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HOME PRODUCTS FIRE SAFETY

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JULY 14, 2004

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ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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HOME PRODUCTS FIRE SAFETY

WEDNESDAY, JULY 14, 2004

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:40 a.m. in room SR–253, Russell Senate Office Building, Hon. Gordon H. Smith, presiding.

OPENING STATEMENT OF HON. GORDON H. SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. It's a pleasure to be here with my colleague. I apologize to him that I was delayed in a downtown speech. It was a spellbinding speech. I'm sorry you all missed it.

[Laughter.]

Senator SMITH. But, no, seriously, it's great to have you all here. We thank you for joining us for this important hearing on Home Products Fire Safety. I welcome the witnesses who are appearing before the Committee today.

The Consumer Product Safety Commission estimates that each year over 2,850 Americans die, with another 15,000 who are injured in residential fires, which can collectively account for more than an estimated $6 billion in property losses. The Commission attributes a third of all deaths to fires involving upholstery furniture, mattresses, bedding products, and small open flames such as candles or matches.

In a 2003 study, the CPSC found that in 1999 there were 9,300 upholstered-furniture fires that resulted in 440 lives lost and $232 million in property damages; 18,000 mattresses and bedding fires that cost $300 million in property loss and took 330 lives; and 14,500 candle-related fires that resulted in $245 million in property damage and 100 deaths.

The Commission has made the reduction of residential fires a top priority. Currently, the CPSC is in the process of developing flammability standards for upholstered furniture, mattresses, and bedding, and has worked closely with the candle industry to establish voluntary standards.

Chairman Stratton is here to highlight the Commission's progress with these standards, and I look forward to hearing how he expects to resolve the challenges facing the development of such standards.

Before we begin, however, I feel it's important to note that we must be careful to strike a balance between providing effective flammability standards that will protect our homes and our fami-

lies while ensuring that any new standards are practical in relationship to manufacturing issues of cost and quality. My hope is that this hearing will help provide insight into how such a balance can be achieved.

In addition, the CPSC should be cognizant that there is concern relating to the use of potentially dangerous chemical-based flame retardants in upholstered furniture, mattresses, and bedding. It's important that, in making home products less flammable, we do not, in turn, make them more harmful to consumers.

I, again, want to thank Senator Hollings for his presence here, but more for his leadership on this issue. He has worked tirelessly on it, and he knows something of this subject from a personal standpoint, as he and Peatsy saw much their life's possessions go up in flames in South Carolina, and that is a perspective that makes him unusually qualified and appropriate to urge what he's urging this morning.

Thank you, Senator Hollings.

STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

Senator HOLLINGS. Thank you, Mr. Chairman.

And I concur in your statement.

Senator SMITH. Our first panel is the Honorable Hal Stratton, Chairman of the United States Consumer Product Safety Commission.

Chairman Stratton, the mike is yours.

STATEMENT OF HON. HAL STRATTON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION

Chairman STRATTON. Thank you, Mr. Chairman. It's a pleasure to be here today.

I, first, do also want to thank Senator Hollings for, you know, the impetus behind this hearing, because it is very important. It's some of the most important work we do. And I am pleased to be able to come over here and inform him that he has been persuasive already in his opening statements. We're in complete agreement with him, and my comments will indicate that as we go through the testimony.

Also, Mr. Chairman, I want to thank you for chairing the Committee today. Not all of my people are aware of your New Mexico roots and some tentacles that you have back there at the New Mexico Supreme Court. So we still claim a little bit of you down there in New Mexico, so it's a pleasure to have you here and chairing the Committee for us.

Senator SMITH. Thank you.

Chairman STRATTON. I appreciate the opportunity to be here to update the Committee on the work of the U.S. Consumer Product Safety Commission in regard—and to answer any questions that you may have. Reducing fire deaths is one of our top priorities and most serious challenges at the CPSC, and a key goal in our strategic plan. I would like to thank the Senators for having a hearing today on this very important subject.

The United States Consumer Product Safety Commission was established 30 years ago as an independent bipartisan Commission

to protect families against unreasonable risks of serious injury and death from hazardous consumer products. Though we are a small agency, over that time the work of the CPSC has contributed significantly to the 30 percent decline in the rate of deaths and injuries from consumer products in the United States.

More deaths result from residential fires than from any other hazard under the CPSC's jurisdiction. Children and seniors are particularly vulnerable to danger of residential fires. While the CPSC has been active in implementing and administering safety standards and compliance activity on a wide range of consumer products, this morning I want to specifically discuss our activities on mattresses, bedding, upholstered furniture, and candles.

In my written statement, I've included a chronology of the work of the CPSC on these products prior to my tenure. The CPSC has a long history of involvement with both mattress and upholstered furniture flammability, but I'd like to take this opportunity to update the Committee on the more recent activities, particularly those since I've been there.

In August 2002, I was privileged to be sworn in as Chairman of the Commission. After assuming this position, and having had an opportunity to review all the work being done on product safety throughout the agency, I identified two regulatory projects—upholstered furniture and mattress flammability—as areas I wanted to make top priorities of the agency, and instructed our staff to move these projects forward as quickly as legally possible.

I am pleased to report to the Committee this morning that, after a long history in the development of flammability standards for upholstered furniture, a decision package that includes a draft standard will be on my desk, and those of the other commissioners, this fall. I'm also pleased to report to the Committee that a decision package that includes a draft standard for mattresses will be on our desks this fall, as well. I can assure you that, after reviewing the staff analysis within the briefing packages, the Commission will move as quickly as possible toward completing the regulatory process on both of these issues.

These two hazards are an important priority for us. I have worked closely with the staff, as well as with a variety of outside stakeholders, to move this process forward as quickly as possible through the procedures that our governing statutes require.

Knowing of your deep interest in this area, I am pleased to report the progress we've made to the Committee today. In the 30-year history of the CPSC, the agency has never promulgated a regulation having an economic impact as big as either of these standards is likely to have. When the Commission issued the Advanced Notice of Proposed Rulemaking for mattress flammability standards, several commentors suggested that a standard also may be needed for bedclothes. Some of the data may suggest that bedclothes could contribute to the hazard posed by mattress and bedding fires. In response to these comments, the CPSC staff will include a draft Advanced Notice of Proposed Rulemaking on bedclothes in conjunction with the mattress briefing package being presented to the Commission this fall.

With regard to candle safety, the CPSC staff has been working with ASTM International to develop voluntary standards for can-

dles since 1997. Our statutes require that the agency defer to voluntary standards when those standards eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance by the industry with such standards. In this regard, the CPSC has worked closely with ASTM on the development of a number of candle standards, including the comprehensive voluntary fire-safety standard for candles that is currently provisional, that's scheduled to be formally approved in January 2005. In addition, the National Association of State Fire Marshals filed a petition to make this ASTM PS 59–02 voluntary standard a mandatory standard. This petition was docketed with the Commission on March 10 of this year, and the Commission staff is now analyzing public comments, which have been filed and addressed to the petition.

In addition to these products, the Commission is also active on other fronts regarding fire safety in the home. We launched an important initiative on children's sleep-wear safety with our new Burn Center Reporting System, where we're working with the Shriners Hospitals and the American Burn Association as our partners. Other technical staff is also working on fire safety projects such as effectiveness of smoke alarms, including wireless technologies and improved audibility.

In my experience with these types of fire hazards while at the Commission, I've learned of the human tragedy and family agony of a child or a parent lost in a house fire. I can assure the Committee that the reduction of the hazards posed by residential fires will continue to be a top priority of mine as long as I am Chairman of the Commission.

I want to thank you, once again, for this hearing, and I'll be pleased to answer any questions.

[The prepared statement of Chairman Stratton follows:]

PREPARED STATEMENT OF HON. HAL STRATTON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman, thank you for the opportunity to testify at this morning's hearing on standards for home products fire safety. I appreciate the opportunity to be here this morning to update the Committee on the work of the U.S. Consumer Product Safety Commission (CPSC) on the fire hazards that fall under our jurisdiction and to answer any questions that you may have. Any views I express this morning are mine as Chairman of the Commission and not necessarily those of the other Commissioners. Reducing fire deaths is one of our most serious challenges at CPSC, and I would like to thank the Senators for having a hearing today on this very important subject.

By way of introduction, the CPSC was established 30 years ago as an independent, bipartisan commission, to protect children and families against unreasonable risks of injury and death from hazardous consumer products. Over that time the work of the CPSC has contributed significantly to the 30 percent decline in the rate of deaths and injuries from these products.

The CPSC enforces five Federal statutes, including the Flammable Fabrics Act, and through these laws, the agency has jurisdiction over the safety of some 15,000 types of consumer products. The CPSC is a relatively small agency, with 470 employees including those here at our headquarters and laboratory in the Washington area and also in our field positions across the country. Since the inception of the agency, the annual number of deaths and injuries prevented by just a sample of CPSC activities has reduced societal costs by over $15 billion. Last year, we directed over 280 recalls of unsafe products that involved over 40 million units.

Today we are here to talk about fire deaths and injuries, and specifically those fires related to the ignition of upholstered furniture, mattresses, bedding and candles. Reducing fire-related deaths is a key goal in CPSC's Strategic Plan, and I ap-

preciate the opportunity to discuss this serious problem and CPSC's current activities and planned initiatives in this regard.

Residential fires result in more deaths than any other hazard under CPSC's jurisdiction. Children and seniors are particularly vulnerable. In fact, children under five years of age have a fire death rate more than twice the average for all ages. Products most often ignited in fire deaths are upholstered furniture, mattresses and bedding. In recent years, these product categories were associated with about one-third of fire deaths.

While deaths due to fire have declined substantially since the 1980s, I believe that still more can be achieved to reduce these tragic deaths. Past standard setting and compliance activities by the CPSC have contributed to this decline including CPSC's work on cigarette-resistant mattresses, heating and cooking equipment, electrical products, wearing apparel and children's sleepwear, child-resistant lighters, fireworks, smoke alarms and residential fire sprinklers. This morning, however, I want to specifically discuss our activities on mattresses, bedding, upholstered furniture and candles.

I would like to begin by giving the Committee a short chronology of the work of the CPSC on these products prior to my tenure. It was in the early 1970s that the Secretary of Commerce promulgated the original Standard for the Flammability of Mattresses, requiring mattresses to resist ignition by smoldering cigarettes. Authority to administer that standard was transferred to the Consumer Product Safety Commission when it was created in 1972. While smoldering ignition incidents declined over the years after this standard was enacted, mattress fire ignition by open flame sources, primarily involving child-play, emerged as a continuing problem.

In 1998 the CPSC staff initiated work with the mattress industry and other interested parties to address this hazard. A test method was developed that could be used in a mandatory standard to reduce associated deaths and injuries. In 2001 CPSC began formal rulemaking procedures for an open flame standard by issuing an Advance Notice of Proposed Rulemaking.

I should note at this point that the Consumer Product Safety Commission, unlike most agencies, has a three-part rulemaking process that is initiated by an Advance Notice of Proposed Rulemaking (ANPR), followed by a Notice of Proposed Rulemaking (NPR), and ended with a notice of Final Rule.

With regard to upholstered furniture flammability, CPSC has been working on this hazard since the agency's inception. The primary focus was initially on the risk of smoldering ignitions from cigarettes since these fires accounted for most of the observed fire losses. A voluntary standard has been in place since 1978 to address this risk and has contributed to the decline in the smoldering hazard.

In 1997 CPSC staff forwarded a regulatory options package to the Commissioners concluding that a small open flame standard for upholstered furniture was feasible but recommending that the agency study possible chemical risks associated with flame retardants that might be used on upholstery fabrics to comply with a rule. At that time, the Commission deferred action on the proposed rule and held a public hearing on flame retardant chemicals. CPSC staff started working with the Environmental Protection Agency (EPA) to develop a possible Significant New Use Rule (SNUR) for fabric treatments. Subsequently, in CPSC's Fiscal Year 1999 appropriation, Congress directed the agency to sponsor an independent study of flame retardant chemicals by the National Academy of Sciences (NAS). NAS submitted its report reviewing sixteen flame retardant chemicals to Congress the following year. The report concluded that eight would pose no significant human health risk but recommended further study for the eight others.

Subsequently, CPSC staff forwarded a regulatory options package to the Commission recommending that the agency actively share and discuss the large volume of technical information in the package with the public before considering a proposed rule. In July of 2002, CPSC held a public meeting to present the staff's direction and receive comments and recommendations on an upholstered furniture standard.

As I noted earlier, this is an abbreviated chronology, but clearly, the CPSC has a long history of involvement with both mattress and upholstered furniture flammability. I would like to now update the Committee on our more recent activities.

On August 2, 2002, I was privileged to be sworn in as Chairman of the Consumer Product Safety Commission and to join my able colleagues, Commissioner and Vice Chair Thomas Moore and Commissioner Mary Gall in working to advance the agency's important mission of making America's homes, schools and playgrounds safe and secure for America's families. In particular, shortly after assuming this Chairmanship, and having reviewed all the work being done on product safety by this agency, I identified two projects—upholstered furniture and mattress flammability—as my top priorities and instructed the staff to move these projects forward as quickly as legally possible.

Mr. Chairman, I remain convinced that reducing residential fires should be our top priority at the CPSC. There is little question in my mind that these new standards, once complete, will save lives and property.

In 2003, I directed the staff to present the Commission with a new, expanded regulatory proceeding to cover *both* cigarette and small open flame risks for upholstered furniture. I was pleased that my fellow Commissioners agreed with this change, and we voted unanimously in favor of the new, expanded ANPR.

I am pleased to report to you this morning that after this long history in the development of a flammability standard for upholstered furniture, a decision package that includes a draft standard will be on my desk and that of the other two Commissioners this Fall.

I am also pleased to report to the Committee that CPSC staff is finalizing a draft standard to be included in a decision package on mattress flammability. This decision package on mattresses will also be presented to the Commissioners this Fall. I can assure you that the Commission will move quickly to make a decision on moving forward with an NPR for mattresses after reviewing the staff analysis within that package.

These two hazards—mattress and upholstered furniture flammability—have been an important priority for my Chairmanship. I have worked closely with staff as well as outside stakeholders to move this process forward as quickly as possible through the data-collection, test methods performance and evaluation, legal checkpoints, public comment and many related procedures that our governing statutes require.

Knowing of your deep interest in these products, I am pleased to report the substantial progress we have made to the Committee today. In the thirty year history of the Consumer Product Safety Commission, the agency has never promulgated a regulation with an economic impact of this size—above the $100 million annual impact necessary to qualify as a "major" rule under the Congressional Regulatory Review Act. Our mattress and upholstered furniture standards are each likely to exceed that impact.

I would also like to update you on our work with bedclothes flammability. When the Commission issued the Advance Notice of Proposed Rulemaking for a mattress flammability standard, several commenters suggested that a standard is also needed for bedclothes, which includes such products as comforters, pillows and mattress pads. Research indicates that bedclothes can contribute significantly to the hazard posed by mattress and bedding fires.

In response to these comments and research, CPSC staff will include a draft Advance Notice of Proposed Rulemaking on bedclothes as part of the mattress briefing package being presented to the Commissioners this Fall. Both product categories play a role in residential fires, and therefore, we believe it is important to understand and consider the unique interactions they can have when exposed to an open flame source.

I would now like to turn our attention to CPSC activities on candle safety. In 1997, with the increasing popularity of candles and the increasing numbers of fires associated with them, the CPSC staff began working with ASTM International, the consensus standards developing organization, to develop voluntary standards for candles and candle products. There are now standards addressing various aspects of the fire hazards associated with candles and candle products including hazard labeling, smoking and the integrity of glass containers. Additional performance requirements are being developed for gel candles and accessories.

