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

Memorandum

Date: August 25, 2009

TO : Office of Hazard Identification and Reduction
Directorate of Engineering Sciences

FROM : Todd A. Stevenson, Director
Office of the Secretary

0
SUBJECT : Comments Regarding ***NIST Technical Note 1627: Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes, May 2009 (DRAFT)***

COMMENT	DATE	SIGNED BY	AFFILIATION
1	8/3/09	Ralph Bradac Belleville, IL	rbradac@aol.com
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3	8/3/09	Phillip J. Wadelyn, Ph.D. Consultant	National Cotton Council of America 1521 New Hampshire Ave., NW Washington, DC 20036 pwakelyn@cotton.org www.cotton.org
4	8/3/09	Ryan Trainer Executive Vice President and General Counsel	International Sleep Products Association 501 Wythe Street Alexandria, VA 22314-1917 www.sleepproducts.org info@sleepproducts.org

From: CPSC-OS
Sent: Monday, August 03, 2009 12:03 PM
To: Adair, Patricia; Edwards, Erlinda
Subject: FW: Fire Safe Cigarettes

Todd Stevenson
Director, Office of the Secretary
Division of Information Management
Office of Information Technology Services
US Consumer Product Safety Commission
(301) 504-6836, Fax (301) 504-0127

From: RBradac@aol.com [mailto:RBradac@aol.com]
Sent: Sunday, August 02, 2009 3:54 PM
To: CPSC-OS
Subject: Fire Safe Cigarettes

I can only buy fire safe cigarettes now and have been burned several times by the fire "falling out" of the cigarette onto my body. They also have a terrible taste and make me dizzy, cough, have upset stomach among other ailments that non fire safe cigarettes never caused. I have learned that there are literally hundreds of thousands of Americans suffering the same effects from these fire safe cigarettes.

Cigarette smoking is an explosive issue I realize but to make it worse by the additives in these fsc's can only result in many more people taxing our health system in the long run. Plus, they simply just do not work. I have burned several shirts, furniture and car seats and myself from the fire falling off the cigarette.

I would hope that you folks can help get them off the market as they pose a greater health risk than non fsc's. Thank you.

Sincerely,
Ralph Bradac
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618-977-3770
rbradac@aol.com

National Textile Association

6 Beacon St., Ste. 1125
Boston, MA 02108

(617) 542-8220 • info@nationaltextile.org • www.nationaltextile.org • (617) 542-2199 fax

August 3, 2009
Sent via Email

Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207-0001
cpsc-os@cpsc.gov

Re: NIST Technical Note 1627

Dear Mr. Secretary:

The National Textile Association (NTA) is pleased to comment on the National Institute of Standards and Technology Technical Note 1627, "Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes."

The NTA is the largest trade association representing the U.S. Textile Industry, and consists of textile companies that spin yarns; manufacture fabrics; and dye, finish and print fabrics. Our comments are submitted primarily on behalf of our Upholstery Fabrics Committee, a committee comprised largely of small businesses that manufacture an enormous number of upholstery fabric styles and products, many in lengths as small as 50 linear yards or shorter. Most products produced by these weavers of decorative fabric range in price from moderate to upper end, and they are sold to furniture manufacturers and distributors that service the upper end of the furniture and home remodeling markets.

Our upholstery fabric producers have been involved in the Commission's upholstered furniture flammability efforts since the 1970's and have cooperated in numerous testing programs and public meetings. We have seen this industry and its suppliers make terrific strides forward that make furniture safer, but we are convinced that no single regulatory effort can increase the level of safety as much as the requirement for reduced ignition propensity (RIP) cigarettes which now or soon will affect 99.8% of the U.S. Population according to the Coalition for Fire Safe Cigarettes (http://www.firesafecigarettes.org/categoryList.asp?categoryID=9&URL=Home%20-%20The%20Coalition%20for%20Fire%20Safe%20Cigarettes). We applaud this giant step that has been taken by state legislatures, and we expect it to reduce the fire losses for furniture and numerous other soft furnishings significantly.

