



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

STATEMENT OF THE HONORABLE THOMAS H. MOORE
On Open Flame Flammability Standards for Mattresses, Mattress and Foundation Sets and
Bedclothes
December 21, 2004

I am voting today to issue a Notice of Proposed Rulemaking on the open flame ignition of mattresses and to issue an Advance Notice of Proposed Rulemaking on a flammability standard for bedclothes. I am proud of the excellent work our staff has done to bring us to this point. I am also pleased by the industry participation in this effort and in the cooperation they have shown in working with us on this project.

When the Commission was petitioned to adopt a federal mandatory standard to protect mattresses from small open flame fires, we had already been working on a project in this area with industry for several years. The first goal was to develop a test method that could reproduce the fire that results when bedclothes are ignited by a smaller ignition source (match, lighter, candle, etc). While there were disagreements among interested parties about whether bedclothes should be addressed separately from mattresses, there was little disagreement that a significant contribution to the ignition of most mattresses were the sheets, pillows, comforters, blankets, etc. that were usually to be found on the mattress.

In those early years we had hoped, and early testing seemed to support the hope, that we could take care of the combination fire—that is, the mattress and the various bedding items on it—with one test. However, subsequent testing indicated that certain items of bedclothes could, in and of themselves, bring a room to flashover, undermining any standard we might impose on mattress manufacturers. This was a big setback, but it was also extremely important information. And it was a good reminder that early test results are not always the most accurate results. Some may fault us for the time it takes to promulgate a regulation. In these complicated, multiple-component home furnishing fires, taking the time to get it right takes--time. Getting it right serves the public interest and, in the long run, it also serves the industries we regulate.

California is ahead of us in implementing a mandatory standard in this area, but that should come as no surprise. They were mandated by their legislature to have a final regulation in place by a date certain, a constraint, thankfully, we do not have. They also do not have to make certain of the findings the Congress has deemed we have to make, nor do they have the three-step rulemaking process that we are required to follow.

I am pleased that States, such as California, take consumer protection so seriously. They are a microcosm of the nation and they have the power to shape the national conversation on consumer issues. We have worked closely with the California Bureau of Home Furnishings on both this regulation and on the work being done on upholstered furniture ignition and we value their contributions in these areas.

We would have been hard-pressed to devise the test methodology detailed in this proposed standard, without the expertise, and the use of the burn facility, of the National Institute of Standards and Technology (NIST). Burning full-size mattresses is extremely dangerous. We do not have a facility, as yet, that would permit us to do these tests on our own, although we are attempting to get the funding to modernize our own test facilities, which will be crucial for enforcement of this regulation.

The test itself is quite precise and it will be imperative that labs performing this test for mattress manufacturers learn how to do it properly. I will be very interested to read the report of the inter-lab study on the NIST test methodology which will make findings on the repeatability and the reproducibility of the test. The accreditation of labs that will do this test will be important to ensuring that the tests are done correctly. This is important, not only for the safety of consumers, but also to ensure a fair application of the standard across the mattress industry. The choice of test facility should give a manufacturer/importer neither an advantage nor a disadvantage in meeting this standard.

There is still much work to do before we have a final standard. While there are some flame-retardant chemicals that appear to be safe and there appear to be methods of meeting the proposed standard that minimize the exposure of consumers to flame-retardant chemicals, there are a number of things we do not yet know. What chemicals will end up being used and how they will be used may be sorted out to some extent in California as manufacturers bring their products into compliance with Technical Bulletin 603. Our staff will be doing migration and exposure studies on certain chemicals they believe will be used to meet the standard and for which migration and exposure data are lacking. We cannot afford to be cavalier about this massive introduction of FR chemicals into the homes of Americans, which will only be compounded by any regulation we may adopt on upholstered furniture.

As to the proposed standard itself, I have a few comments. This proposal reflects a balancing of the desire to achieve the most comprehensive solution to a significant fire problem, against the need to find a solution that is reasonable, technologically practicable and appropriate and that has benefits that bear a reasonable relationship to its costs. In achieving this balance, we may have either allowed certain practices to be used or provided for the omission of certain good practices, and manufacturers should consider our forbearing on those issues carefully. For example, while we do not require production testing, there is no comparison between the cost of occasional production testing and the cost of a recall. It would be imprudent for manufacturers (including importers) who do not have absolute control and confidence that the mattresses they sell are identical in all material respects to the prototype on which they are based, not to do occasional production testing. The cost of a refund or replacement (the only logical avenues for redress in a recall of a mattress) far exceeds the cost of production testing. And manufacturers who demonstrate that they cannot control the quality of the mattresses they produce could find themselves faced with a requirement in a settlement agreement with the Commission that they do so in the future. So, while there is no requirement in the proposed standard for production testing, each manufacturer should decide how prudent a decision it is to ignore this component of a good quality assurance program.

The standard also allows pooling so that one prototype can be the basis for a number of manufacturers' product lines. My concern here is the ability of manufacturer B (as denoted in the standard) to do one confirmation test and if that fails, to presumably make changes, do one more confirmation test and if that passes, to put the product on the market. I understand the desire to reduce the burden on small manufacturers. I would not propose changing that, but I would propose that the manufacturer (and this includes importers) document what change was made to the mattress to make it meet the standard. We are, in effect, allowing a manufacturer/importer to potentially put a product on the market that they produce that has been tested by them only twice and which has failed one of those two tests. We should have some confidence that something of substance was done to that mattress after the failing test result other than just a "luck of the draw" second test that passed. I think we owe that to the manufacturers who have had to adhere to the three passing tests requirement and we owe it to the consumers who will be relying on our standard to protect them in the event of a fire.

Additionally, the standard requires manufacturer B to report a failing confirmation test to manufacturer A (the maker of the prototype). But it does not say what manufacturer A is to do with that information. What if he gets notification of other failures by other manufacturers on that same prototype? The standard implies some obligation on the part of manufacturer A, but is silent on what the obligation would be. We may want to explore this issue before we issue a final standard.

I also would like to hear comments about the three-year record retention provision. Unfortunately a mattress can catch fire at any point in its life, which will be considerably longer than three years. For prototypes which are in production over a long period of time, three years may be sufficient. But for prototypes with shorter production lives, three years may not be long enough. Given the limited data we often get in major fires because of the inevitable destruction involved, it may be a while before we spot a particular mattress as a problem. I am not convinced that three years from the end of a production line of a prototype (without regard to the life of that prototype) is a long enough period to require manufacturers to hold on to these records.

A more basic concern I have is how much additional escape time this standard will give potential fire victims. For most people in the room where the fire originates there are, most certainly, clear and dramatic benefits. However, for people in other parts of the house, their additional escape time may hinge on when the smoke alarm nearest the room of origin (or to them) sounds, assuming the house contains smoke alarms. If new fire-resistant materials reduce the amount of smoke a burning mattress and bedclothes give off, that could result in no smoke alarm going off during much of the thirty minutes during which our test measures the mattress for fire-resistance. To get a better sense of the increased warning time for people in the house, but outside the room of origin, we should do tests with both unimproved and improved mattresses to find out when alarms that are not connected and are outside the room of origin would alarm. Having alarms that are connected, of course, would be an enormous improvement in fire safety and our staff is working on a project on interconnected, wireless alarms that has the potential to save lives regardless of the fire location. Having any alarm is the best early warning device a home owner can have in the event of fire. If possible, our standards should work to maximize an alarm's potential to save lives.

Despite these concerns, I believe that this proposed standard will lead to mattresses that are a dramatic improvement, in terms of fire resistance, and lives saved, over most mattresses currently on the market.