In March of this year, CPSC received and docketed a petition from the National Association of State Fire Marshals to issue mandatory fire safety standards for candles and candle accessories. The Commission issued a notice in the Federal Register soliciting written comments concerning the petition. CPSC staff is currently reviewing these comments and preparing responses and a recommendation to the Commission.

CPSC's statutes require that the agency rely on voluntary standards when those standards adequately address the hazard and there is substantial conformance with them, and in this regard, CPSC is continuing to work closely with ASTM to finalize the comprehensive voluntary Fire Safety Standard for Candles that covers flame height, secondary ignition, end of useful life and stability. That standard is currently provisional and is expected to be formally approved in January.

In addition to these products, the Commission is also active on other fronts regarding fire safety in the home. CPSC has an important initiative on children's sleepwear safety with our new Burn Center Reporting System. We will be releasing a report on our findings from that project later this Summer.

CPSC is also working to strengthen or develop voluntary standards or codes on a variety of other household products that are sometimes involved in starting fires. Improving the effectiveness of smoke alarms, including wireless technologies and

improved audibility, is another project on which the CPSC is working. Obviously, the sooner we can alert residents to the danger of fire in the home, the more quickly they can escape. This is especially important for the elderly and for children.

As I noted earlier, the Consumer Product Safety Commission is a small agency with a big mission. We have an impact well beyond our size on America's families and the safety of their homes, schools and playgrounds. In addition to identifying product hazards and developing standards, CPSC also conducts regular public awareness campaigns to keep the public informed of potential household hazards from fireworks safety to pool drownings.

Fire safety is a critical component of this agency's mission. In my research on these fire hazards, I have intensely learned the human tragedy and family agony of a child lost to a house fire or a severely burned infant who isn't yet old enough to understand why he or she is in pain every day. I can assure the Committee that those pictures are on my mind as I work on these critical fire issues, and the reduction of this terrible hazard will continue to be one of my top priorities as long as I serve as Chairman of the Consumer Product Safety Commission.

Thank you for having this important hearing today, and I look forward to the opportunity to answer your questions.

Senator SMITH. Mr. Chairman, the Consumer Product Safety Act specifically cautions the Commission to allow voluntary standards to work before proceeding to the promulgation of mandatory standards. By issuing Advanced Notices of Proposed Rulemaking for upholstered furniture and mattresses, and proposing an ANPRM for bedclothes, is the Commission saying that voluntary fire safety standards for these products are not sufficiently effective? Is that what the real message is?

Chairman STRATTON. Well, that is certainly one of the messages. You are absolutely correct on the question of voluntary standards. We have to consider, in every regulatory process that we have, whether a voluntary standard would be adequate or not. And I can tell you that, in these matters, that that determination, if it hasn't been made, I'm confident, then, when we receive the packages, that that determination will be made. We don't have anybody out there that I know of, in the industry or otherwise, or any other stakeholders, that are suggesting, particularly in regard to furniture and mattress flammability, that we should resort to voluntary, as opposed to a mandatory, standard.

Senator SMITH. Well, critics of the CPSC's efforts in developing fire safety standards for upholstered furniture, mattresses, and bedding, and candles, argue that the Commission has been considering such standards for nearly two decades, and that ultimately the CPSC will prolong its efforts and never move forward toward final standards. Why hasn't the Commission reached a final rule on these fire safety standards in these past years?

Chairman STRATTON. Mr. Chairman, that's a complex question. And, as you may know, most of that occurred before I reached the Commission, and there will be people here testifying on the second panel that have been with this for that full 20 years. I'll just say that it's a very complex process. Our process of promulgating regulations is about double what it is in many other agencies. We have to go through an ANPR process, an NPR process, we have to consider voluntary standards, we have to consider cost-benefit analysis, we have to make sure that there is a benefit to what we're doing—that's right in our statute; not everyone has to do that—we have to make sure that regulations are technically practical. And we have all of these findings that we have to go through, and we can't just come up and find that. Here in Congress, you can put in

a bill, and you can make that finding in a bill. We have to have scientific evidence and studies to do that.

So I suspect that that is some of the reason; and also not complete consensus about what should be done, certainly in industry and with other stakeholders. But when I came in, it appeared to me that there was a possibility to get this done. And I got with the stakeholders, frankly, in all of these areas, and I suggested we needed to move forward and it was time to get together and come to a consensus. And, to their credit, they are either there or almost there. And when you see these packages come out in—I hate to commit the staff, but I expect one of them to be out in October and the other to be out the 1st of November—when you see them come out, they will have the final regulations that we're going to consider in them. And then the last, really, regulatory process—and it sounds easy, but it takes time—but the last process is to allow comments on those, and then for the Commission to vote on those. So we will be that close to getting those regulations done, and I think it'll be a real milestone when we get those packages out.

Senator SMITH. Well, often, in the process of lawmaking, I've noticed, around here, that one lawmaker's perception of "the perfect" ends up being the reason for opposing "the good." And I don't know that you'll ever get "perfect." I've never voted on a perfect bill yet. But I've voted on a lot of good ones. And so I think maybe the goal ought to be "good," and not "perfect." And so, just as a matter of suggestion, I offer that.

A concern I have for domestic manufacturers of these things, though, is would they be held to one safety standard, and people who import to our country to a lesser standard? That is of concern to me. And my point is just simply this, if people want to sell to the American consumers, they'd better meet the standards of American manufacturers—for safety, quality, everything. And so I'm hoping that whatever standards you might create, you'll hold foreign and domestic manufacturers to the same standards.

Chairman STRATTON. Mr. Chairman, that is the law, and when Congress passed this bill, as Senator Hollings was talking about earlier, they put in a very good system for ensuring that imports have to meet our standards. Any product that comes into the U.S. has to meet our standards.

And let me just briefly tell you how well it works. We really have, sort of, a three-pronged process to make sure that happens. First of all, everybody in the product chain is responsible and liable under our statutes. That means the retailers, the distributors, the importers, and the manufacturers. So if, for instance, a piece of furniture is made in China, which, as we know, there is being a lot more furniture made in China, the retailer, if he sells that piece of furniture in the United States, and it isn't conforming, he is just as liable as the manufacturer. And I can assure you, we're going to look to the retailer in that case, because it's going to be hard to get to the manufacturer.

The reason this works so well is, because of that rule, you find a lot of retailers and a lot of importers and shippers working very hard overseas making sure those products meet the standard before they come over. So that, to me, was the genius of the Act, and that's the number-one guard we have against bad imports.

We have two other safety guards on them. One is, we have inspectors at all the ports, and we have a Memorandum of Understanding with Customs where we are now working with Customs. We have access to their data base, and we are, of course, interdicting those products when they come in, when they are nonconforming.

And then, finally, I have made it a point to make it clear to those countries who are sending exports to the United States that we believe—and we intend to make sure that those exports meet our standards. I've been to China twice this year to talk to, not only the people in Beijing, but also people out in the provinces, about how they need to meet our safety standards. That was my sole reason for going. I've been to China a number of times before, and I, frankly, didn't care to go, but I made commitments to some of our industries that I would show up there to impress upon those authorities over there as to how important it was to meet our safety standards.

So I know that's a long answer to your question, but it's important to us, and I wanted to make sure you understood—or the Committee has the benefit of knowing everything that we're doing.

Senator SMITH. That's a good answer, and I appreciate your going there to send that message.

Two other things, briefly. One of the big issues, obviously, is the California standards on bedding and burning: whether it's 60 minutes or 30 minutes. I guess they've settled on 30 minutes. And would you comment further on the debate over whether a 30- or a 60-minute burn resistance should be required if, in fact, the Commission votes to move forward with its new rules?

Chairman STRATTON. Well, it's difficult for me to comment on that, because I would like to see our scientists' work before I know that. What our staff does makes a big difference to me, and when they come out with their package on that, the 1st of October, there will be data in that to tell us. They're testing that. That's why—one of the reasons it's taking so long. We are not able to test mattresses at our facility, at our lab. We have to—there are only seven or eight places in the country, so we have to get into cahoots somehow with somebody else to help us test. So they've been testing that. I expect that to be in the package. I know that there's a pretty good consensus—well, I won't say there's a consensus, but I would like to wait before I made my decision on that. I don't want to prejudge that issue——

Senator SMITH. OK.

Chairman STRATTON.—before I have to vote on it——

Senator SMITH. Fair enough.

Chairman STRATTON.—or get a view of it.

Senator SMITH. Fair enough.

This is probably a better question, that Senator Hollings would ask, and, as I turn it over to him, I'm actually interested in your response to the candle industry contention that they don't belong in Senator Hollings' bill.

And so, with that, Senator Hollings?

Senator HOLLINGS. Well, they'll have to certainly be deliberate and consider it with respect to candles in the churches, because I—just as a practical matter, I just don't see the requirement on ex-

actly how that candle is supposed to go over to one side, or not bend, or whatever, any different than the regular candles that are bought, because the churches buy the candles in the regular commercial market. And we'll just have to see. But I'm sure the Commission will look at that carefully.

Mr. Chairman, your testimony this morning has already made this hearing a success, in the sense that we're going to get these rulings out, because as you talk about the different hearings and the complexities, mind you, you've made a record—as your testimony shows, you made the finding way back in 1998, and, thereafter, you made it a top priority. And we've got the National Academy of Sciences, the NIST study, the Fire Marshal's study and studies upon studies. So I don't see any holdup, except it might be some subjective test with respect to benefit. Is there any question about the benefit to the—the better producers think it is a benefit. That's why some of them are already including it there now.

And with respect to the compliance of the imports, we already have that precedent with the automobiles. All imported cars have to comply with the American standards. And, similarly, as you've testified, it'll be with respect to fire-resistant products.

What about the benefit? Do you see any lack of benefit to this at all?

Chairman STRATTON. Senator, I don't. I'm prejudging what our packages are going to say, but I think I can say with pretty——

Senator HOLLINGS. Well, I like the Chairman prejudging.

[Laughter.]

Senator HOLLINGS. Yes, when he prejudges, that usually happens.

[Laughter.]

Chairman STRATTON. Mr. Chairman, you'd like me, because I like to prejudge a lot. Unfortunately, I have two other Commissioners that have twice as many votes that I have on these matters, and so I have to be very cautious. And I haven't made that point yet, but there are two other Commissioners involved, and they do get to vote on this. So just let me make that point.

From what I have seen, I do not see that as a roadblock. I think there will be a cost-benefit to the regulations that are proposed this fall.

Senator HOLLINGS. Very good. I appreciate the answers you've given, and to the questions of our Chairman. The California standard is there, and they're living with it, and it's working. There's nothing wrong with adopting that at the Federal level.

Chairman STRATTON. If I may comment on that—and I am prejudging here a bit, but, since you like that, I guess this is the place to do it—when they adopted the standard in California, I took it upon myself to, kind of, shop it around with everybody I could find to see what they thought about that standard.

Senator HOLLINGS. Sure.

Chairman STRATTON. And, yes, I shopped it at our place, I shopped it with our staff—and when I say this, this is informal; this isn't a formal thing—and everybody thought it was a pretty good standard. So it seemed like it was the right direction to go.

We, unfortunately, in my view, have not had what I would consider a really good relationship with the folks in California. That's

not our staff. Our staffs have very good relationships. They work together all the time, so I'm not saying our staff hasn't had a good relationship. But I recently made a trip out there and sat down directly with them to talk about these issues that we're talking about here today. In fact, I believe it was 2 weeks ago that I went out there and talked to the director—the new director of the Consumer Affairs out there, and the Secretary of State and Consumer Affairs, who's the Secretary—Cabinet Secretary. And we're going to get on the same page on a lot of this stuff. We can work together. They're reasonable people. And from now on, California is going to be involved in what we're doing, and we're going to try to get a little more in sync. After all, that's one of the purposes of the Consumer Product Safety Commission, and that is to resolve disputes among states when it comes to these issues. And California's a big state; they're the 800-pound gorilla. So we are going to have a better working relationship with them as we go forward.

Senator HOLLINGS. Very good.

Thank you very much, Mr. Chairman.

Senator SMITH. Thank you, Senator Hollings.

And thank you, Mr. Commissioner, we appreciate your presence here today.

And we'll now call up our second panel, which will consist of Mr. John Dean, Vice President, National Association of State Fire Marshals; Mr. Norman Chapman, Executive Vice President, Inman Mills, from South Carolina; Mr. Andy Counts, the American Furniture Manufacturers Association—he is the CEO; Mr. Bob Higgins, President of the National Candle Association, located here in D.C.; Mr. Al Klancnik—I'm sorry if I mispronounced that, but Group Vice President of the Serta, Inc. I think I sleep on a Serta sometimes.

Mr. Dean, we welcome you, and you can lead it off.

STATEMENT JOHN DEAN, VICE PRESIDENT, NATIONAL ASSOCIATION OF STATE FIRE MARSHALS

Mr. DEAN. Thank you very much.

Mr. Chairman, my name is John Dean. I am the State Fire Marshal for the State of Maine, and I am before the Committee today on behalf of the National Association of State Fire Marshals, NASFM.

NASFM represents the senior-most fire official in each of the 50 states. We, along with hundreds of Federal, state, and local fire-service organizations, encourage this Committee and Congress to give serious consideration to the American Home Fire Safety Act, Senate Bill 1798. Thank you for this opportunity.

For as long as I have been a firefighter—and my public-safety career spans more than three decades—people have died and been seriously injured in residential fires involving upholstered furniture, mattresses, bedding, candles, and cigarettes. In all of those years, no other category of fires has harmed as many people.

The American Home Fire Safety Act will save lives, prevent injuries, and protect property and the environment by setting effective fire safety standards for four of these five products. Cigarettes are addressed in companion legislation, at the request of the Campaign for Tobacco-Free Kids, and other anti-tobacco groups.

We appreciate all that the affected industries have done to generate safety tests and standards that attempt to be both effective and practical. So much of the progress that has been made is due to their work. We are thankful to Congress for recognizing the importance of these issues and for working with us on solutions.

We are encouraged by the Consumer Product Safety Commission's recent announcement that it intends to move forward this year with open flame safety requirements for upholstered furniture and mattresses. But allow me to share with you a brief history of this issue.

Over 30 years ago, the U.S. Department of Commerce first issued a finding of need that a flammability standard may be necessary for upholstered furniture. More than 10 years ago, NASFM petitioned the Commission to address this hazard, as well. Nothing happened.

Out of frustration with the slow progress with fire safety standards for many consumer products, we turned to the news media and to state legislatures for help. Ultimately, we chose to work with industry to find solutions.

The American Furniture Manufacturers Association got to work. Its members and their suppliers recently proposed a package of standards that holds promise for much safer products. These standards still must be validated, and they differ from the upholstered furniture requirements cited in this Act. But we would be willing to support the industry proposal if it can be demonstrated scientifically to achieve the levels of safety, in the real world, that we all agree are necessary.

The International Sleep Products Association also stepped up and helped develop mattress-safety test methods cited in the Act. It's important to note that this is a—there is a discrepancy between the 30-minute test industry supports and the 60-minute test cited in the Act. Because of respect for the industry, we revisited the question of whether a 60-minute test is necessary and feasible.

The bottom line is that, in the real world, fires are not detected the moment they are ignited. And even our best-equipped fire departments cannot always arrive at the scene of a fire fast enough to save lives. The average American household can expect about 40 minutes from the point of ignition to when firefighters are putting water on a fire. In rural communities, the time typically exceeds 70 minutes. We need the 60-minute test cited in the legislation, and small manufacturers have told us that they can meet it.

The mattress producers and we both agree on the importance of requirements for bedding.

The candle-safety standards cited in the Act were developed largely by the industry, with input from us and others, through the ASTM voluntary consensus process. Unlike the furniture and mattress producers, neither the candle industry nor cigarette producers want mandatory standards. But neither industry has moved forward with proposals to implement effective voluntary standards and to manage products' performance.