The authors of the Note have done a good job of evaluating past technical information and reviewing the literature on this issue; however, they have made assumptions and formed recommendations that will make the standard reference material (SRM) ignition source more severe than the standard cigarette which has been used for upholstered furniture and fabric testing for three decades. Unfortunately, if the new SRM conforming to the NIST Technical Note is adopted, its more severe insult will cause fewer fabrics to pass the test for usage on Type I furniture than if the standard cigarette had been used.

Examining Table 2 on page 10, it's clear that over time, the percent of full length burns (PFLB) clearly decreases as the vintage years increase. Though the sampling might be small, the trend is clear. With this being the case, we question why the PFLB is not established using the most current information available. We expect that the most recent test data generated by interested parties, including CPSC, was likely generated using cigarettes of the newer vintage period.

An equally important issue which could have a large impact on the outcome of whether furniture and fabric smolder flammability tests pass or not are some of the parameters recommended by NIST for the SRM. For example, cigarette length data in table 3, column 2 averages 83.26 mm; however, the report recommends a SRM that measures 85mm +/- 2 mm, though no cigarette in the population examined measures this long. This fact also questions why the 85 mm +/- 2 mm is currently in the proposed upholstered furniture flammability standard if cigarettes routinely measure 83+ mm.

The projected cost of the new SRM is also an enormous issue for the small jacquard weavers who make up the upholstery fabrics sector that will be impacted mostly by the proposed standard. We understand that a standard carton (10 packs) of SRM cigarettes will sell for approximately $188. Overall, the SRM cost alone will be approximately $1 per cigarette, a cost exceedingly high compared to the previous standard cigarette and a cost that is enormously high for small textile companies that are suffering economically from the business downturn and each with an enormous number of SKUs.

The overriding issue is why should the Agency support establishing a severe SRM and place a large order with a cigarette company for the product when the nation, almost in total, will be forbidden from selling the SRM-type of cigarettes in the near future. Taking this approach does not appear to have sound logic nor does it acknowledge the "real life" situation that we live in today – RIP cigarettes will soon be the only type available in the U.S. We ask that the Agency reconsider developing a SRM that depict the burning behavior of the old CPSC standard cigarettes and redirect efforts toward developing a substitute SRM that depicts RIP cigarettes which should be the ignition source for future textile-related activities.

We will be pleased to answer any questions regarding our comments.

Sincerely,

Roger Berkley
Chairman,
Upholstery Fabrics Committee and
Chairman,
National Textile Association

National Cotton Council OF AMERICA

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Mr. Todd Stevens
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Bethesda, MD 20814-4408
e-mail: CPSC-OS@CPSC.gov

Re: NIST Technical Note 1627: Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes, May 2009

Dear Mr. Stevens:

These comments are submitted by the National Cotton Council (NCC) in response to the U.S. Consumer Product Safety Commission's request for comments (CPSC staff statement June 2009) on the NIST Technical Note 1627 on modification of the ASTM test to measure the ignition propensity of conventional cigarettes.

NCC is the central organization of the U.S. cotton industry representing producers, ginners, oilseed crushers, merchants, cooperatives, textile manufacturers, and cottonseed handlers and merchandisers in 18 states stretching from California to the Carolinas. NCC represents producers who cultivate between 9 and 14 million acres of cotton. Annual cotton production, averaging 18 million 480-lb bales between 2006 and 2008, is valued at more than $5 billion at the farm gate. While a majority of the industry is concentrated in the 18 cotton-producing states, the down-stream manufacturers of cotton apparel and home-furnishings are located in virtually every state. The industry and its suppliers, together with the cotton product manufacturers, account for more approximately 200,000 jobs in the U.S. In addition to the cotton fiber, cottonseed products are used for livestock feed and cotton-seed oil is used for food products ranging from margarine to salad dressing. Taken collectively, the annual economic activity generated by cotton and its products in the U.S. economy is estimated to be in excess of $120 billion.

NCC has a long history of commitment to product safety and has worked cooperatively with CPSC on flammability issues since CPSC was formed and with its predecessor organization since flammability regulations were first developed for textiles under the Flammable Fabrics Act (FFA).

