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STATEMENT OF
CPSC COMMISSIONER THOMAS H. MOORE
BEFORE A JOINT SEMINAR OF
THE NATIONAL COTTON BATTING INSTITUTE
THE FUTON ASSOCIATION INTERNATIONAL
AND
THE SPECIALTY SLEEP ASSOCIATION

ORLANDO, FLORIDA
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I want to thank the National Cotton Batting Institute (NCBI), the Futon Association International and the Specialty Sleep Association for the kind invitation to address your membership and for the opportunity to learn more about your interests and concerns.

As you know, the flammability of consumer products has always ranked very high among the safety issues that the Commission addresses. And it is of particular concern to me personally.

In attempting to reduce product-related fires, the Commission looks both: at trying to eliminate the source of fires, such as through our regulations on child resistant cigarette and multi-purpose lighters; and at trying to reduce the flammability of certain products, such as through our Children's Sleepwear Standard and the current Standard for the Flammability of Mattresses and Mattress Pads, with which you are quite familiar.

In its early years, when it looked at furniture fires, the Commission focused on cigarette ignition because that was the major cause of fires in mattresses and upholstered furniture when they were the first item ignited. That focus accelerated a shift to the use of products made of synthetic fabrics and polyurethane foams, which were more cigarette-ignition resistant. The number of fires, fire deaths and injuries caused by cigarette ignition of upholstered furniture and mattresses has dropped dramatically over the last twenty-five years. The voluntary Upholstered Furniture Action Council (UFAC) program on upholstered furniture and the mandatory CPSC mattress standard can't take all the credit for these reductions because other things were happening simultaneously (such as a significant reduction in cigarette smoking by the American public) but they can certainly take some of the credit.

More recently the focus has shifted to fires caused by small open flames. In 1994, the Commission granted a petition to begin a rulemaking to address upholstered furniture fires that were started by small open flames, principally matches and lighters.

There are various ways to approach fire prevention. In the upholstered furniture proceeding, the two that are most often discussed are: decreasing the speed with which the fire grows, to provide more time for escape; and preventing the ignition of the material in the first instance. The proposal staff is working on takes the latter approach.

The Commission staff has drafted a small open flame standard for upholstered furniture. This draft standard contains two tests in which a bench scale mock up of the furniture's seating area and dust cover are exposed to a small (35 millimeter) butane flame. If, after having been exposed to the flame for 20 seconds, the test sample self-extinguishes within two minutes, it would meet the draft flammability test.

The staff proposal seeks to prevent upholstered furniture from igniting and continuing to burn. The draft performance test does not specify how a manufacturer must meet the test, but it is expected that the most likely way would be through the use of flame-retardant fabric treatments.

Various commenters, including the original petitioner (the National Association of State Fire Marshals) favor the approach of delaying the fire growth. They want the Commission to focus on the filling material rather than the fabric covering. This would allow a fire to start but would seek to limit its growth by using flame-retardant treatments on the filling material. The Fire Marshals have filed a second, related petition seeking to have labels placed on polyurethane foam in finished products to warn of its potential for flammability. This second petition has been incorporated into the upholstered furniture rulemaking and will be considered as part of that proceeding.

This rulemaking is still at a relatively young stage. There has been no vote by the Commission as to whether a mandatory rule should be proposed in this area and, similarly, as of yet, there is no official position on the staff's draft test methodology. The Commission did vote in March of 1998, to defer action while the staff did some additional research on the potential toxicity of flame-retardant chemicals. The Commission held a two-day public hearing on toxicity issues in May of that year, during which interested parties stated their views.

Subsequently, the Congress directed further study of the toxicity question by the National Academy of Sciences. The Academy was supposed to have finished its review in January, but it requested and was granted an extension until April. Everyone will be very interested in the study's conclusions. I believe that, regardless of what happens in the upholstered furniture proceeding, the work being done on flame-retardant chemicals is extremely important. I am hopeful it will either put fears to rest or give us clear guidance on what additional research needs to be done.

The Congress also had the U.S. General Accounting Office examine CPSC's regulatory development procedures. GAO focused on the staff's statistical methodology for arriving at the estimates of fire deaths and injuries used in the upholstered furniture rulemaking. For the most part, the GAO's report was favorable. They did, however, recommend some changes in the way the fire loss estimates are made and used. Our staff is working to implement those recommendations.

The National Institute for Occupational Safety and Health (NIOSH) and the Environmental Protection Agency (EPA) are also helping the Commission staff with various aspects of the rulemaking proceeding. NIOSH will be conducting tests at a number of companies where workers handle flame-retardant treated products to determine what hazards, if any, workers in the textile and upholstered furniture industry might face in being exposed to fabrics treated with flame-retardant chemicals. EPA is looking at the need for a Significant New Use Rule on flame-retardant chemicals, that could require chemical manufacturers to conduct tests and submit data to EPA before certain flame-retardant chemicals are used in residential furniture.

And the Commission staff is continuing its own work on other aspects of the upholstered furniture issue. Staff continues to conduct laboratory tests in areas such as the long-term durability of flame-retardant treatments and the ability of flame retardants to be used successfully on various types of fabrics. We also want to know of the potential risks, if any, of human exposure to flame retardants from treated fabrics and the possible economic and environmental effects of adopting the draft flame-resistant furniture standard or of taking some other action.