In recent years, the progress has been good, but not one national mandatory standard has come into effect for any of these products. States have had to step in, and all are doing something different. We think the states should be free to protect their citizens, but the

Consumer Product Safety Commission has already ruled that California is not free to set and enforce their open-flames and mattress fire safety standards.

My appearance before this Committee today would not be complete without a word about flame retardants, products that have recently attracted a great deal of attention. Flame retardants do help products resist fire and save lives. NASFM does not believe, however, that the obvious fire safety benefits of these chemicals justify harm to the environment or to human health that their usage may cause. We believe that fire safety must go hand in hand with environmental safety and human health. These are not simple matters, and there are no winners here. I can assure you that NASFM will hold all parties with an interest in fire safety responsible for their actions.

I would like to conclude by saying that we wish that this legislation were not necessary. But the Commission has consumed over a decade study in the need for fire safety standards for upholstered furniture. It is just now looking at open-flame standards for mattresses and standards for candles. No official action is underway on bedding standards. This, in spite of the fact that residential fires involving these products kill more Americans than any other products within the Commission's jurisdiction. Regardless of the reasons for lack of action, how can we justify another lost life? Congressional action is necessary now to straighten it out. We need your support.

Thank you for this opportunity to speak.

[The prepared statement of Mr. Dean follows:]

PREPARED STATEMENT OF JOHN DEAN, VICE PRESIDENT, NATIONAL ASSOCIATION OF STATE FIRE MARSHALS

Senator Smith, my name is John Dean. I am the State Fire Marshal for the State of Maine and am before the Committee today on behalf of the National Association of State Fire Marshals (NASFM). NASFM represents the senior most fire official in each of the fifty states. We, along with hundreds of federal, state and local fire service organizations, encourage this Committee and Congress to give serious consideration to the American Home Fire Safety Act Senate Bill 1798. Thank you for this opportunity.

For as long as I have been a firefighter—and my public safety career spans more than three decades—people have died and been seriously injured in residential fires involving upholstered furniture, mattresses, bedding, candles and cigarettes. In all of those years, no other category of fires has harmed as many people.

We have done what we can to protect the public from these fires. Public education and the widespread use of smoke alarms and effective standards addressing smoldering ignition of mattresses and furniture are the primary reasons that the number of deaths and injuries has dropped over the years. We have not been as successful in achieving widespread installation of residential sprinklers.

We support the American Home Fire Safety Act. It will save lives, prevent injuries and protect property and the environment by setting effective fire safety standards for four of these five products. Cigarettes are addressed in companion legislation at the request of the Campaign for Tobacco Free Kids and other anti-tobacco groups.

We believe that the goal of "improved public safety" is reason enough for this legislation. But we are aware that this legislation also may be necessary to protect responsible companies from a patchwork of state requirements, increased litigation, recalls and attacks in the media. These pressures may or may not be fair, but they are the inevitable result of not having Federal requirements for manufacturers to meet.

We are thankful to the Congress for recognizing the importance of these issues, and for working with us on solutions. In a perfect world, new regulations—much less new laws—would be unnecessary. Many companies just make their products

safer than what is required. But, the companies that do so may place themselves at a competitive disadvantage. At the end of the day, these are all choices.

We are encouraged by the Consumer Product Safety Commission's recent announcement that it intends to move forward this year with open-flame fire safety requirements for upholstered furniture and mattresses. We have great respect for the Commission's technical staff. Their commitment to safety has never been in question, but allow me to share with you a brief history of this issue. Over thirty years ago, the U.S. Department of Commerce first issued a "Finding of Need" that a flammability standard may be necessary for upholstered furniture. More than 10 years ago, NASFM petitioned the Consumer Product Safety Commission to address this hazard as well. Nothing happened.

Five years ago, our association chose cooperation over confrontation. We were frustrated then, as we are now, by the very slow pace of progress with fire safety standards for many consumer products. We turned to the news media and to the state legislatures for help. The American Plastics Council asked that we redirect our efforts. We chose to work with the Council and other industry groups to find solutions.

We are appreciative of all that the affected industries have done to generate safety tests and standards that attempt to be both effective and practical. So much of the progress that has been made is due to their work.

The American Furniture Manufacturers Association, its members and their suppliers recently proposed a package of standards that holds promise for much safer products. These standards must be validated and may need to be improved. They differ from the upholstered furniture requirements cited in the American Home Fire Safety Act, and from the Consumer Product Safety Commission's draft proposal. We stand by the furniture standards cited in the Act but would be willing to support the industry proposal if it can be demonstrated scientifically to achieve the levels of safety in the real world that we all agree are necessary.

The International Sleep Products Association provided the vision and leadership necessary to develop the mattress fire safety test method cited in the Act. The industry favors a test that lasts for 30 minutes. It argues that postponing flashover for 30 minutes is a major step forward, and that manufacturers—and especially small businesses—cannot pass a test that lasts for 60 minutes. Because we respect the industry, we recently revisited the question of whether a 60-minute test is necessary and feasible.

The bottom line is that we found small mattress producers who have been meeting the 60-minute standard for most of this year. Certainly, 30 minutes may be better than 5 minutes but it is not enough time in the real world. In the real world, fires are not detected the moment they are ignited, people routinely waste precious minutes before reporting fires, and even our best-equipped fire departments fight traffic and cannot arrive at the scene of a fire fast enough to save lives. The average American household can expect about 40 minutes from the point of ignition to when firefighters are putting water on a fire. In rural communities, the time typically exceeds 70 minutes. We need the 60-minute test cited in the legislation, and industry can meet it.

The mattress producers and we both agree on the importance of requirements for bedding.

The candle safety standards cited in this legislation were developed largely by the industry with input from us and others through the American Society for Testing and Materials voluntary consensus process. The standards are uncontroversial. However, unlike the furniture and mattress producers, neither the candle industry nor cigarette producers want mandatory standards. But neither industry has moved forward with proposals to implement effective voluntary standards and to manage producers' conformance.

In recent years, the progress has been good, but not one national mandatory standard has come into effect for any of these products.

States have had to step in. California, New Jersey, New York and Rhode Island all are doing something different. We think that states should be free to protect their citizens as they wish, but the Consumer Product Safety Commission has ruled that California—and we presume other states—are not free to set and enforce their own open flame mattress fire standards because the existing Federal mattress standard, which deals only with cigarette ignition, preempts any states' attempts to deal with the same product even if they are addressing a different hazard.

We have never seen so much litigation. The absence of standards means each manufacturer is out there on its own.

Retailers and wholesalers are at risk, because along with manufacturers, they are responsible for recalls of dangerous products. NASFM has just adopted a national, science-based position that any upholstered chair or mattress with untreated or

unshielded flexible polyurethane foam is too dangerous for sale in the home. No one—including all of the industries affected here—presented a single fact contrary to that finding. That statement is now publicly available to all who are dealing with this matter seriously.

My appearance before the Committee today would not be complete without a word about flame retardants, products that have recently attracted a great deal of attention in the Congress, in the legislatures of a number of states (including that of my native Maine) and in the media.

As a matter of chemistry, flame retardants work—they help products resist fire, they save lives. NASFM does not believe, however, that the obvious fire safety benefits of these chemicals justify harm to the environment or to human health that their usage may cause. We believe strongly that fire safety must go hand-in-hand with environmental safety and human health. But we are not experts in these areas and so we work directly with the U.S. Environmental Protection Agency, World Health Organization, Society of Toxicology, and environmental and health authorities in Europe to ensure that all dimensions of health and safety are not in conflict and receive equal attention.

These are not simple matters and, after so many years of study, there are no winners here. I can assure you that State Fire Marshals will hold all parties with an interest in fire safety responsible for their actions.

Finally, less we forget, American families are at risk. We are well aware of the political adage, "It's the economy, stupid." But it is hard to ignore the hundreds of people who continue to die and be injured in these fires every year. We easily could have flooded this room with burn survivors and the families of those who died. Their stories are playing out in state legislatures, in courtrooms and the media.

I would like to conclude by saying that we wish this legislation were not necessary. But, the Commission has consumed over a decade studying the need for fire safety standards for upholstered furniture. It is just now looking at open flame standards for mattresses and standards for candles. No official action is underway on bedding standards. This, in spite of the fact that residential fires involving these products kill more Americans than any other products within the Commission's jurisdiction. Regardless of the reasons for lack of action, how can we justify another lost life? Congressional action is necessary now to straighten it all out. We need your support. Thank you for the opportunity to speak before this Committee.

Senator SMITH. Thank you, Mr. Dean.

And now we'll hear from Mr. Norman Chapman.

STATEMENT OF NORMAN CHAPMAN, PRESIDENT AND CHIEF OPERATING OFFICER, INMAN MILLS

Mr. CHAPMAN. Thank you very much. I appreciate the opportunity to be here.

My name is Norman Chapman, and I am President and COO of Inman Mills, a textile manufacturer specializing in yarn spinning and weaving. Inman Mills has been in the textile business for over a hundred years, and is located in South Carolina. We currently employ approximately 500 associates. After back-to-back record years in 1997 and 1998, our company has been under extreme pressure from imported fabrics and finished products. Since 2001, we have closed two plants and laid off over half of our work force.

During these difficult times, we have developed many new products in many different markets. Innovation and flexibility is the future of the textile industry. Fire-resistant mattress ticking and interliners are two products where we have concentrated much of our effort.

In May 2002, we signed an agreement with McKinnon-Land-Moran, a North Carolina research and development company, to be the exclusive manufacturer of Alessandra yarns and fabrics. These products are sold and distributed by Hanes Industries, a division of Leggett & Platt. Alessandra is a patented technology that makes yarns and fabrics resistant to fire. Fabrics that use this technology

retain their strength even after they have been exposed to open flame. These fabrics may be used as either interliner barriers or tickings. They keep fire from penetrating and igniting the highly flammable foam found inside most mattresses. This is achieved by manufacturing a Core Spun yarn that uses a combination of fibers.

It is important to emphasize that the Alessandra products use no chemicals to achieve their fire resistant properties. Through continued research, we have been able to improve our Alessandra products and reduce the price to the manufacturer by over 37 percent. We continue to research ways to improve the product and reduce cost.

In addition to Alessandra, Inman Mills also manufactures Fireguard, another well-recognized fire resistant fabric. Fireguard is patented technologies owned and sold by Springs Industries. It has been used for many years in mattresses on Navy ships and submarines. It is also sold in college dormitories and in hotels where fire safety is of great concern.

Both technologies are high performance and support the passing of California's current and former TB 603, Cal 129, and Boston's IX–11. These fire-resistant fabrics have also passed the U.S. Navy's FR bedding requirement.

Our company has products that are proven and ready for the market. We feel further delay will be harmful to both our industry and the consumer. Many people die unnecessarily each year in bedding fires.

It is our understanding that the following issues are important to the mattress industry. Products selected must reliably support the passage of TB 603 test requirements. FR products preferably will be compatible with mattress styling, comfort, white and color, breathable, noiseless, soft, and provide comfort. Products must be easily incorporated into manufacturing, invisible to the consumer, inexpensive, and there can be no loss of durability. Critical mass must exist. Products must be toxicologically and environmentally safe.

We are pleased to advise that numerous woven and nonwoven technologies exist today that meet all of these requirements. According to ISPA's 2002 unit sales of mattress and box-spring data, the U.S. bedding industry consumes approximately 140 million linear yards of ticking annually. A similar amount of fire resistant barrier product will be required to meet market demand. Due to California's AB 603 legislation and an enforcement date of January 1, 2005, capacity of both fiber and fabrics are readily available to meet this new market need. The capacity to produce our products, Alessandra and Fireguard, alone, could reach 24 million yards, annualized, 6 months from the time of commitment. Much of this capacity is available now.

Through market studies and information obtained at California hearings in April 2003, we have determined that 107 million pounds of fire resistant blending fibers were available by March of 2003, which can provide 174 million linear yards of 90-inch-wide barrier products for annual consumption. Due to market forces, additional fiber capacity is available today.

We know of 21 producers of finished fire resistant barrier products who reportedly have achieved passing test results. Additional

names are being added to the list regularly. These products are on record as part of AB 603 hearings held in April 2003.

We fully support total implementation of the American Home Fire Safety Act for mattresses, as written, because it will help substantially reduce residential fire deaths and injuries, as well as property damage. Further, the standard is based upon good science and research completed by the National Institute of Standards and Technology. Our company and our partners have assisted mattress companies and fire-resistant component manufacturers in a large number of full-scale independent laboratory tests. Requirements of TB 603 have, and can be, continually met.

It is our belief that this legislation provides a tremendous opportunity to both the consumer and the textile industry. It offers industry the opportunity to make and sell innovative products, and gives the consumer safer products. Innovative products are the future of our industry.

Thank you.

[The prepared statement of Mr. Chapman follows:]

PREPARED STATEMENT OF NORMAN CHAPMAN, PRESIDENT AND CHIEF OPERATING OFFICER, INMAN MILLS

Company Structure, Management and Product Description

Good morning. My name is Norman Chapman, President & COO of Inman Mills, a textile manufacturer specializing in yarn spinning and weaving. Inman Mills has been in the textile business for over 100 years and is located in South Carolina. We currently employ approximately 500 associates. After back to back record years in 1997 and 1998, our company has been under extreme pressure from imported fabrics and finished products. Since 2001 we have closed 2 plants and laid off over half of our workforce. During these difficult times we have developed many new products in many different markets. Innovation and flexibility is the future of the U.S. textile industry. Fire resistant mattress ticking and interliners are 2 products where we have concentrated much of our effort. In May of 2002 we signed an agreement with McKinnon Land Moran, LLC a North Carolina research and development company to be the exclusive manufacturer of Alessandra yarns and fabrics. These products are sold and distributed by Hanes Industries, a division of Leggett & Platt.

Alessandra is patented technology that makes yarns and fabrics resistant to fire. Fabrics that use this technology retain their strength even after they have been exposed to open flame. These fabrics may be used as either interliner barriers or tickings. They keep fire from penetrating and igniting the highly flammable foam found inside most mattresses. This is achieved by manufacturing a core spun yarn that uses a combination of fibers. It is important to emphasize that the Alessandra products use no chemicals to achieve their fire resistant properties. Through continued research, we have been able to improve our Alessandra products and reduce the price to the manufacturer by over 37 percent. We continue to research ways to improve the product and reduce cost.

In addition to Alessandra, Inman Mills also manufactures Fireguard another well recognized fire resistant fabric. Fireguard is patented technology owned and sold by Springs Industries. It has been used for many years in mattresses on Navy ships and submarines. It is also sold in college dormitories and in hotels where fire safety is of great concern.

Both technologies are high performance and support the passing of California's current and former TB 603, Cal 129 and Boston's IX–11. These fire resistant fabrics have also passed the U.S. Navy's FR bedding requirement NAVSEA PD 1–00 REV D 25 July 2000.

Our company has products that are proven and ready for the market. We feel further delay will be harmful to both our industry and the consumer. Many people die unnecessarily each year in bedding fires.

Industry Needs

It is our understanding that the following issues are important to the mattress industry:

1. Product(s) selected must reliably support the passage of the current or proposed TB 603 test requirements.
2. FR Products preferably will be compatible with mattress styling and comfort, white in color, breathable, noiseless, soft, and provide comfort.
3. The products must be easily incorporated into manufacturing.
4. They must be invisible to the consumer.
5. New products must be inexpensive and have a minimal cost impact to the consumer.
6. There can be no loss of durability.
7. Critical mass must exist. In other words there must be a variety of options and ample supply to meet market demands.
8. Products must be toxicologically and environmentally safe.

We are pleased to advise that numerous woven and nonwoven technologies exist today that meet all of these requirements.