The NIST Technical Note 1627 describes a method for measuring the ignition propensity of conventional cigarettes, a key first step in establishing a Standard Reference Material (STM) cigarette similar to the one currently used for testing soft furnishings. However, the information presented in the NIST Technical Note 1627 raises many questions. For example, the proposed change to testing the filter paper will have an effect on the

performance data, according to the data presented in the subcommittee and it is not possible to know that the performance of the older vintages can be replicated in a new standard reference material without development and testing. The ignition strength of Reduced Ignition Propensity (RIP) cigarettes cannot be measured according to the modified NIST test that has been proposed, and the current test cigarette cannot be measured according to the original ASTM E 2147 method. The data in Table 2 of the report shows that the mean ignition strength for recent years (2007 and 2008) is approximately half of the other years that were tested. So any analyses of previous test data with data based on this test would be questionable. Also consider that 99.8% of the US population is now or soon will be in states requiring RIP cigarettes according to the Coalition for Fire Safe Cigarettes. In addition all of Canada and Europe currently require that all cigarettes sold are Reduced Ignition Propensity (RIP) cigarettes. So essentially by the beginning of 2010 only RIP cigarettes will be allowed to be sold in the USA and Canada. This suggests that the RIP cigarette should be the test cigarette. These issues are discussed in more detail below.

1. **The modifications suggested for ASTM E 2187 are not representative of current ballot action in the subcommittee.**

The modification to sections 9.3 and 11.3 of ASTM E 2187 proposes testing with the filter paper being placed rough side up for half the determinations and smooth side up for half the determinations. Currently, ASTM E 2187 is being balloted for revision to have all of the determinations performed with the rough side up. This change was requested to make the standard easier to perform and have higher compliance. The same procedure should be suggested in this modification. This change will have some effect on the performance data, according to the data presented in the subcommittee.

2. **The apparent borderline conformity of purchased cigarettes with the current test cigarette specifications for physical properties and lack of correlation with ignition performance**

Because NIST found no correlation between any of the measured physical parameters and the differences in ignition performance for different vintages, the cause must lie in some other factor of the cigarette that is not specified or has not been measured, such as the paper. The variable could be something that is related to the tobacco crop and which cannot be controlled. Therefore, it is not possible to know that the performance of the older vintages can be replicated in a new standard reference material without development and testing.

Although the NIST report states that none of the three variables (length, mass, and packing density) that are specified in the regulations have any significant differences for the different years that were tested, the overall averages for those variables barely lie within the acceptable tolerance that is given. For example, the average packing density is 0.256 (± 0.006) g/cm^3, but the specification is 0.270 (± 0.020) g/cm^3. Therefore, the question must be raised about how well the selected manufacturer will be able to meet a performance specification such as ignition strength without needing to set the

specification so wide that it is meaningless or making a requirement that cannot be met. In addition, without identifying the cause for the performance variability and controlling the cause, meeting any target will be more difficult.

3. **The proposed ignition strength requirement does not reflect the fact that state laws have been changed to only allow the sale of reduced ignition propensity cigarettes. These laws are in effect now, or within the next two years, in 49 states.**

The ignition strength of reduced ignition propensity (RIP) cigarettes cannot even be measured according to the modified test that has been proposed, and the current test cigarette cannot be measured according to the original ASTM E 2147 method. Therefore, there is no accurate way to quantify the difference between the current test cigarette and the cigarettes that are actually being sold. A requirement to purchase a special test material that cannot be obtained by consumers seems to be an excessive obligation.

4. **The data on ignition strength suggests that assumptions and analyses in current rulemaking may be inaccurate.**

The data in Table 2 of the report shows that the mean ignition strength for recent years (2007 and 2008) is approximately half of the other years that were tested. Therefore, fabrics that appeared to pass, or were borderline, in testing by CPSC and others with those cigarettes may actually be failures if tested with a cigarette that has a higher ignition strength. Therefore, any analyses of this data would be questionable.

5. **Summary and Discussion**

The information presented in the NIST Technical Note 1627 raises many questions. The data in the report shows that the mean ignition strength for recent years (2007 and 2008) is approximately half of the other years that were tested. So any analyses of previous test data with data based on this test would be questionable.