Additionally, the furniture and textile industries are conducting their own studies on flame-retardant fabrics and on the costs to American consumers of using such treatment.

When all of these tests and reports are complete, the Commission staff will send a briefing package to the Commission with a recommendation as to whether to proceed to the proposed rulemaking stage. The Commission will have to address a number of issues to determine if a standard which, in effect, would require flame-retardant treatment for most residential upholstered furniture sold in this country, is the appropriate way to address small open flame fires.

Steve Ray and other members of Futon Association International came to the Commission recently to talk to our staff about issues facing the futon industry. They naturally asked about the upholstered furniture rulemaking and the question arose as to the applicability of the rulemaking to futons. The futon mattress is covered by the federal mattress flammability standard that addresses cigarette ignition. As the staff draft now stands, to the extent the futon is intended to be used with cover fabrics as a seating product, futons also could be subject to an upholstered furniture small open flame standard.

Whether futons are included in the proposal, and how the proposal would deal with separately sold slipcovers and reupholstered furniture are issues that the Commission would have to address. If and when the Commission issues a proposed rule, you should be prepared to present your views on it.

The small open flame fire issue has also resurfaced with regard to mattresses and bedding. As you know, the sleep products industry is sponsoring tests at the National Institute of Standards and Technology (NIST) to evaluate the feasibility of a "real world" small open flame test. I say "real world" because it would take into account bedding products (sheets, blankets, etc.) which are so often present and can affect fire behavior. It is hoped that the results of this testing, which should be available in the next few months will provide some guidance on possible strategies for addressing small open flame fires in mattresses.

It is likely the Commission will be petitioned to promulgate a mandatory rule on small open flame fires involving mattresses. If enough progress is being made by industry on a voluntary standard, the Commission could defer action on a rulemaking proceeding. Whether or not the Commission would proceed with a rulemaking would also depend upon whether there is a practical and cost effective course of action to be pursued in this area. The Commission staff will be studying the NIST report very carefully in this regard.

Earlier I mentioned the child-resistant cigarette lighter standard. At the time it was issued, the Commission estimated the standard would save about 100 lives a year. There are approximately 230 deaths each year from small open flame fires started in mattresses and upholstered furniture. Our staff is currently completing a study of the effectiveness of the cigarette lighter standard. Unfortunately I can't give you any scoop on the results, as staff is still analyzing the data, but I can say that we have begun to see a downward trend in these types of deaths and I believe the standard is having a beneficial effect. Of course, matches continue to be a significant part of the small open flame fire problem and they are much less likely to yield to a solution than the lighters did.

I know, from their visits to the Commission, that both the National Cotton Batting Institute and Futon Association International are very concerned about compliance with the current mattress flammability standard. The various programs such as the NCBI/UFAC quality assurance program and the third-party certification program that NCBI has instituted with Underwriters Laboratories, attest to that. You are to be congratulated for your efforts to encourage manufacturers and retailers to sell only complying products.

Third-party certification and good quality control, along with required futon testing and records keeping, will go a long way to solve the compliance problems, but even so, occasional product flammability failures will come to the Commission's attention. The Commission is about to announce a recall with a major futon manufacturer. There is one point I would like to make about this particular recall. It was made more difficult (for all parties, including the company) because not only did they run afoul of the flammability requirements, but they also did not comply with the labeling or records-keeping requirements. Where the Commission staff cannot tell with certainty which mattresses may be subject to a recall (because, for example, the label lacks the required date information) the recall may end up capturing more products than are necessary to adequately protect the public. If we are going to err due to a manufacturer's inability to properly identify the products involved, then we will err on the side of the consumer every time.

Safety is not an area where you want to take short cuts to get a price advantage over your competitors. The federal flammability standards are law, they are not guidelines or suggestions. You can be fined, face the loss of inventory, and have a public relations nightmare on your hands if you make, import or sell products that fail the flammability test. And that assumes no one has been killed or injured by ignition of the product. You don't even want to contemplate the consequences of that event. While the Commission most often goes directly after the manufacturer, many consumers will blame the retailer as well because that is who sold them the hazardous product.

Under our statute, retailers and distributors can rely on a written guaranty from their domestic manufacturers as to whether the product meets the federal flammability standard. That guaranty only relieves retailers of criminal penalties and then only if the guaranty is received "in good faith." Having a guaranty will not do you much good if your products are recalled and you have to contact your customers and tell them what you sold them does not meet federal flammability requirements. It is your responsibility to know your suppliers and make them provide you with testing reports to make sure their guaranty is more than just a piece of paper or boilerplate language in an invoice. If they refuse, find another supplier. It is your reputation that is on the line.

If you don't take steps to ensure your guaranties are genuine, and this is a pattern which becomes known to our staff, you could find yourself facing civil (or possibly even criminal) penalties on top of a recall. The guaranty is not a free pass.

There is a lot happening at the federal level that could impact your businesses. I appreciate this opportunity to share my thoughts with you about some of those topics and I look forward to hearing your views on them as the Commission continues its work in the flammability area.