Market Size and Capacity

According to ISPA's 2002 unit sales of mattress and box spring data, the U.S. Bedding industry consumes approximately 140 million linear yards of ticking annually. A similar amount of fire resistant barrier product will be required to meet market demand. Due to California's AB 603 legislation and enforcement date of January 1, 2005 capacity of both fiber and fabrics are readily available to meet this new market need.

The capacity to produce Alessandra or Fireguard fabrics alone could reach 24,000,000 yards annualized 6 months from time of commitment. Much of this capacity is available now. Inman can expand beyond this if more capacity is needed.

Availability of Other Fibers and Fabrics

Through market studies and information obtained at the California hearings in April 2003, we have determined that 107,000,000 lbs of fire resistant blending fibers were available by 3/1/03, which can provide 174,000,000 lyd/yr of 90" wide barrier products for annual consumption. Due to market forces additional fiber capacity is available today.

Finished Barrier Producers

We know of 21 producers of finished fire resistant barrier products who reportedly have achieved passing test results. Additional names are being added to the list each month. These products are on record as part of the AB 603 hearings held in April 2003.

Validation Studies and Conclusion

We fully support total implementation of The American Home Fire Safety Act for mattresses as written because it will help substantially reduce residential fire deaths and injuries as well as property damage. Further, the standard is based upon good science and research completed by the National Institute of Standards and Technology (NIST).

Our company and our partners have assisted mattress companies and fire resistant component manufacturers in a large number of full-scale independent laboratory tests. REQUIREMENTS OF TB 603 HAVE AND CAN BE CONTINUALLY MET.

It is also our belief that this legislation provides a tremendous opportunity to both the consumer and the textile industry. It offers industry the opportunity to make and sell innovative products and gives the consumer safer products. Innovative products are the future of our industry. If we lose our textile industry, think of all of the great new products we will not be able to bring to the market.

Thank you.

Senator SMITH. Thank you very much, Mr. Chapman.

We'll hear now from Mr. Andy Counts, the American Furniture Manufacturers Association.

STATEMENT OF ANDY COUNTS, CHIEF EXECUTIVE OFFICER, AMERICAN FURNITURE MANUFACTURERS ASSOCIATION

Mr. COUNTS. Good morning. I'm Andy Counts, CEO of AFMA, and I want to thank you for this opportunity to participate in the hearing.

We commend Congress for its interest in this vital safety matter. However, given that CPSC is well on its way to providing the American public with safer furniture, AFMA opposes S. 1798. With respect to furniture, the bill embraces a untested package of requirements developed by California regulators which they themselves have declined to finalized. It also removes CPSC from the standards development role that Congress envisioned, and removes the agency's most important tools for decisionmaking and public input.

It is no secret that the last several years have been the most challenging period in the history of domestic furniture industry. Plants in the Pacific Rim have gained a dominant share of the furniture marketplace, contributing to the loss of over 100,000 U.S. furniture jobs, and creating real hardship in communities like Sumter, South Carolina, Martinsville, Virginia, and Palatka, Florida. Many of the same regions have experienced job loss and plant closures in the textile industry. In weighing approaches to upholstered furniture flammability, I ask you to consider the continued viability of domestic furniture facilities and the textile operations that supply them.

I want to give credit to Chairman Stratton, his fellow commissioners, and the staff of the Consumer Product Safety Commission. The Chairman inherited technical challenges and interest group discord that confounded progress on this matter for over a decade. He has helped bring together the stakeholders in pursuit of a workable regulation, and has achieved a remarkable degree of consensus during his brief tenure.

We understand the frustrations some have expressed about the pace of progress on this issue. However, one shouldn't disregard the technical hurdles entailed in achieving fire resistance for a product that is typically covered in fabric, filled with plastics, cellulosics and other cushioning materials. Add to this the differential performance of the tens of thousands of upholstery fabrics on the market, and you begin to grasp the challenge the CPSC has shouldered.

Over the last several years, AFMA has engaged in a constructive dialogue between industry stakeholders, CPSC staff, and fire safety advocates. That process has resulted in a package of flammability requirements that was outlined in the May 13 letter to Chairman Stratton. This framework has engendered broad support among key stakeholders as the most workable and cost-effective solution. I should emphasize that "cost effective" does not mean cost free. As a result of this proposal, consumers will see a noticeable retail upcharge.

AFMA and many of the other parties of this rulemaking support a 5-second open-flame test for outer fabrics, as contrasted with the 20-second test referenced in S. 1798. We believe this test accurately models the risk created by children playing with matches and lighters. It allows industry to consistently deliver compliant products, and continues to provide consumers with a wide array of comfortable and attractive fabrics.

In recent weeks, round-robin testing involving nine labs, including the CPSC, confirmed that the 5-second fabric test reliably pre-

dicts performance, and a report on the findings is now being prepared for the administrative record.

As an alternative to FR treatment of outer fabrics, all stakeholders have endorsed a compliance option in which flame-blocking barriers, also called interliners, are layered between the fabric and cushioning material. No such option is provided by S. 1798. The interliner option would preserve fabric choice by allowing the use of outer fabrics which cannot be reliably FR treated and those for which treatment would compromise function or consumer appeal.

Taken as a whole, S. 1798 is the most expensive approach yet proposed for upholstered furniture flammability. As the Committee is aware, the reduction of flammability risk in the most cost-effective manner is part of the mandate that Congress provided the CPSC. It is also critical to the success of a flammability regulation for upholstered furniture.

The replacement of the Nation's furniture stock with more fire-resistant constructions will take place over several generations, even at current prices. Price distortions imposed by careless regulation could deter consumer purchases of new furniture, and, thereby, have a counterproductive effect. S. 1798 would circumvent important provisions of the Consumer Product Safety Act and related statutes. These statutory provisions were established by Congress to provide for fairness and transparency in the regulatory process and to ensure that regulation is accomplished in the manner least disruptive to the consumer marketplace. AFMA believes that adoption of S. 1798 would set an unfortunate precedent for administrative law.

The CPSC is well on its way to providing the American public with safer furniture, and we respectfully recommend that Congress allow that process to proceed.

Thank you, again, for this opportunity.

[The prepared statement of Mr. Counts follows:]

PREPARED STATEMENT OF ANDY S. COUNTS, CHIEF EXECUTIVE OFFICER, AMERICAN FURNITURE MANUFACTURERS ASSOCIATION (AFMA)

Introduction

Good Morning. I am Andy Counts, the Chief Executive Officer of the American Furniture Manufacturers Association (AFMA). I want to thank the Members and staff of the Committee for the opportunity to participate in today's hearing.

One of my priorities for the association is to identify opportunities to advance standards for environmental responsibility, workplace safety and product stewardship. I believe you will be pleased to hear of the substantial progress that AFMA, working with CPSC and the other stakeholders here today, has made toward establishing a Federal flammability regulation for upholstered furniture.

We commend Congress for its interest in this vital safety matter. However, given that CPSC is well on its way to providing the American public with safer furniture, AFMA opposes S. 1798. The bill embraces an untested package of requirements developed by California regulators, which they themselves have declined to finalize. It also removes CPSC from the standards development role that Congress envisioned for the agency, and blocks the use of some of its most important tools for decisionmaking and public input.

Industry Profile

AFMA companies participate in a highly competitive market characterized by ever-changing style preferences, margin pressure from retailers, and the tendency of consumers to postpone big-ticket purchases if their perceptions of value and function are not met.

It is no secret that the last several years have been the most challenging period in the history of the domestic furniture industry. Plants in the Pacific Rim have

gained a dominant share of the furniture marketplace, contributing to the loss of 100,000 U.S. furniture jobs and creating real hardship in communities like Sumter, South Carolina; Martinsville, Virginia; and Palatka, Florida. Many of the same regions have experienced job loss and plant closures in the textile industry. In weighing approaches to upholstered furniture flammability, I ask you to consider the continued viability of domestic furniture facilities and the textile operations that supply them with fabrics.

History of the Furniture Flammability Project

I want to give credit to Chairman Stratton, his fellow Commissioners and the staff of the Consumer Product Safety Commission. The Chairman inherited technical challenges and interest group discord that confounded progress on this matter for a number of years. He has helped bring together the stakeholders in pursuit of a workable regulation, and has achieved a remarkable degree of consensus during a relatively brief tenure. It is our understanding that a package regulating both the cigarette and small open flame performance of upholstered furniture could be published this Fall.

We can certainly understand the frustration some have expressed about the pace of progress on upholstered furniture flammability. One should not disregard, however, the technical hurdles entailed in achieving fire resistance for a product that is typically covered in fabric and filled with plastics, cellulosics and other cushioning materials. Add to this the differential performance of the tens of thousands of upholstery fabrics on the market, and the synergy between fabrics and filling materials and you begin to grasp the challenge CPSC has shouldered.

Previous approaches to this risk tended to single out individual components for regulatory attention. The 1993 petition of the National Association of State Fire Marshals (NASFM) identified polyurethane foam as the most significant potential fuel source. However, subsequent testing demonstrated that modification of foam does not by itself meaningfully improve open flame performance. In its 1997 Briefing Package, CPSC staff originally relied solely on fire retardant (FR) treatment of outer fabrics, reasoning that minimizing ignition at the outset avoided the complexities and expense of measuring progressive involvement of other components. However, evidence about the variability in performance of some treated fabrics, along with concerns about consumer acceptance and FR toxicity, led the agency to provide an alternative compliance option involving fire-blocking interliners, a positive development discussed in greater detail below.

Consensus Surrounding the Present Approach

At present, most interested persons recognize that upholstered furniture fires represent a synergy between fabric, foam and other cushioning materials. This consensus laid the groundwork for a constructive dialogue between producers of furniture, fabrics, fiber, polyurethane foam and flame retardant materials, assisted by input from CPSC staff, testing labs and fire safety advocates. That process resulted in a package of flammability requirements for furniture that were outlined in a May 13 letter from AFMA to Chairman Stratton. The elements of this proposal are summarized below.

1. For upholstery fabrics, the 5-second open flame fabric test utilizing the Technical Bulletin 117 test apparatus, as proposed by the Fabric Coalition. Non-passing fabrics or those for which FR treatment is not desired could be utilized atop an open flame barrier. CPSC is currently working to identify an appropriate test for such barriers.
2. For all foam (any type) used in upholstered furniture, the cigarette and open flame requirements contained in the proposed revision to California Technical Bulletin 117 ("TB–117+").
3. For all non-foam cushion core materials used in upholstered furniture, the cigarette and open flame requirements of TB–117+ or a comparable test method.
4. For non-foam seat cushion wrapping or topper materials, the requirements of the BS 5852 Source 2 *Test for Non-Foam Filling Materials.*
5. For any cotton batting used in upholstered furniture, the ASTM E 1353 test with maximum smolder length criteria specified by UFAC.
6. For all non-foam materials used in arm constructions, the filling and padding test of ASTM E 1353 with the maximum smolder length criteria specified by UFAC.

This framework has engendered broad support among the key stakeholders. Earlier this week, a letter endorsing it was delivered to Chairman Stratton, signed by representatives of the National Textile Association, the Polyurethane Foam Associa-

tion, the Upholstered Furniture Action Council, the Decorative Fabrics Association, the Coalition of Converters of Decorative Fabrics and the American Fire Safety Alliance, among others. These organizations are convinced the framework represents a cost-effective, risk-based approach to the most likely ignition scenarios for both small open flame and cigarettes.

I should emphasize that cost-effective doesn't mean cost-free. Price increases are expected for reformulated foam and chemically backcoated fabrics, along with some loss of aesthetics from the replacement of siliconized cushion wraps and toppers with less flammable alternatives. Suppliers of both upholstery fabrics and cushioning will incur R&D and testing expenses as they revamp their products to pass the proposed flammability tests, and to do so using safe and appropriate chemicals. As a result of these changes, consumers will see a noticeable retail upcharge. Even higher costs are foreseeable for products using flame-blocking barriers beneath untreated fabrics.

At this point, I would like to briefly describe some of the important elements of our proposal, and how they differ from what is proposed in S. 1798. While comparison is made more difficult by the draft status of the requirements embodied in the bill, I am basing my assessment on the best interpretations of those requirements by technical authorities in government and the private sector.

The Open Flame Test for Fabrics

AFMA and many of the other parties to this rulemaking support a 5-second open flame test for outer fabrics, as contrasted with the 20-second test referenced in S. 1798. We believe this test accurately models the risk created by children playing with matches and lighters, and allows industry to continue to provide consumers with an array of comfortable and attractive fabrics.

The 5-second fabric test was originally developed by researchers from the textile industry. It utilizes a familiar testing apparatus currently used to perform testing of upholstery fabrics under California Technical Bulletin 117. The one-second ignition time employed in TB–117 testing has been extended to five seconds to better model the phenomenon of child fireplay. Textile industry researchers have found that the great majority of current upholstery fabrics fail this test, but that most can be modified through yarn substitution and chemical backcoating to achieve sufficient flame resistance. Under this test, each fabric SKU marketed as upholstery would be tested ten times and evaluated for non-ignition or self-extinguishment. Fabrics could also pass by demonstrating a relatively slow rate of burn (the five-inch test sample could not be consumed in less than 30 seconds).

In recent weeks, round robin testing involving nine labs (including CPSC) confirmed that the fabric test reliably predicts fabric performance, and a report on the findings is now being prepared for the administrative record. We are confident that the greater ignition resistance of fabrics meeting the proposed requirement will work in concert with the recommended changes to foam and other cushioning material to provide Americans with significantly safer furniture.

It is our view that the 20-second flame test referenced in *S. 1798* is unrealistically long. CPSC concluded in 1997 that "many young children would not be expected to hold a flame source in one place for more than several seconds." [1] This is understandable, given the agency's finding that most small open flame fires originate on the top of horizontal upholstery cushions or near the crevice between the horizontal and vertical cushions. One need not be a fire scientist to recognize the difficulty of holding a match or lighter for 20 seconds while attempting to direct its flame downward onto a horizontal surface.

In addition, textile scientists have found it impossible to reliably achieve resistance to such a sustained ignition source without jeopardizing the qualities that make upholstery appealing. A 20-second requirement in the United Kingdom has resulted in a diminished range of fabric choices, along with poor "hand" and "boardiness." The editor of a U.K. trade publication said of the fabrics at a 1996 trade show:

> It makes me sad to think that so few of these exquisite weaves and prints will ever reach the U.K. market, mainly because of our stringent fire retardancy regulations. A number of mills commented that although they would like to export more to the U.K., the application of FR backings would ruin the special feel and texture of the fabric. . . .[2]

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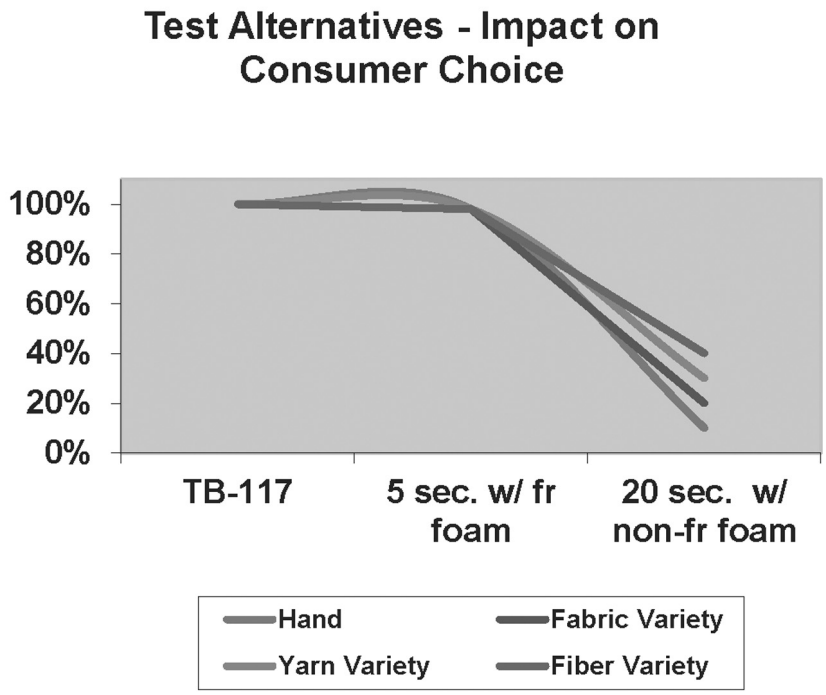
[1] U.S. Consumer Product Safety Commission, *Regulatory Options Briefing Package on Upholstered Furniture Flammability* October 28, 1997, p. 38 (emphasis added).