Current (e.g., 16 CFR 1632) and proposed USA flammability standards for soft furnishings such as upholstered furniture specify a "standard" cigarette as the ignition source in smoldering resistance performance tests. The current smolder test methods use a standard/specified cigarette -- without a filter tip, made of natural tobacco, 85 ± 2 mm long with packing density of 0.270 ± 0.02 g/cm^3 and a total weight of 1.1 ± gm; Pall Mall® is the suggested cigarette. This Pall Mall® standard cigarette has become difficult to obtain so it has to be replaced if the mandatory testing is to be performed. The current Pall Mall® available for sale in the U.S. is an unfiltered RIP cigarette that meets the physical specifications set in 16 CFR 1632.4(a)(2).

The standard cigarette was not defined based on ignition strength (i.e., fire insult to the test material) but on physical specifications. Also, the ignition strength of existing stocks of the standard conventional cigarette appears to vary significantly, which should be expected since tobacco being an agricultural crop varies from year to year and the

packing density of the cigarette as well as other parameters vary. Since none of the cigarettes in 1973 were tested for ignition strength, it is really not known what the ignition strength was of cigarettes used to develop the first mandatory smolder test for mattresses. To support manufacturers and testing organizations in product design and testing, and to assist regulators in the compliance evaluation process until such time as an alternative ignition source is identified, a continuing supply of standard conventional cigarettes is required. NIST Technical Note 1627 describes a method for measuring the ignition propensity of conventional cigarettes, a key first step in evaluating current cigarettes and establishing a Standard Reference Material (STM) cigarette similar to the one currently used for testing soft furnishings.

Another thing to consider is that to combat the loss of property and lives caused by cigarette-ignited fires, all states (except Wyoming, now or soon will be) in the U.S. (i.e., 99.8 of the U.S. population) as well as all Canadian provinces, are requiring that all cigarettes sold are Reduced Ignition Propensity (RIP) cigarettes. So essentially by the beginning of 2010 only RIP cigarettes will be allowed to be sold in the USA and Canada. It is recognized that RIP cigarettes can not eliminate the cigarette ignition problem, that burning cigarettes can never be totally safe, and will always be a potential source of ignition and hazard. However, RIP cigarettes have the potential for greatly reducing the problem. That is why every state in the USA but one is requiring RIP cigarettes.

Further, in 2006, NIST released a Standard Reference Material (SRM) 1082 RIP for sale to help testing laboratories and cigarette manufacturers make accurate measurements required by the new regulations.

Since essentially by the beginning of 2010 only RIP cigarettes will be allowed to be sold in the USA and Canada and NIST has already developed a SRM RIP cigarette, why is the CPSC establishing a severe SRM for conventional cigarettes which are no longer sold in the U.S.? This approach does not appear to be logical and does not acknowledge that only RIP cigarettes will soon be available anywhere in the USA and Canada as well as Europe. NCC strongly urges CPSC to reconsider developing a SRM that depict the burning characteristics of cigarettes prior to RIP cigarettes and uses the already developed RIP SRM 1082 cigarette as the standard ignition source for smolder ignition testing.

If there are questions or additional information is needed please contact me (202-745-7805; pwakelyn@cotton.org).

Sincerely,

P J Wakelyn

Phillip J. Wakelyn, Ph.D.
Consultant

INTERNATIONAL
SLEEP
PRODUCTS
ASSOCIATION

August 3, 2009

U.S. Consumer Product Safety Commission
Office of the Secretary
Room 502
4330 East-West Highway
Bethesda, MD 20814

Dear Mr. Secretary:

Pursuant to the Consumer Product Safety Commission's (CPSC) request for comment concerning "NIST Technical Note 1627: Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes," May 2009 (NIST Note),[1] the International Sleep Products Association (ISPA) submits the following comments on behalf of the mattress manufacturing industry.

The mattress industry has a long history of working with the CPSC to develop standards that improve the safety of the products we make. ISPA takes no position regarding the test method that NIST has proposed. However, ISPA objects to the fire performance and dimensional characteristics that NIST has proposed for a surrogate cigarette to replace the conventional unfiltered cigarettes formerly used to conduct certain smoldering cigarette ignition tests.

