of the CPSA concerning tobacco products to read:

> B. tobacco and tobacco products to the extent that these products may represent health hazards when ingested through smoking.

A short paragraph explaining the legislative intent of this amendment is also provided for your consideration:

> The language added to Section 3 (a) (1) (B) by this amendment is designed to clarify the intent of the Congress in regard to the scope of jurisdiction granted to the Consumer Product Safety Commission in the regulation of tobacco and tobacco products. The amendment restates the legislative design that restrictions on the use of tobacco which are related to smoking and health hazards originate with the Congress; and not the Consumer Product Safety Commission. However, the Consumer Product Safety Commission may, consistent with the policies and procedures embodied in the Consumer Product Safety Act, impose such other restrictions and regulations upon tobacco and tobacco products, including the regulation of the burning rate of cigarettes, as it deems appropriate to eliminate or reduce an unreasonable risk of injury associated with such products.

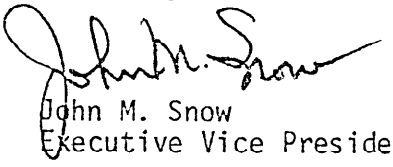
Our industry stands ready to assist in any way relative to this proposed legislation. Further, it is our intention to continue to cooperate fully with

the Consumer Product Safety Commission and the tobacco industry in an effort to implement the objectives of this legislation, if favorably considered by the Congress, and any subsequent regulations promulgated under its authority.

We were most pleased with Chairman Simpson's letter of January 27 on behalf of the Commission to the Tobacco Institute. It seems to us that it would be ideal if Chairman Simpson invited the tobacco industry to participate in an Ad Hoc Committee with manufacturers of furniture and other affected industries and representatives of the public in an effort to deal with the fire hazard problem of cigarettes.

We are looking forward to your response and any legal opinion that results from the request.

Sincerely,



John M. Snow
Executive Vice President

JMS/jcs

cc: Chairman Simpson
Commissioner Kushner
Commissioner Franklin
Commissioner Newman
Michael Brown, General Counsel