[2] Felicity Murray, *Cabinet Maker,* Miller Freeman Publishers, May 1996.

The tradeoff between the ignition resistance and marketability of fabrics is illustrated in a chart developed by David Pettey, Director of Product Development for Quaker Fabrics, presented at a March 1, 2004 public meeting of the CPSC.



Clearly, as the ignition source progresses from the 5-second test recommended by the majority of stakeholders to the 20-second standard embodied in the pending legislation, the aesthetics and fabric variety demanded by consumers would be sacrificed.

Still, the most important reason for not establishing a 20-second test requirement for upholstery fabrics is the simple fact that such a standard cannot be reliably met. The United Kingdom represents to its citizens that upholstery fabrics marketed in that nation pass a 20-second open flame test. Nonetheless, researchers, journalists and even British enforcement authorities have documented compliance levels with that requirement at barely 50 percent.[3] Dr. Kurt Reimann, a research manager at BASF, tested a representative sample of 31 fabrics backcoated and BS5852 certified by an accredited laboratory in the U.K. Seventeen of these failed subsequent small open flame testing. Some of these required multiple treatments in order to pass, and many exhibited a mixture of passing and failing results.[4] AFMA believes that consumer protection is better served by a more sensible fabric requirement which enjoys high compliance levels than a more stringent-sounding standard that is observed largely in the breach.

Flame-Blocking Barriers

As an alternative to FR treatment of outer fabrics, all stakeholders that we are aware of have endorsed a compliance option in which flame-blocking barriers (also

[3] Andrew Kidd, "More than 50 percent of Sofa Beds Failed to Pass Fire Safety Regulations," *Cabinet Maker,* January 31, 1997.
Derbyshire County Council, *Company Fined Over Fire Retardant Claims,* August 13, 2001.
News Wales, *Buyers Risking Lives for a Bargain,* April 28, 2004.
Janet L. Brady, *A Study of the Effects of FR Backcoating on Selected Upholstery Fabrics,* Philadelphia College of Textiles, June 16, 1999.

[4] Janet L. Brady, *A Study of the Effects of FR Backcoating on Selected Upholstery Fabrics,* Philadelphia College of Textiles, June 16, 1999.

called interliners) are layered between the fabric and cushioning material. No such option is provided by S. 1798.

Barriers would be particularly critical at the upper levels of the market, where yarn substitution or chemical backcoating might conflict with customer preferences. The goal of such constructions is not primarily to prevent ignition of the outer fabric, but to limit the progression of fires into internal components such as polyurethane foam and polyester batting. Barrier materials are already used in the United Kingdom, as an alternative to the 20-second fabric test just discussed. Under our proposal, barriers would be qualified using an ignition source meant to model the effect of burning outer fabric. While barriers currently represent a more costly option than backcoating, a national regulation could give rise to economies of scale that bring such materials into wider use.

The interliner option would advance public safety while providing furniture manufacturers with compliance flexibility. It would preserve fabric choice by allowing the use of outer fabrics which cannot be reliably FR treated, and those for which treatment would compromise function or consumer appeal. This option would also deal more sensibly with limited run fabrics and customer's own merchandize (COM's), for which valuable quantities of fabric would otherwise be consumed by testing. Furniture manufacturers and consumers especially concerned about chemical content would have access to flame resistant product which contains no chemical flame retardants. This could be advantageous in markets where consumer preference, labeling initiatives or regulations discourage the use of flame retardants.

Unfortunately, the draft California standard referenced by S. 1798 does not provide a workable interliner option. To use untreated fabrics, a manufacturer would have to conduct composite testing of the fabric, batting, bagging, foam and other materials in each of the potentially thousands of combinations they bring to market. Composite testing is expensive and dangerous, requiring sophisticated measurement and pollution abatement equipment. It is also directly at odds with achieving cost-effective product and high levels of compliance.[5] One flammability expert has noted the unworkability of such tests for monitoring the compliance of furniture with safety standards:

> [A test] may be highly sophisticated technically and require special facilities and instrumentation. As a consequence it can generally only be performed in a limited number of installations and . . .used only for research purposes. It is usually not practical to require such elaborate testing for all possible combinations of filling and fabric materials. For any regulatory purpose, such as the requirement of certification for compliance, it is vital that a quality control test be available that . . .does not require highly trained personnel or elaborate equipment.[6]

The absence of an interliner alternative and the need to conduct composite testing for all SKU's of product using untreated fabric is a central flaw of the California approach embodied in S. 1798.

Cost-Effectiveness

The unrealistically stringent test methods and the burden of composite testing render S. 1798 the most expensive approach yet proposed for residential upholstered furniture. As the Committee is aware, the reduction of flammability risks in the most cost-effective and least disruptive manner is part of the mandate that Congress provided to CPSC.[7] It is also critical to the success of a flammability regulation for upholstered furniture.

Improved furniture will only provide additional fire safety if it reaches peoples' homes, particularly those at greatest risk of residential fire. Furniture is unlike toys, disposable lighters and other products which enjoy a rapid turnover in stock. There are approximately 400 million units of upholstered furniture currently in use in this country, and the average product life is between 15–17 years.[8] New upholstered furniture represents a discretionary purchase for most U.S. consumers. As shown in the chart below, median income households replace sofas and loveseats at a rate of 3.6 percent annually. This figure drops to 2.5 percent among households with annual incomes under $20,000.[9] The replacement of the Nation's furniture

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[5] See CPSC Briefing Package (2001), p. 50, indicating that the agency chose component over composite testing to avoid "imposing unreasonable technical or cost burdens."

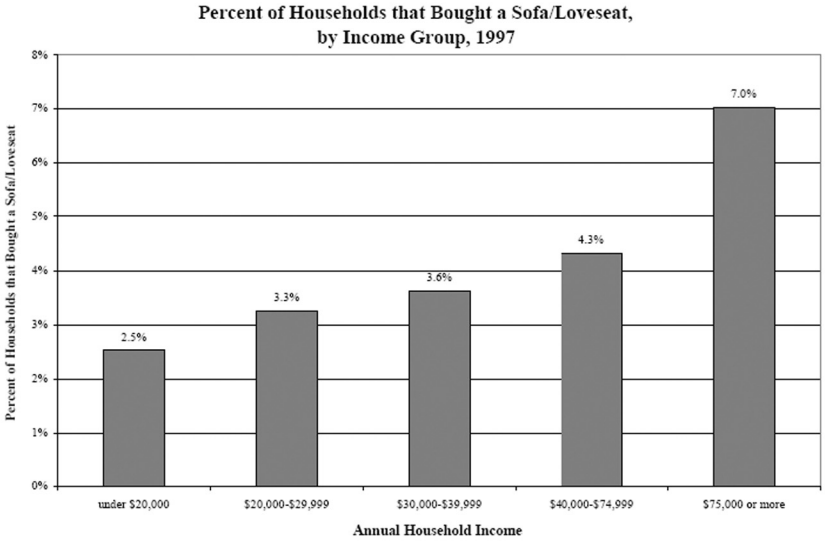
[6] Dr. Herman Stone, *Overview of the Combustibility and Testing of Filling Materials and Fabrics for Upholstered Furniture,* July 1998.

[7] 15 U.S.C. 1193 (j) (2) (C).

[8] U.S. CPSC, *Briefing Package on Upholstered Furniture Flammability,* October 2001, p. 50.

[9] Dr. Mark Berkman, *Assessing the Need for a Federal Upholstered Furniture Flammability Standard,* National Economic Research Associates (NERA), February 16, 2001, p. 32.

stock with more fire-resistant constructions will take place over several generations, even at present prices.



Source: "Consumer Buying Trends," *Furniture Today,* February 16, 1998.

Price distortions imposed by careless regulation could deter consumer purchases of new furniture and thereby have a counterproductive effect. Our suppliers indicate that the reformulated and chemically treated components required by S. 1798 would result in a retail upcharge of approximately $100 per chair, and perhaps $145 per sofa. High testing costs would be layered onto these amounts. Policymakers can best promote the interest of consumers by choosing the most practical and cost-effective approach to furniture flammability. Most of the stakeholders present today believe that the AFMA proposal represents that path.

The Bill Would Eliminate Decisionmaking Criteria and Transparency

S. 1798 would make inapplicable important provisions of the Consumer Product Safety Act and related statutes. Specifically, no assessment of the resulting standard's costs or benefits would be allowed. The agency would also be blocked from considering the impact of the regulation on the availability of products, or whether less burdensome or more effective alternatives are available. Significantly, the opportunity for interested parties to be heard on the advantages and disadvantages of the standard would be eliminated.

These statutory provisions were established by Congress to provide for fairness and transparency in the regulatory process, and to ensure that regulation is accomplished in the manner least disruptive to the consumer marketplace. AFMA believes that adoption of S. 1798 would set an unfortunate precedent for administrative law.

Conclusion

CPSC is well on its way to providing the American public with safer furniture, and we respectfully recommend that Congress allow that process to proceed. We do encourage you to provide the agency with appropriate oversight and sufficient funding to carry out that task.

Related to that point, please recognize that a flammability standard for upholstered furniture, when finalized, will be the most expansive safety standard ever promulgated by CPSC. Hundreds of million of upholstered units will be affected, and many of these will originate in foreign factories. The effectiveness of such a standard will rest with the ability of Federal authorities to enforce it. We urge Congress to provide CPSC and Customs authorities with resources sufficient to fairly and effectively monitor the compliance of upholstered furniture with any regulation that is imposed.

BIOGRAPHY OF ANDY S. COUNTS

Andy Counts is Chief Executive Officer of the American Furniture Manufacturers Association (AFMA), the Nation's largest trade association for furniture manufacturers and suppliers. Formerly AFMA's Vice President of Environmental and Technical Affairs, Mr. Counts has been instrumental in the development of consensus-based environmental regulations and product safety standards that impact the furniture industry. He has testified before state and Federal policymaking bodies, including the U.S. Consumer Product Safety Commission.

Prior to joining AFMA, Andy served as a Project Engineer with Malcolm Pirnie, Inc. in Charlotte, NC; as a Plant Engineer with kitchen cabinet manufacturer Merillat Industries; and as a Senior Environmental Engineer with the Virginia Department of Environmental Quality.

Andy has a degree in Industrial Engineering from the Georgia Institute of Technology. He is a Member of the North Carolina Furniture Export Council; a Board member of the International Woodworking Fair; a Past Member of the High Point Market Authority; and President of the Georgia Tech Alumni Association.

Senator SMITH. Thank you very much.

Bob Higgins, President, National Candle Association.

STATEMENT OF ROBERT HIGGINS, PRESIDENT, NATIONAL CANDLE ASSOCIATION

Mr. HIGGINS. Good morning. My name is Bob Higgins. I'm Vice President of Manufacturing and Logistics with Candle-lite, in Cincinnati, Ohio. Today, I'm speaking as President of the NCA, the National Candle Association.

The NCA is a major trade association of U.S. candle manufacturers and their suppliers. It consists of nearly 200 member companies, accounting for more than 90 percent of all candles manufactured in the U.S. I want to emphasize that the NCA is deeply committed to reducing candle fires, and strongly supports any legislation that helps to decrease residential fires and their devastating effects.

The NCA has been actively involved in addressing consumer fire safety issues since 1997, when a growing number of candle fires led the CPSC to ask our help in developing standards on candle fire safety. The result was the ASTM F–15.45 Subcommittee on Candle Products. The candle industry, CPSC staff, and the fire community have all been actively involved.

The NCA takes pride in the ASTM candle standard developed to date. NCA's commitment to move forward as rapidly as possible has propelled the publication of three groundbreaking ASTM candle safety standards in only 25 months. A fourth standard dealing with the candle test methods was published earlier this year. A fifth standard dealing with candle accessories is under development.

By far, the most technically advanced of the ASTM candle standards is PS 59–02, which addresses the control of flame height, stability, end-of-useful life, and secondary ignition. To make PS 59–02 a mandatory CPSC standard would set back efforts to improve candle fire safety.

By statute, the CPSC may issue a mandatory standard only when it finds that a voluntary standard has not adequately reduced injury or death, or when substantial compliance with a voluntary standard is absent. Neither of these conditions exist in the candle industry. Our members have consistently demonstrated

their support for, and compliance with, the ASTM candle standards. PS 59–02 is no exception.

Working with ASTM, the candle industry has recently revised and broadened PS 59–02 to now include virtually all types of candles in its end-of-useful-life requirements. A final standard is anticipated in December.

Voluntary standards continually evolve. Mandatory standards are essentially frozen in time. ASTM standards are regularly reviewed and updated, ensuring that the latest technologies are adopted. By comparison, to change a mandatory CPSC standard would require complex and lengthy procedures under the Consumer Product Safety Act.

Candles are safe products when used correctly, but educating consumers is the key to reducing candle fires. Approximately 85 percent of all candle fires occur when consumers leave lighted candles unattended, place candles too close to combustibles, or place candles within the reach of children or pets. This finding prompted the development of the ASTM candle labeling standard, and underscored the tremendous importance of educating consumers about candle fire safety. That's why the NCA aggressively distributes candle safety materials to consumers through the media, our Website, our members, industry groups, retailers, and cooperating organizations around the country.

The NCA strongly believes that neither candles nor candle fire safety standards belong in S. 1798. The purpose of this bill is to reduce the flammability of candles, mattresses, bedclothing, and upholstered furniture. A candle constitutes a source of ignition. It is an open flame. Mattresses, bedclothing, and upholstered furniture are items that can be ignited by a flame. This distinction between an ignition source and an ignited item is important. If the purpose of S. 1798 is to reduce the flammability of items ignited in household fires, then candles clearly do not belong in the bill. If the purpose is to improve the fire safety of ignition sources, then stoves, ovens, heaters, furnaces, fireplaces, chimneys, clothes dryers, and cigarettes, all of which cause more residential fires than candles, should be included. Candles constitute but 4 percent of all residential fires.

In conclusion, the U.S. candle industry has been steadfast in its commitment to improving candle safety, to developing voluntary ASTM standards, to complying with those standards, and to educating consumers. The NCA is committed to the intent of this legislation and to reducing residential fires.

We appreciate the opportunity to testify, and respectfully request that language regarding candles and candle standards be removed from S. 1798.

I thank you for allowing me to be here today.

[The prepared statement of Mr. Higgins follows:]

PREPARED STATEMENT OF ROBERT HIGGINS, PRESIDENT, NATIONAL CANDLE ASSOCIATION

I. Introduction

Good morning. My name is Robert Higgins. I am Vice President of Manufacturing and Logistics with Candle-Lite, Inc., one of the largest candle manufacturers in North America. Candle-Lite is owned by Lancaster Colony Corporation, a publicly traded company headquartered in Columbus, Ohio.

I am speaking today on behalf of the National Candle Association as its President.

II. The National Candle Association

The National Candle Association ("NCA") is the major trade association representing U.S. candle manufacturers and their suppliers. Founded 30 years ago, the NCA today consists of nearly 200 member companies, accounting for more than 90 percent of all candles manufactured in the United States. NCA's leadership and technical expertise in all aspects of candlemaking is well established and widely recognized.