To fill the void that now exists following the replacement in 2008 of the conventional unfiltered cigarettes with so-called "reduced ignition propensity" (RIP) cigarettes, ISPA instead urges the CPSC to act promptly and set performance criteria for a surrogate cigarette that replicates the characteristics of the discontinued 2008 vintage conventional cigarette. If the CPSC decides that a more stringent testing material is needed, ISPA urges the agency to amend Part 1632 to accomplish that result in the course of a formal rulemaking proceeding as required by the Flammable Fabrics Act. ISPA will be glad to work with the CPSC should the agency decide to amend Part 1632 in this manner.

Background

Several flammability standards address the risk of a smoldering cigarette igniting a product. For mattresses, that standard is codified at 16 CFR Part 1632. Part 1632 specifies that the ignition source to use when testing a mattress' fire performance shall be:

> cigarettes without filter tips made from natural tobacco, 85 +/- 2 mm long with a tobacco packing density of 0.270 +/-0.02 g/cm^3 and a total weight of 1.1 +/-gm.[2]

According to the CPSC's request for public comment, the agency requested that NIST "devise a method to evaluate the ignition strength, or ignition propensity, of cigarettes that may be used in conducting smoldering ignition tests for the evaluation of consumer products." The CPSC stated that this research

[1] See http://www.cpsc.gov/volstd/research/nistastm.pdf .
[2] 16 CFR § 1632.4(a)(2).

was needed because production of "one commercial cigarette meeting certain physical specifications and considered to be a relatively strong smoldering ignition source was widely used by manufacturers, testing laboratories (including CPSC) and others to conduct smoldering research and to establish compliance with the smoldering ignition resistance tests of applicable standards" ceased in 2008.[3] This cigarette was replaced with RIP cigarettes, which are designed to stop burning if a smoker does not draw on the cigarette. Many states now prohibit the sale of non-RIP cigarettes, and virtually all cigarettes sold in the United States are of this type.

For these reasons, the CPSC requested that NIST develop a "test method for assessing ignition strength that may lead to the development of a NIST Standard Reference Material (SRM) cigarette" for use in Part 1633 and other standards that use a cigarette as an ignition source. The NIST Note also provides NIST's recommended fire performance and dimensional characteristics for a surrogate cigarette to use as an SRM.[4]

In approaching this assignment, NIST stated:

> To ensure continuation of the same degree of cigarette ignition resistance shown by today's soft furnishings, the replacement standard ignition source (SIS) must be at least as potent as the CTC. A weaker SIS would allow more susceptible furnishing composites to enter the market, effectively weakening the existing and proposed flammability rules.
>
> For the SIS to be a "safety-neutral" replacement for the CTC, testing using the SIS should generally fail all furnishing materials and composites that fail presently and pass all that pass presently. Arriving at a truly equivalent ignition source requires careful replication of the properties of the CTC and/or enhanced knowledge of the physics of the ignition process.[5]

Yet in making its SRM recommendations, NIST took a different approach, and recommended an SRM that bears no resemblance to the unfiltered conventional cigarette that RIP cigarettes replaced in 2008. NIST tested and measured unfiltered cigarettes manufactured in 1992, 2001, 2006, 2007 and 2008. Among other things, NIST measured the "percentage of full-length burns (PFLB)" for cigarettes from each vintage year. Based on the cigarettes NIST tested, the PFLB generally decreased after 1992, from around 89% in 1992 to only 47% in 2008 (with 2007 being the low at 35%).

In making its recommendations for an SRM, however, NIST disregarded the 2007 and 2008 vintage data. NIST recommended that the SRM have a PFLB of 70-95%.

In addition to measuring the PFLB, NIST also measured the length, mass, circumference and density of the tested cigarettes. Rather than propose that the SRM follow these characteristics of the actual conventional unfiltered cigarettes that had been used for years to conduct these tests, NIST recommended that the SRM meet the nominal measurements and tolerances set in Part 1632.

