



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Acting Chairman Robert S. Adler
 Commissioner Ann Marie Buerkle
 Commissioner Elliot F. Kaye
 Commissioner Dana Baiocco
 Commissioner Peter A. Feldman

ITEM:

Upholstered Furniture Update 2019
(Briefing package dated September 25, 2019 OS# 3175)

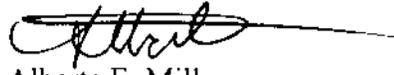
DECISION:

The Commission voted **1-2-1-1**. A majority was not reached and there will be no action taken. Commissioner Buerkle voted to adopt CPSC staff recommendation. Acting Chairman Adler and Commissioner Kaye voted to not adopt CPSC staff recommendation. Acting Chairman Adler filed a statement with his vote (see attachment). Commissioner Baiocco voted to take other action as stated below. Commissioner Feldman voted to take other action as stated below.

Commissioner Baiocco voted to take other action as follows: Direct staff to prepare a Notice of Proposed Rulemaking to make mandatory under the Flammable Fabrics Act (15 U.S.C. 1193), the test methods and performance requirements set forth in California's Technical Bulletin 117-2013, *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*. (See attachment).

Commissioner Feldman voted to take other action as follows: Direct staff to prepare a Notice of Proposed Rulemaking to make mandatory under Section 4 of the Flammable Fabrics Act (15 U.S.C. 1193), the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117-2013, *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*," originally published June 2013. (See attachment).

For the Commission:

A handwritten signature in black ink, appearing to read 'A. Mills', with a long horizontal line extending to the right.

Alberta E. Mills
Secretary

*Ballot vote due October 4, 2019

(CO Baiocco extended the vote due date from October 1, 2019)

Attachments: Statement by Acting Chairman Adler
Other Action Commissioner Baiocco
Other Action Commissioner Feldman

Statement of Commissioner Robert Adler
on
Vote to Terminate CPSC Rulemaking on Upholstered Furniture
October 4, 2019

Furniture fires have plagued society since the invention of cloth covered furniture. Because of this, government has sought ways to reduce the risk of these fires for at least half a century, and undoubtedly longer than that. As I recall, when the Consumer Product Safety Commission was established in 1972, the National Bureau of Standards (now the National Institute of Standards and Technology) had been conducting research on upholstered furniture fires for many years. And, the search for safer furniture continues to today.

Anyone who has monitored CPSC flammability work knows that the Commission has dedicated considerable resources to reducing furniture fire risks over the years. Without recounting the various initiatives that the agency has undertaken, suffice it to say that we have tried numerous approaches to solving flammability issues. The good news is that deaths and injury have dropped dramatically since 1980 as the Commission and other safety groups have worked to address the problem. According to a recent staff briefing package on upholstered furniture flammability, among the efforts to promote safety that have an impact on furniture fire deaths and injuries, there have been changes in building codes, materials in homes, materials in upholstered furniture, fire department strategies, reporting culture, smoke alarm (and sprinkler) use, and a decrease in smoking.¹

The net effect of these changes in the market and in the design and materials used with upholstered furniture has been substantially beneficial. For example, where upholstered furniture was the first item ignited, losses from fires have dropped from almost 1,400 deaths annually in 1980 to roughly 470 deaths and 660 injuries per year for the years 2014-2016.²

Alas, to me, this number of fatalities and burn injuries remains unacceptably high. Accordingly, I am unwilling to terminate CPSC's upholstered furniture rulemaking. I say this while fully cognizant of staff's hard, but thus far unsuccessful, efforts in attempting to draft a workable, cost-effective safety standard. I have lived through myriad attempts to develop an effective model for testing furniture mock-ups that would serve as surrogates for full-scale testing, including the more recent attempt to develop barrier technologies that would reduce furniture fire risks. None have so far proven workable and cost-effective despite our many years of technical research.

¹ CPSC Staff Briefing Package, "Upholstered Furniture Flammability: Staff Activities and Recommendation" (September 2019) at 3. (hereafter, "Upholstered Furniture Briefing Package").

² Upholstered Furniture Briefing Package, at 1-3.

I should note an additional complicating factor that staff has had to contend with in developing a good furniture flammability standard – the need to avoid using toxic and unsafe fire-retardant chemicals as a strategy in combatting furniture fires. I have joined other Commissioners in making clear my opposition to any standard – however performance-based it might appear to outside observers – that would permit or encourage the use of toxic fire-retardant chemicals.

In short, I realize and appreciate staff's current position regarding the immediate possibilities for developing a good flammability standard for furniture. That said, I do not support sending a signal to our stakeholders that we have given up on the need for a good safety standard. Accordingly, while I fully support staff's proposal to monitor and participate in voluntary standards and its intention to conduct follow-up technical meetings with various stakeholders, I do not support doing so in a setting where we have terminated our rulemaking on upholstered furniture. Better to do these things with upholstered furniture as an ongoing priority rather than on the back burner.

III. Take other action:

Direct staff to prepare a of Notice of Proposed Rulemaking to make mandatory under the Flammable Fabrics Act (15 U.S.C. 1193), the test methods and performance requirements set forth in California's Technical Bulletin 117-2013, *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*.

III. Take other action:

Direct staff to prepare a of Notice of Proposed Rulemaking to make mandatory under Section 4 of the Flammable Fabrics Act (15 U.S.C. 1193), the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117-2013, *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,*” originally published June 2013.