The popularity of candles soared dramatically with American consumers during the 1990s. Candle sales reached their historical high at the close of the decade, and have remained relatively steady since that time. U.S. retail sales of candles are currently estimated at $2 billion annually.

Data from industry and independent market research firms indicate that candle sales in the United States increased more than 700 percent from 1990 to 1999. In turn, candle-related residential fires increased 275 percent.

It was the growing number of candle fires that led the U.S. Consumer Product Safety Commission in 1997 to ask our help in forming a subcommittee under ASTM to develop consensus standards for addressing the fire safety of candles. The result was the ASTM F–15.45 Subcommittee on Candle Products.

The National Candle Association takes exceptional pride in the ASTM candle safety standards that have been developed to date. NCA's commitment to move forward as rapidly as possible, and the contribution of its members' technical know-how and innovation, allowed the publication of three groundbreaking safety standards in a record 25 months. A fourth candle standard dealing with a manufacturer test method was published earlier this year. A fifth standard dealing with the fire safety of candle accessories is currently under development.

The active participation and contribution of the CPSC staff and representatives of the fire community in developing these standards has helped to ensure that both the fire science and consumer behavior components of candle safety have been effectively addressed.

In the process of developing these standards, we have gained considerable knowledge about the technological and practical opportunities and limitations for reducing the incidence of residential candle fires. It is in this context that we today address the proposed American Home Fire Safety Act (S. 1798).

III. The Value of Voluntary Standards

S. 1798 calls for the U.S. Consumer Product Safety Commission to issue a mandatory candle fire-safety standard that is "substantially the same" as the voluntary ASTM Provisional Standard PS 59–02.

Section 7 of the Consumer Product Safety Act provides that the CPSC may issue a mandatory standard only when it finds that a voluntary standard has not adequately reduced the addressed risk of injury or death, or when substantial compliance with the voluntary standard is absent. NCA strongly believes that neither of these conditions exists.

Our members have consistently demonstrated their support for and compliance with the ASTM candle standards, and PS 59–02 is no exception. Its technically advanced specifications for controlling the flame height, stability, end of useful life and secondary ignition factors are playing a significant role in reducing candle-related residential fires.

The Committee should be aware that the PS 59–02 standard cited in this legislation was the initial candle-fire safety standard developed by the ASTM F15–45 subcommittee and rushed into effect as a provisional standard to speed its adoption and acceptance by the candle industry.

Since then, the ASTM Subcommittee has improved and broadened the standard by adding end-of-useful life provisions for freestanding candles, tea lights and votives. The balloting period has just closed on these broadened revisions and we anticipate the standard will become final in December of 2004, at which time the standard's provisional "PS 59–02" nomenclature will be dropped and a new number and prefix designation assigned.

The addition of these new provisions underscores the value of a voluntary consensus standard and the severe drawbacks of a mandatory standard. Recognized standards bodies, such as ASTM and ANSI, require regular review and updating of voluntary standards to ensure that the latest technologies and improvements are continually adopted and put into effect.

If ASTM 59–02 were to become a mandatory standard, its fire-safety specifications would essentially be frozen in time. The automatic updating and expansion of a standard that occurs with recognized standards bodies would be effectively lost.

To incorporate into a mandatory CPSC standard any future technical advances or fire-safety measures would necessitate undergoing the relatively complex and lengthy procedures required to amend a mandatory standard under the Consumer Product Safety Act. This would constitute a giant and needless step backward in the industry's continuing effort to improve candle-fire safety.

Turning the ASTM candle fire-safety standard into a mandated standard would effect absolutely no positive change in candle fire safety, but would likely obstruct the future addition of technological advances or expansions of the standard's current provisions.

IV. Consumer Education Is Key to Reducing Candle Fires

Despite the importance of fire science and standards in reducing the incidence of residential fires, the NCA strongly believes that the real key to candle-fire safety lies with consumer education. Candles are safe products when used correctly. It is consumer misuse and inattention to basic fire-safety precautions that leads to candle fires.

When the ASTM Subcommittee on Candle Products was first formed, the CPSC presented NFIRS data indicating that 85 percent of all candle fires were due to consumers leaving lighted candles unattended, placing candles too close to combustibles, and placing candles within the reach of children or pets.

These findings prompted the subcommittee to develop ASTM F–2058, the cautionary labeling standard. In effect since November of 2000, it requires candles to have a consumer warning label setting forth these three critical fire-safety rules.

Unfortunately, no product label or safety standard, whether voluntary or mandatory, can overcome the fact that the vast majority of candle fires are due to consumer inattention and carelessness. Educating consumers as to the proper method for burning candles, and increasing their awareness of candle fire safety precautions, are critical requisitions for reducing candle fires.

The National Candle Association has worked diligently in educating consumers about the need for vigilance when burning candles. We have created and promoted literature stressing the importance of candle fire safety. We disseminate this literature to consumers through our members, non-member industry groups and retailers, as well as through fire, safety and consumer organizations around the country.

Our website is recognized for its outstanding candle safety information, and the media regularly directs consumers to *www.candles.org* for important safety advice. We have contacted national and regional fire groups, restaurant associations, hotel associations, retailers and others, providing them with information on the ASTM candle fire safety standards and encouraging them to join us in promoting candle fire safety. Currently we are working on a pilot project in North Carolina aimed at getting our candle safety message to school children and their parents in cooperation with the Office of the State Fire Marshal and Safe Kids chapters in the state.

To reach as many consumers as possible, NCA regularly issues press releases and feature stories on candle safety to radio, television print and the electronic media. In addition, we produce and annually distribute a television Video News Release on the importance of fire safety when using candles.

V. Candles Do Not Belong in S. 1798

The National Candle Association strongly believes the neither candles nor candle fire-safety standards belong in S. 1798.

The stated purpose of the bill is to develop standards "to reduce the flammability of candles, mattresses, bed clothing and upholstered furniture." A burning candle is *a source of ignition,* an open flame. Mattresses, bed clothing and upholstered furniture are *items that can be ignited* by a flame. This distinction between an *ignition source* and an *ignited item* is important.

If the purpose of S. 1798 is to reduce the flammability of *items ignited* frequently in household fires, then candles clearly do not belong in the legislation.

If the purpose of this legislation is to improve the fire safety of *ignition sources,* then stoves and ovens, heaters and furnaces, fireplaces and chimneys, cigarettes, and clothes dryers—all of which cause more residential fires than candles—should be included.

The ASTM standard for candle-fire safety is the most technically advanced in the world. Turning it into a mandated standard would effect absolutely no positive change in candle fire safety, and would thwart our ongoing efforts to expand and improve it.

Industry has consistently demonstrated its support for, and compliance with, the ASTM candle standards, and we believe they are playing a significant role in reducing candle-related residential fires.

The NCA requests that references to candles and candle fire-safety standards be eliminated from S. 1798.

VI. Conclusion

The NCA has been diligent and resolute in its efforts to improve candle fire safety. We believe we have made notable progress addressing the fire science component of candle-fire safety through our active participation in the ASTM standards development process.

We are especially proud of our role in the development of PS 59–02, and its innovative technical specifications for controlling the flame height, stability, end of useful life and the secondary ignition of candles. When the latest revisions are added and the standard becomes final in a few months, it will provide the industry with the most advanced and comprehensive means of addressing candle fire safety from the standpoint of combustion control.

Through dedication and innovation, the U.S. candle industry has harnessed the candle flame in ways that were unthinkable just a decade ago. Yet these technological feats will be of minimal value unless we can make significant inroads in educating consumers about the need for caution and vigilance when burning candles.

As the voice of the U.S. candle industry, the NCA has been steadfast in its commitment to improving candle fire safety, not only through its active participation in the development of voluntary standards, and compliance with those standards, but in its ongoing consumer education and media outreach activities, its cooperative endeavors with fire and safety organizations, and its efforts to involve the entire U.S. candle industry and customers in a commitment to candle fire safety. The NCA requests that references to candles and candle fire-safety standards be eliminated from S. 1798.

I appreciate the opportunity to testify before you today on this important subject. Thank you for your attention.

NATIONAL CANDLE ASSOCIATION—ASTM STANDARDS FOR CANDLES

F 1972–99 Standard Guide for Terminology Relating to Candles and Associated Accessory Items

Defines the key terms associated with candles to ensure universal understanding of related standards.

F 2058–00 Standard Specification for Cautionary Labeling for Candles Burned in A Home

Sets forth the minimum wording, typestyle and design requirements for the warning label that is to be placed on candles. The standard addresses the three most common causes of accidental candle fires:

- Keep burning candle within sight
- Keep out of reach of children and pets
- Never on or near anything that can catch fire

F 2179–02 Standard Specification for Annealed Soda-Lime-Silicate Glass Containers that are Produced for Use as Candle Containers

Developed to address concerns over candle fires caused by broken or shattered glass containers, this standard requires that glass containers for candle use be:

- Properly annealed—pass a scratch test without fractures or, for transparent glass, has a real temper <4 using a polariscope.
- Able to withstand a 90º F thermal shock differential.

F 2326–04 Standard Test Method for Collection and Analysis of Visible Emissions from Candles As They Burn

Establishes a *test method* for collecting and analyzing visible emissions when comparing the smoking and burn behavior of certain candle designs and formulations. Does not provide pass/fail criteria

PS 59–02* Provisional Specification for Fire Safety for Candles

Sets fire prevention measures for the manufacture and design of candles. Currently a provisional standard, anticipated requirements of the final standard are listed below.

- Maximum flame height on candles shall not exceed 3.0 inches (church candles = 3.75").

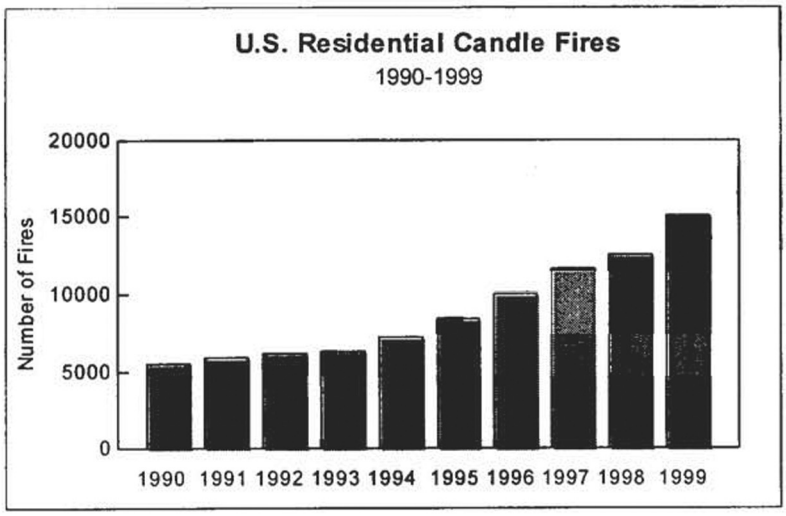
- A candle placed on an incline of 10 degrees shall not tip over.
- A candle shall not support ignition at points other than the intended wick or wicks.
- When a free-standing, tealight, votive or container candle reaches the end of its useful life:
  - —the candle must not exhibit excessive flame height,
  - —the candle must not exhibit secondary ignition,
  - —the flame must go out.
  - —if a container candle, the container shall not break,

Fire Safety Specifications and Test Methods for Candle Accessories (*Under Development*)

Intended to ensure that a candle flame will not ignite a candle accessory to initiate a larger fire. Includes flammability test methods and pass/fail criteria. Also includes stability requirements.

Residential Candle Fires increased by 275 percent from 1990–1999

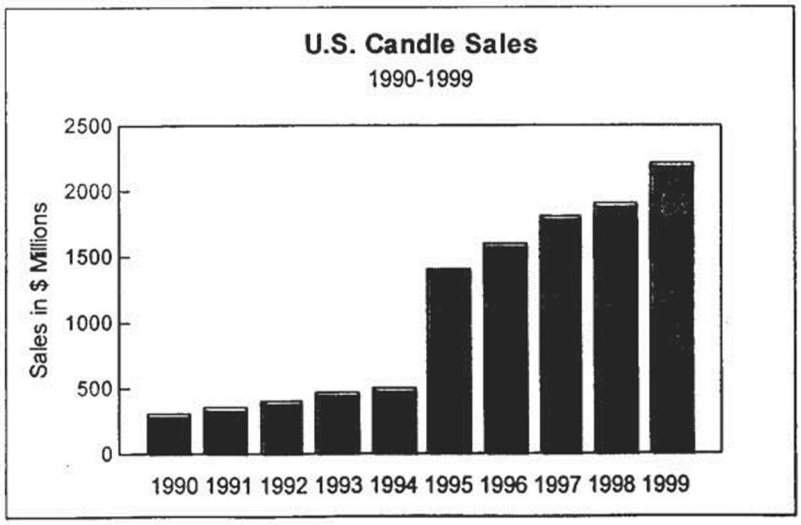
There were 5,450 candle fires reported in 1990 and 15,040 candle fires in 1999.



Source: NFIRS/NFPA

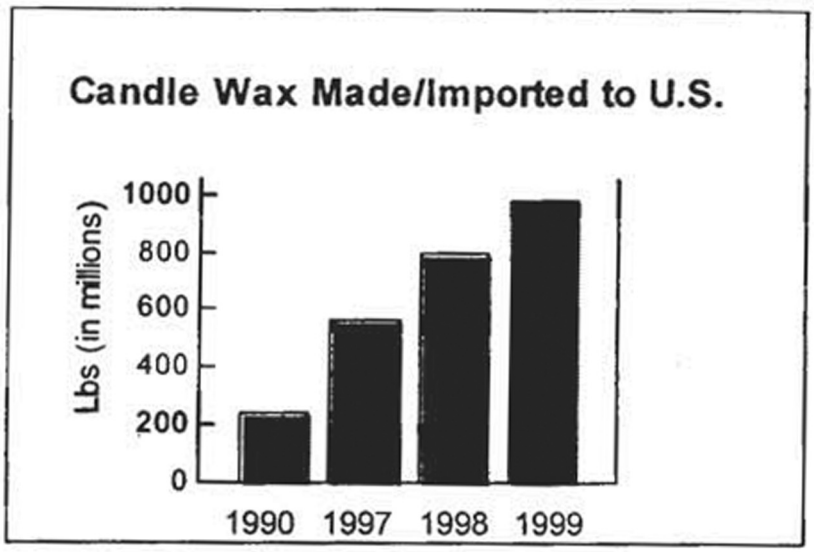
U.S. Candle Sales increased more than 700 percent from 1990–1999

Candle sales rose from an estimated $300 million in 1990 to $2.2 billion in 1999.



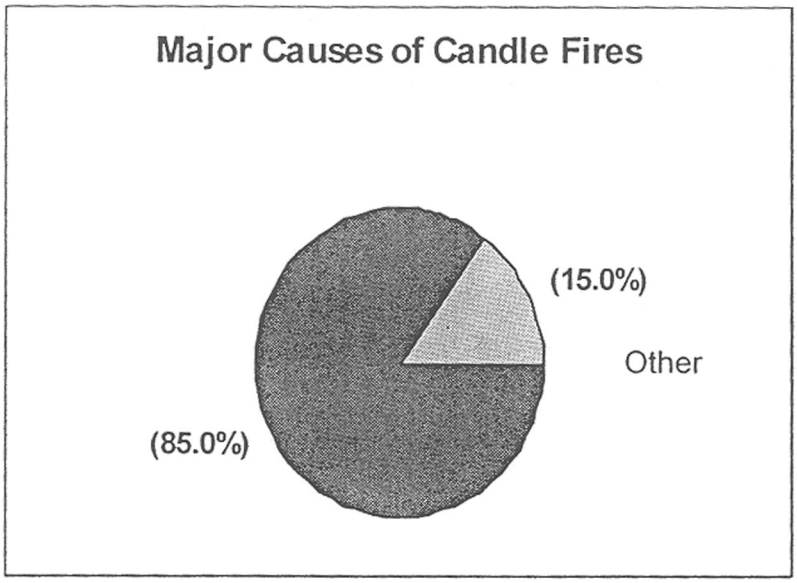
Source: 1990–1994 Industry estimates: 1995–1999 Mintel (all figures exclude candle accessories)

Candle Wax made in the U.S. or imported increased 410 percent from 1990–1999.