Comments

ISPA appreciates the opportunity to comment on the NIST Note, and understands the reason for the NIST research that the CPSC has requested. ISPA takes no position regarding the test method that NIST proposes. Nevertheless, ISPA respectfully disagrees with NIST's recommended specifications for an SRM, and urges the CPSC to reject them in favor of criteria that maintains the status quo that existed when production of conventional unfiltered cigarettes stopped in 2008.

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[3] See http://www.cpsc.gov/volstd/research/nistcover.pdf .
[4] Id.
[5] NIST Note at 2.

1. **NIST departed from its intended course to develop an equivalent surrogate following the replacement of the existing ignition source with RIP cigarettes.**

Part 1632 addresses the real world risk posed by fires that result when a smoldering cigarette ignites a mattress.[6] To reflect the real world ignition source, Part 1632 specified which cigarettes available in the marketplace to use when testing the fire performance of mattresses. As a "worst case" scenario, Part 1632 specified that the ignition source "shall be cigarettes without filter tips made from natural tobacco," with specified physical dimensions and other characteristics. Part 1632, however, specified no "ignition strength" or other fire performance characteristics for the heat source.

Thus, to the extent that the ignition strength of the real world cigarette changed over time, Part 1632 was in effect a "living" standard that allowed for the use of such a variable test material. In fact, this feature of the test allowed Part 1632 to continue to reflect real world conditions as the actual ignition risk posed by non-filtered cigarettes changed over time.

Therefore, based on the purpose and terms of Part 1632, the cigarette ignition test should be applied using currently available non-filtered RIP cigarettes, given that they meet the ignition source specification set in 16 CFR § 1632.4(a)(2) and virtually all cigarettes sold in the United States today are of this type. These are the real world ignition source that mattresses today face. Nevertheless, ISPA understands that the CPSC has decided that unfiltered RIP cigarettes are not appropriate for Part 1632 testing and has requested NIST's assistance in developing a substitute.

Thus, but for the advent of the RIP cigarette, the CPSC would not have requested NIST to develop a surrogate for the conventional unfiltered cigarette that the industry, test labs and the CPSC had used for over 30 years. As a result, the question posed to NIST was, given the withdrawal of conventional (non-RIP) unfiltered cigarettes, what "safety-neutral" test material would maintain the status quo? Given these circumstances, NIST's recommendations at least should have reflected the characteristics of the heat source specified in Part 1632 when production of conventional unfiltered cigarettes ceased in 2008.

Rather than attempt to maintain the status quo as of 2008, NIST's recommendations exclude the characteristics of the discontinued cigarette, and instead base the recommended PFLB on cigarettes produced as many as 16 years earlier. As a result, the NIST recommendations do not reflect the existing real world ignition risks (that is, the RIP cigarette) that Part 1632 was intended to address – or even the real world conditions that existed in 2008 when RIP cigarettes replaced the ignition source then in use. Instead, NIST recommends an SRM that would have fire characteristics more severe than the discontinued cigarette.

NIST makes this recommendation despite the fact that:

- virtually all cigarettes sold in the United States today are RIP cigarettes,
- deaths and injuries from cigarette-ignited mattress fires have fallen substantially since Part 1632 was implemented in the mid-1970s, and
- the mattress industry's experience has been that mattress prototypes that meet the open-flame ignition test requirements of Part 1633 also meet the cigarette-ignition test requirements of Part 1632.

Moreover, if the NIST data show anything, they demonstrate that the flammability of the unfiltered conventional cigarette generally diminished from 1994 to 2008. For these reasons, ISPA respectfully disagrees with NIST's recommendation that the SRM have a PFLB of between 70 and 95%.

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[6] Thus, the regulatory summary that the Commission has prepared to explain Part 1632 states, "This standard reduces the risks of death, personal injury, and property damage associated with fires that result from the ignition of mattresses by cigarettes." See https://www.cpsc.gov/businfo/regsummattress.pdf .