Source: Compiled from Department of Commerce, "Wax Data and Industry surveys."

Consumer inattention and misuse of candles account for 85 percent of all residential candle fires.



Source: 1997 CPSC Analysis of 1993–1994 NFIRS data for ASTM F–15.45 Subcommittee as reported in ASTM Standardization News, March 2003. Subsequent NFIRS data have shown no substantial changes in the reported causes of candle fires.

ASTM CANDLE FIRE SAFETY TASK GROUP

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Specification for Fire Safety for Candles [1]

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1. Scope

1.1 This specification is intended to prescribe requirements for certain candles to provide a reasonable degree of safety for normal use, thereby improving personal safety and reducing fires, deaths, and injuries.

1.2 This specification is not intended to replace other important safety practices that should be in place, such as adult supervision, close monitoring, fire detection, alarm or suppression systems, and use of candles away from combustible materials.

1.3 The values stated in SI units are to be regarded as the standard. The values given in parentheses are for information only.

1.4 *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory requirements prior to use.*

1.5 Flame-producing devices, such as candles, present a potential hazard to the user. This standard cannot eliminate all hazards but will minimize the potential hazards of candles to the user.

1.6 This standard measures and describes the response of materials, products or assemblies to heat and flame under controlled conditions, but does not by itself incorporate all factors required for fire hazard or fire risk assessment of the materials, products or assemblies under actual fire conditions.

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[1] This specification is under the jurisdiction of ASTM Committee F15 on Consumer Products and is the direct responsibility of Subcommittee F15.45 on Candle Products.

2. Referenced Documents

2.1 *ASTM Standards* [2]

E 176 Terminology of Fire Standards

F 400 Consumer Safety Specification for Lighters

F 1972 Guide for Terminology Relating to Candles and Associated Accessory Items

3. Terminology

3.1 Certain candle-related terminology is addressed in Guide F 1972, and the reader is directed to that standard for definitions not found in 3.2. For definitions of terms associated with fire issues, see E 176 Terminology of Fire Standards.

3.2 *Definitions:*

3.2.1 *Altar candle, n*—candle that is constructed, packaged, and labeled as an "Altar" candle.

3.2.1.1 *Discussion*—The candle is used in a place of worship in close proximity to the altar during the religious service or ceremony.

3.2.2 *base material, n*—intended fuel source for candle flame.

3.2.3 *birthday candle, n*—candle whose sole purpose is to be used on a birthday cake.

3.2.4 *candle flashover, n*—condition in which the base material's vapors ignite over the entire fuel pool.

3.2.5 *Easter, Paschal, Sacramental candle, n*—candle that is constructed, packaged, and labeled as an "Easter," "Paschal," or "Sacramental" candle (or some combination of these names, for example, "Easter/Paschal"), generally 43.2 cm (17.0 in.) or more in length.

3.2.5.1 *Discussion*—The candle shall be displayed and burned in the place of worship as the focal candle during Easter or with the celebration of various sacraments. The candle is adorned with symbols and ornamentation as required and deemed appropriate.

3.2.6 *end of useful life, n*—when the candle ceases to support combustion and the candle flame(s) goes (go) out on its own, as designed, and cannot be relit.

3.2.7 *ensemble, n*—candle and items physically packaged together and intended for use with the candle for sale as one unit at the retail level.

3.2.8 *fuel pool, n*—pool of molten base material.

3.2.9 *place of worship, n*—any building that functions primarily as a group meeting place for the practice of religion.

3.2 9.1 *Discussion*—This includes, but is not limited to, churches, synagogues, cathedrals, temples, and meeting halls.

3.2.10 *secondary ignition, n*—self-sustained flame other than that on the intended wick(s) that occurs during candle use, including candle flashover.

3.2.11 *self-sustained flame, n*—flame that continues to burn until the fuel source is removed or depleted or requires manual extinguishing.

4. Safety Requirements

4.1 *Safety Requirements for Flame Height*—This safety requirement does not pertain to candles intended to be burned outdoors.

4.1.1 *Rationale*

4.1.1.1 Candle flame heights are burn characteristics that shall be monitored closely by manufacturers, consumers, retailers, and anyone associated with the distribution and use of candles.

4.1.1.2 Excessive candle flame heights can increase the risk of fires when using candle products.

4.1.1.3 The 76.2-mm (3.0-in.) maximum allowable flame height requirement for all candles excluding "Easter," "Paschal," "Sacramental," "Altar," and outdoor candles is, in part, based on the established requirement for nonadjustable, non-windproof lighters contained in Consumer Safety Specification F 400, taking into account certain differences in measurement methods and other candle performance considerations not relevant to fire safety. In addition, candle flame heights are not static. The natural tendency of a candle is for the flame height to vary during the burn life. The maximum allowable flame height requirement in this specification takes into account such variation and anticipates that manufacturers will design candles to ensure that they remain below the maximum flame height requirement throughout the burning period. Furthermore, the manufacturer shall determine the appropriate lower flame height for optimum performance for individual candle types.

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[2] For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at *service@astm.org*. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

4.1.1.4 The 95.3-mm (3.75-in.) maximum allowable flame height requirement for "Easter," "Paschal," "Sacramental," and "Altar" candles is larger than other candles because visibility of the flame during services at the place of worship warrants slightly larger flame heights.

4.1.2 *Performance Requirement*

4.1.2.1 Candle flame heights (other than those of "Easter," "Paschal," "Sacramental," "Altar," and outdoor candles), when tested in accordance with the test method in 5.2, shall not exceed 76.2 mm (3.0 in.). If at any time during the testing period the flame height exceeds 76.2 mm (3.0 in.), extinguish that candle and record it as a failure.

4.1.2.2 "Easter," "Paschal," "Sacramental," and "Altar" candle flame heights, when tested in accordance with the test method in 5.2, shall not exceed 95.3 mm (3.75 in.). If at any time during the testing period the flame height exceeds 95.3 mm (3.75 in.), extinguish that candle and record it as a failure.

4.1.2.3 For filled candles, if at any time during the testing period, regardless of flame height, the container cracks or breaks, it shall be recorded as a failure.

4.2 *Safety Requirements for Secondary Ignition*—This safety requirement applies to all candles and ensembles with the exception of "Easter," "Paschal," and "Sacramental" candles specifically designed to be used during the service at the place of worship.

4.2.1 *Rationale*

4.2.1.1 Potential hazards associated with secondary ignition sources in and on candles exist, especially if the candle is not designed properly. The ignition of material other than the intended wick(s) may result in damaged candles, elevated fuel pool temperatures, excessively rapid base material consumption, and unintended flames. All of these conditions could lead to potential fire hazards.

4.2.1.2 This requirement describes the method to determine the tendency of candles to support ignition at points other than the intended wick(s) that are integrated into the candles to enable them to burn.

4.2.2 *Performance Requirement*

4.2.2.1 When the candle is tested in accordance with 5.2 of this specification, no secondary ignition shall occur.

4.2.2.2 Record the candle as passing the secondary ignition specification if no secondary ignition is observed during the testing.

4.3 *Safety Requirements for End of Useful Life*—This requirement applies to all votive, freestanding, and filled (including tealights) candles and to all ensembles containing tealights. This requirement does not apply to candles requiring a holder to keep them upright, birthday candles, and candles intended to float on water.

4.3.1 *Rationale*—When the candle meets the safety requirements for the end of useful life, this will reduce the risk of fires.

4.3.2 *Performance Requirement*

4.3.2.1 Record votive and filled (including tealights) candles or tealight ensembles as passing the end of useful life requirement when tested in accordance with the test method in 5.2 if the candle or tealight ensemble meets the definition in 3.2.6 and does not break or crack the container, does not exhibit excessive flame height, and does not exhibit secondary ignition as detailed in this specification.

4.3.2.2 Record the freestanding candle as passing the end of useful life requirement when tested in accordance with the test method in 5.2 if the candle meets the definition in 3.2.6 and the flame does not impinge on the supporting surface, does not exhibit excessive flame height, and does not exhibit secondary ignition as detailed in this specification.

NOTE 1—The use of current processes or devices that limit the candle °s ability to consume all of the available fuel is offered as a way to reduce candle fires that occur at the end of the candle °s life. This does not preclude the development of other suitable means to meet the requirements set forth in 4.3. This reduces heat buildup at the end of life and the possibility of secondary ignition, candle flashover, and container failure. While it is understood that current processes and devices will not guarantee that all fuel will not be consumed, the anticipated benefit in reducing candle fires warrants their consideration for use.

4.4 *Safety Requirements for Stability*—This safety requirement is intended to cover freestanding candles that are normally used without the aid of a holding device to keep them upright, filled candles (including tealights), and ensembles. Candles requiring a holder to keep them upright and votive candles are excluded unless incorporated in an ensemble. "Easter," "Paschal," "Sacramental," and "Altar" candles, specifically designed for use during the service at the place of worship, are also excluded from the requirements of this section.

4.4.1 *Rationale*—This requirement is intended to minimize the hazards of candle tip over.

4.4.2 *Performance Requirement*

4.4.2.1 Candles specified in 4.4 must not tip over when placed on a minimum 10.0° incline when tested in accordance with 5.3 in this specification.

4.4.2.2 Asymmetrical candles shall pass this requirement if they do not tip over when rotated around the candle's vertical axis and tested on the incline apparatus in all orientations.

5. Test Methods

5.1 Candle fire safety issues to be monitored by these test methods include flame height, secondary ignition, safety requirements for end of useful life, and stability.

5.2 *Candle Burning Performance Test*

5.2.1 *Summary of Test Method*—Candle wicks are trimmed in accordance with the label's instructions. If no information is provided on the label, the wicks are not trimmed for this test. All candles except tealights, tealight ensembles, and gel-containing candles are lit and allowed to burn for 4 h with periodic observation. Gel candles and candles containing any gel materials shall be lit and allowed to burn for 8 h with periodic observation. This procedure is repeated until the end of the candle's useful life. For tealights and tealight ensembles, the candles are lit and allowed to burn to their end of useful life with periodic observation. Flame heights are observed at specified intervals and recorded at the end of each burn cycle. Flame heights shall be measured and recorded in millimetres (inches).

5.2.2 *Apparatus*

5.2.2.1 Nonflammable measuring device graduated in millimetres (inches);

5.2.2.2 Candle holder/glass (if applicable);

5.2.2.3 Lighter, matches, or other source of ignition;

5.2.2.4 Test surface level, noncombustible; and

5.2.2.5 Wick-trimming device.

5.2.3 Safety *Hazards*

Warning: There is an inherent risk of working with and around open flames.

5.2.3.1 Appropriate personal protective equipment must be used and safe work practices must be followed.

5.2.3.2 Fire suppression equipment capable of mitigating fires associated with candle fire safety testing must be readily available during testing.

5.2.4 *Procedure*

5.2.4.1 Remove all wrapping. Remove label(s) in accordance with label instructions before initiating the burn test.

5.2.4.2 The burn test area shall be environmentally controlled to 20 to 30 °C (68 to 86 °F) with minimal disturbance of the flames of the candles under test. Drafts affect flame heights and shall be minimized.

5.2.4.3 Place candles with the wicks in a straight/upright position. When appropriate, place candles in a holder and trim wicks in accordance with the manufacturer's instructions.

5.2.4.4 Place candles at least 20 cm (7.87 in.) apart, measured sidewall to sidewall, on test surface.

5.2.4.5 Light candles and avoid contaminating them with carbon or debris from the ignition source. Burn tealight candles and tealight ensembles to their end of useful life; burn gel candles and any candles containing gel materials for 8 h; burn all other candles for 4 h.

5.2.4.6 Make visual observations after initial lighting and at least hourly intervals throughout the entire burn duration. If a flame height appears to approach the maximum allowable flame height, measure and record the flame height and the time of occurrence.

5.2.4.7 Measure and record flame height at the end of the specified burn cycle. For candles whose intended product life is less than 8 h, measure and record the flame height a minimum of two times before the end of useful life. Measure flame with a nonflammable measuring device. Carefully place the measuring device as close as possible behind the flame without disturbing the flame. Allow flame to stabilize. Hold the measuring device in place for 5 s and record a maximum value (undisturbed flame). Measure the flame height from bottom of flame arc to the flame tip (see FIG 1).

5.2.4.8 At the end of burn cycle, extinguish the candle and allow to cool.

5.2.4.9 Repeat 5.2.4.2–5.2.4.8 until the end of candle life.

5.2.5 *Calculation of Results*

5.2.5.1 Record any failure for maximum flame height.

5.2.5.2 Record any occurrence of secondary ignition.

5.2.5.3 Record any candle that does not pass the safety requirements at end of useful life in accordance with 4.3 of this specification.

5.2.5.4 Record any occurrence of container breakage or cracking.

5.2.6 *Precision and Bias*—No information is presented about either the precision or bias for measuring the flame height, secondary ignition, or safety requirements for end of useful life since the test results are nonquantitative.

5.3 *Stability Test Method*

5.3.1 *Summary of Test Method*—Candles shall be placed on a minimum 10.0° incline to determine if they remain in a stable, upright position without tipping over.

5.3.2 *Apparatus*—An incline plane, either fixed or adjustable, capable of achieving a minimum of 10.0° from level. The plane may need a stop to help prevent the candle from slipping during this test. When a stop is used, its maximum height shall not exceed 6.4 mm (0.25 in.) so as not to affect the test results.

5.3.3 *Procedure*

5.3.3.1 *Preparation of Samples*—Remove all wrapping. Remove label material when instructed by the manufacturer and prepare the candle or ensemble, or both, for use.

5.3.3.2 Place the prepared, unlit candle or assembled ensemble on an incline apparatus in the orientation most likely to cause tipping at a minimum of 10.0° from level. The tested candle or assembled ensemble or both shall remain stable and not fall over. Rotation around the candle's vertical axis will be necessary to determine the stability of an asymmetrical candle.

5.3.4 *Calculation of Results*—Record any stability failures.

5.3.5 *Precision and Bias*—No information is presented about either the precision or bias of the measurement of stability since the test results are nonquantitative.

NOTE 2—More stringent testing of test methods contained within this specification is permissible if, when testing identical specimens, a test using alternate apparatus or procedures yields failing results as often as, or more often than, a test using the apparatus and procedures specified in this specification.

6. Keywords

6.1 candles; end of useful life; fire safety testing; flame height; gel; secondary ignition; stability; tealight

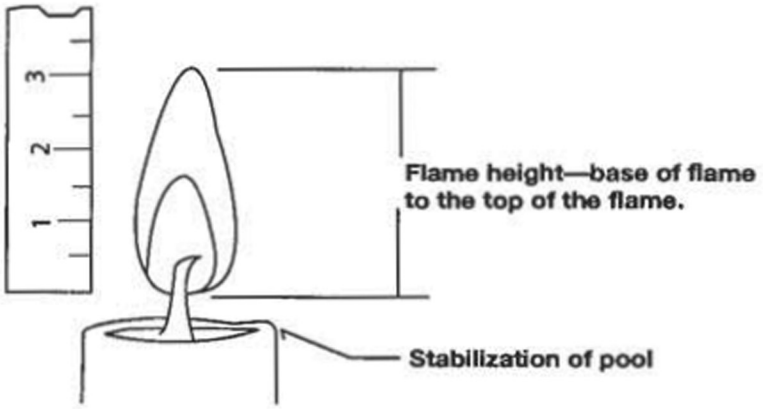

FIG. 1 Flame Measurement Diagram

APPENDIX

(Nonmandatory Information)

X.1. GEL-CONTAINING CANDLES

X1.1 Gel candles have been involved in a number of candle fires as reported by various government agencies. In addition, several product recalls involving gel candles have been issued. Limited testing of experimental candles conducted by the Candle Fire Safety Task Group did not reproduce the candle flashover effect associated with reported gel-based candle failures. Further testing is planned to attempt to identify the causal factors in candle flashover and other gel-based candle failures. If necessary, the specification will be revised to reflect the outcome of this testing.