Likewise, ISPA disagrees with NIST's recommended dimensions for the SRM, which mirror the nominal dimensions and tolerance ranges set in Part 1632. NIST's own analysis shows that the real world conventional unfiltered cigarettes that it tested were on average shorter and lighter than the nominal figures specified in Part 1632, although within the tolerance range set in the standard (with the exception of some 2008 vintage cigarettes whose length fell slightly below the tolerance range). Instead of setting the SRM based on the much broader Part 1632 criteria, ISPA believes that to maintain the status quo, the physical dimensions of the SRM should reflect the average physical dimensions of the cigarettes in actual use (excluding those that fell outside the Part 1632 dimensional ranges).

2. The fire performance of old cigarettes is irrelevant to current real world conditions.

NIST based its SMR recommendations in part on its testing of 1992 vintage cigarettes that it has stored in freezers. It is extremely unlikely, however, that cigarettes made 17 years ago would ignite any real world fire today or in the future. Moreover, since cigarettes become stale relatively quickly, it is also highly unlikely that consumers are smoking cigarettes that are more than one or two years old. Old cigarettes simply do not pose real world ignition risks for mattresses. Therefore, NIST's use of test data for very old cigarettes hardly reflects the status quo of the conventional Part 1632 ignition source when its production ceased in 2008.

Furthermore, NIST appears to state that it disregarded current PFLB data for the most recent real world examples tested – that is, the 2007 and 2008 vintage cigarettes – because they appeared to be outliers when compared to the results for 1992, 2001 and 2006. Given the very sparse and sporadic nature of the cigarette vintages tested, ISPA respectfully questions whether NIST's inference is valid, given that it is based on cigarettes made in only five of the nearly 35 years during which unfiltered cigarettes has been used to test mattresses under Part 1632. Had NIST tested the fire performance of other vintages, it would seem equally likely that it might find that the 1992, 2001 and 2006 vintage cigarettes are the true outliers.

3. A surrogate equivalent to the discontinued non-RIP cigarette is needed quickly given that those materials are no longer being produced; to specify a non-equivalent SRM as NIST recommends would require CPSC to conduct a lengthy rulemaking proceeding to amend Part 1632.

Although unfiltered RIP cigarettes that meet the physical specifications set in 16 CFR § 1632.4(a)(2) are readily available, conventional unfiltered non-RIP cigarettes are not. Some mattress manufacturers are either about to run out of these conventional materials or have already exhausted their supplies. For this reason, ISPA has repeatedly requested that the CPSC suspend Part 1632 pending the availability of an equivalent substitute.

If the CPSC were to accept NIST's recommendations for a non-equivalent SRM, the agency would need to amend Part 1632. For example, it appears that NIST's SMR recommendations are based in part on the fire performance of cigarettes that do not meet the ignition source criteria of § 1632.4(a)(2) (which NIST has labeled A, B and C).[7] To require the used of such a non-equivalent ignition source at minimum would require the CPSC to amend the 1632.4(a)(2) ignition source definition. Under the Flammable Fabrics Act, this would entail the lengthy administrative and fact-finding process specified in 15 USC § 1193(b), which would prolong the current difficulties being encountered.

For these reasons, ISPA urges the CPSC to reject NIST's recommendations and to ask that that it develop an SRM that is equivalent to the ignition source discontinued in 2008. Such an equivalent SRM could be implemented more quickly, possibly without needing to initiate a full standard amending proceeding.

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[7] NIST Note at 11-12.

If the CPSC believes that further consideration of the ignition strength of the SRM is necessary, that analysis could be performed separately through an appropriate rulemaking proceeding.

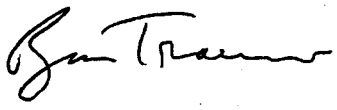
Conclusion

ISPA respectfully requests that the CPSC reject NIST's recommended SRM criteria, and instead promptly specify criteria that are equivalent to those for the unfiltered conventional cigarettes discontinued in 2008. If the CPSC decides that a more stringent testing material is needed, ISPA urges the agency to amend Part 1632 to accomplish that result in the course of a formal rulemaking proceeding as required by the Flammable Fabrics Act.

* * *

Please contact the undersigned if you have any questions.

Sincerely,



Ryan Trainer
Executive Vice President and General Counsel
International Sleep Products Association