X1.2 In an attempt to identify specific characteristics associated with gel-based candle failures, the burn interval for gel-containing candles in the Candle Burning Performance Test has been increased to 8 h from the requisite 4 h in the specification.

X2.3 It is highly recommended that gel candles be extensively tested to try to identify any potential problems with the products. It is also highly recommended that candle manufacturers consult and work closely with the gel material suppliers as they develop these products.

NATIONAL CANDLE ASSOCIATION
Washington, DC, May 5, 2004

Office of the Secretary,
Consumer Product Safety Commission,
Washington, DC.

"Petition CP 04–1/HP 04–1, Petition for Fire Safety Standards for Candles and Candle Accessories"

The National Candle Association (NCA) submits the following comments in response to the U.S. Consumer Product Safety Commission (CPSC) request for comments on the petition from the National Association of State Fire Marshals (NASFM) requesting the CPSC to issue mandatory fire safety standards for candles and candle accessories (Petition No. CP 04–1/HP 04–1, 69 FR 18059, April 6, 2004).

The NCA is the major trade association for the U.S. candle industry. We are recognized as the North American technical experts on candle manufacturing and formulation. Our member's account for more than 90 percent of the candles manufactured in the United States. Our members include both manufacturers and suppliers.

Because of NCA's leadership in the industry, and its technical expertise in candle manufacturing, the CPSC in 1997 asked NCA to help form a candle products subcommittee under the Consumer Products Committee of the ASTM standards organization. Through the efforts of this ASTM F–15.45 subcommittee, the current voluntary consensus standards regarding candle fire safety have been developed and continue to be expanded. Both NCA and CPSC have actively participated in the subcommittee's consensus deliberations, with representatives from a variety of fire and safety organizations and other interested parties.

Section 7 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2056, provides that the Commission may issue a mandatory standard only when it finds there is not a voluntary standard that adequately reduces the addressed risk of injury or death, or when substantial compliance with the voluntary standard is absent. NCA strongly believes that the voluntary consensus standards that have been and continue to be developed, for candle product fire safety under ASTM F–15.45, have been effective in reducing candle-fire risks, and that such standards will continue to help reduce the risk of such fires.

Further, we believe that the CPSC staff concurs with NCA in this matter, given the recommendation of the Office of Hazard Identification and Reduction and the concurrence of the Office of the General Counsel that CPSC's involvement in this issue has been so extensive that it is not necessary for the Commission to seek public comment on the NASFM petition.

Adequacy of Voluntary Industry Standards

In proposing that the Commission adopt a mandatory standard for candle fire safety, NASFM implies that the voluntary standards are inadequate. Because the voluntary standard's provisions are relatively new and the standard is being expanded, it is too early to make the judgment that the voluntary standard will not

be effective. Our efforts an the efforts o all candle manufacturers to educate the marketplace is still underway.

NASFM also requests that four additional provisions be incorporated into the mandatory standard. Ongoing activities of the ASTM F–15.45 subcommittee are covering these requests. For all intents and purposes, the additional provisions requested by NASFM have already been addressed, either through revisions and inclusions to the PS 59–02 standard, which is currently being readied for balloting, or through the standards drafting procedure, or consensus of the subcommittee.

Specifically, end-of-useful-life requirements for freestanding, tea light and votive candles have been incorporated into the latest revision of PS 59–02; inclusion of tapers in this requirement is not technically possible or economically feasible at this time. Flammability performance requirements for candle accessories and candleholders are being drafted as a new standard by the F–15.45 subcommittee. Stability requirements for tapers and votives packaged with holders as ensembles are also included in the latest revisions of PS 59–02.

The NASFM request for a provision regarding the miscibility and flash points of gel candles addresses fire-safety concerns already achieved by the voluntary candle fire-safety standard. PS 59–02 addresses key fire-safety specifications that can in some way be controlled through manufacturing procedures—flame height, stability, end of useful life, and secondary ignition. These specifications apply to candles regardless of their fuel type—paraffin, soy, beeswax, gels, synthetic waxes, palm wax, etc., or blends of these fuels. In this sense, adding a gel candle-specific provision is redundant, and would inappropriately interject very narrow (and likely anti-competitive) formulation requirements into what is designed to be a universally applicable performance standard. Moreover, adding narrow formulation specifications for one particular type of candle wax would require adding parallel prescriptive specifications for all types and blends of candle waxes, a virtually impossible undertaking involving thousands of possible combinations.

Negative Safety Impact of a Mandatory Standard

Ironically, NASFM's petition for a mandatory standard addressing candle product fire safety would likely impede the improvement of candle-fire safety technology and designs. The promulgation of a mandatory standard would serve to freeze in time any technical advances or innovations in candle product fire safety because of the relatively complex and lengthy procedures required to amend a mandatory standard under the Consumer Product Safety Act.

The value of voluntary industry consensus standards, as developed through recognized standards development bodies such as ASTM, ANSI, ISO, etc., is that they are continually improved through required revision and update procedures. This allows new technologies and innovations to be incorporated into applicable standards on a timely basis. Indeed, the evolving and progressive nature of voluntary consensus standards is what led to the most recent revision of PS 59–02 and its inclusion of the additional provisions contemplated by NASFM.

To issue a mandatory standard for the fire safety of candle products at this time would thwart the efforts of both industry and the CPSC to effectively and expediently address candle fire-safety issues with standards that include the best available technology. Over the past few years, the necessary "critical mass" of personnel and technical expertise has come together in the existing voluntary standards proceedings to allow for rapid expansion and continued refinement of the voluntary standards for candles. It would be premature to halt this synergistic activity until the results of these efforts are complete and have time to work on the market place.

Candle Industry in Compliance

NASFM alleges that the candle industry is not in compliance with the ASTM standards, and that it has made no effort to encourage compliance with the ASTM standards. These allegations are inaccurate and unfounded.

The NCA's commitment to product excellence and the safe and proper use of candles is at the foundation of its aggressive efforts to establish and participate in the ASTM F–15.45 subcommittee. Members in good standing of the National Candle Association pledge to manufacture candles and candle products in accordance with recognized industry standards and practices. Since NCA members account for approximately 90 percent of the candles manufactured in the U.S., this alone constitutes more than substantial compliance by the industry with the ASTM standards.

Further, NCA takes its responsibility and leadership role in the candle industry very seriously. We have undertaken aggressive efforts to educate member and nonmember candle manufacturers, suppliers and retailers—as well as large-scale user groups—regarding the ASTM standards and the importance of candle fire safety.

Our retailer members, as well as major non-member retailers and mass purchasers, specify the ASTM standards in their procurement and supply contracts.

Consumer Education Is Key to Reducing Candle Fires

Candles are safe products when used correctly. It is consumer misuse and inattention to basic fire-safety precautions that leads to candle fires. When the ASTM F–15.45 subcommittee was first formed, the CPSC presented data from the National Fire Incident Reporting System indicating that 85 percent of all candle fires were due to consumers leaving lighted candles unattended, placing candles too close to combustibles, or placing them within the reach of children and pets. These findings prompted the subcommittee to first address the need to warn consumers of these dangers, resulting in the ASTM F2058 cautionary labeling standard.

However, no product safety standard—whether voluntary or mandatory—can significantly impact the majority of candle fires due to consumer inattention or carelessness. Only the education of consumers as to the proper burning of candles and observance of candle fire safety rules can have an impact in reducing these candle fires.

The NCA has worked tirelessly and aggressively to educate consumers on the paramount importance of fire safety precautions when using candles. We have created and promoted literature stressing the importance of candle fire safety. We disseminate this literature to consumers through our members, non-member industry groups, retailers, and through fire, safety and consumer organizations around the country. Our website is well recognized for its outstanding candle safety information, and the media regularly directs consumers to the site for important safety advice.

We have contacted national and regional fire groups, restaurant associations, hotel associations, retailers and others, providing them with information on the ASTM candle fire safety standards and encouraging them to join us in promoting candle fire safety. Currently we are working with fire and consumer groups to get our candle safety messages disseminated through the schools to students and their families.

To reach as many consumers as possible, NCA regularly issues press releases and feature stories on candle safety to radio, television, print and the electronic media. In addition, we produce and annually distribute to television stations around the country a holiday season Video News Release on the importance of fire safety when using candles.

As the voice of the U.S. candle industry, the NCA has been steadfast in its commitment to improving candle fire safety, not only through its active participation in the development of voluntary standards, and compliance with those standards, but in its ongoing consumer education and media outreach activities, its cooperative endeavors with fire and safety organizations, and its efforts to involve the entire U.S. candle industry and customers in a commitment to candle fire safety.

The NCA objects to NASFM's petition for a mandatory candle product fire safety standard. There is no evidence to suggest that the CPSC should reject its mandate to rely on voluntary industry standards, and instead promulgate a mandatory one. The continued involvement of the industry in the development of voluntary candle product fire safety standards remains in the best interest of both the U.S. consumer and the candle industry.

Sincerely,

ROBERT A. HIGGINS,
NCA President.

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NATIONAL CANDLE ASSOCIATION
Washington, DC, June 16, 2003

Dear:

As you know, candle fires have been on the increase, spurred by a dramatic growth in their popularity with consumers. The National Candle Association (NCA) is working aggressively to reduce the incidence of candle fires through the development of fire-safety standards, technical innovation and educational outreach.

The purpose of this letter is two-fold: to brief you on the pioneering ASTM candle-safety standards advanced by NCA, and to encourage you to join us in educating the public on candle-fire prevention.

Candle fires now account for approximately four percent of all residential fires in the U.S. In 1999, the most recent year for which statistics are available, some 15,000 residential candle fires were reported. As candle sales skyrocketed by some 300 percent during the 1990s, residential candle fires increased 175 percent.

When this increase in candle fires became apparent in the late 1990s, the U.S. Consumer Product Safety Commission (CPSC) asked NCA to spearhead an ASTM subcommittee on candle products as a means of developing consensus standards to

improve candle safety. Since 2000, three far-reaching candle fire-safety standards have been published through ASTM (a fourth standard for terminology was published in 1999).

The first ASTM fire-safety standard—F2058—was published in 2000, and calls for the cautionary labeling of all candles. The impetus for the standard was an analysis of NFIRS data showing that nearly 85 percent of candle fires were attributable to unattended candles, candles placed too close to combustibles, and the accidental actions of children and pets. Working from this data, the consumer cautions now appearing on all candles or candle packaging were incorporated into the standard:

Always keep a burning candle within sight.

Never burn a candle on or near anything that can catch fire.

Keep candles out of the reach of children and pets.

The second ASTM candle safety standard—F2179—was developed to address concerns over candle fires caused by broken or shattered glass candle containers. Drawing from the technical expertise of NCA-member glass and candle manufacturers, the 2002 standard requires that glass containers for candle use:

Are properly annealed (true temper grade of 4 or less; or scratch-test equivalent)

Able to withstand a 90 °F thermal shock differential

Unquestionably the most technically advanced candle fire-safety standard is ASTM PS 59. Published in late 2002 as a provisional standard, it introduces several far-reaching fire prevention measures into the manufacturing and design of candles. Specifically, it requires that

The maximum flame height on a candle shall not exceed 3.0 inches.

A candle placed on an incline of 10 degrees shall not tip over.

A candle shall not support ignition at points other than the intended wick or wicks.

When a container candle reaches the end of its useful life:

—the container shall not break,

—the candle must not exhibit excessive flame height,

—the candle must not exhibit secondary ignition, and

—the flame must go out.

Because ASTM PS59 was developed as a fast-track provisional standard, the industry is now testing and working to refine the standard's requirements, as well as investigating the potential for expanding the end-of-useful life requirements beyond container candles to other types of candles. The provisional candle-fire safety standard is expected to be balloted as a full consensus standard by the spring of 2004.

The development and acceptance of candle fire-safety standards in just three years is a notable achievement, and underscores NCA support for voluntary consensus standards as the most effective means of rapidly introducing industry-wide product safety changes into the marketplace. We also believe our success in working with the CPSC to develop safety standards that meet industry's technical capabilities as well as the Commission's policy objectives further reinforces the value of the Federal preference for a public-private partnership approach to standards development.

Unfortunately, however, candle fire-safety standards are not enough. Consumer disregard of the potential dangers of an open flame still remains the primary cause of residential candle fires.

Educating the public about candle safety is a top priority of the National Candle Association. In recent years, NCA has devoted a significant portion of its resources to building public awareness of candle safety. We regularly disseminate press releases, feature articles, video news releases and informational materials focusing on fire safety and the proper burning of candles. In addition, a large portion of our website—*www.candles.org*—is devoted to providing consumers with information on candle safety and fire prevention.

Recently we developed a brochure on candle use and fire safety (enclosed), which we hope to distribute as widely as possible to further educate consumers on the safe use of candles. I invite you to consider distributing this brochure to your constituent publics as well, or adding its contents to your website. We are able to offer 100 copies of the brochure at no charge to fire groups upon request. For larger quantities, we are charging a minimal amount to cover printing and mailing costs.

Over the next few months, NCA hopes to further broaden its public education campaign through the development of cooperative efforts with the Nation's fire community. We are extremely interested in developing new avenues for disseminating candle-fire safety information to consumers, and in further pinpointing the human factors behind residential candle fires. Given your knowledge of fire safety and our expertise in candles, I am confident we can combine forces in some way to reduce the incidence of residential candle fires.

I look forward to hearing from you.

Respectfully,

BOB NELSON,
President.

Be Careful Around
CANDLES

Safety Rules for Kids

- Never light or burn a candle without a parent.
- Never touch or move a burning candle.
- Don't play near burning candles.
- Never burn a candle in your room or use a candle as a night light.
- Keep your pets away from candles flames.
- Make sure your family blows out all candles when they leave the room.
- Teach your family the candle safety rules on the back of this bookmark.

Family Safety Rules

- Always keep a burning candle in sight.
- Extinguish candles before leaving a room or sleeping.
- Never burn a candle on or near anything that can catch fire.
- Keep candles out of the reach of children or pets.
- Read and follow all manufacturer instructions.
- Always use a fire-resistant candleholder placed on a stable heat-resistant surface.
- Burn candles away from drafts and air currents.
- Keep the wax pool free of matches and debris.
- Always burn candles in a well ventilated room.
- Extinguish the flame if it gets too close to the holder or container.
- Never touch or move a burning candle, or wax that has become liquid.

NATIONAL CANDLE ASSOCIATION

North Carolina Department of Insurance
Office of State Fire Marshal

Dear Parent,

Every year, approximately 15,000 residential fires are caused by the careless or inappropriate use of candles. Please protect your home and family from a possible candle fire.

The North Carolina Office of the State Fire Marshal and the National Candle Association ask that you spend a few minutes reviewing the following basic rules of candle fire safety with your family . . . and then put them into practice in your home.

- *Always keeps a burning candle within sight.*
- *Never leave a burning candle unattended.*
- *Never burn a candle on or near anything that can catch fire.*
- *Keep candles out of reach of children and pets.*

Although the popularity of candles has grown dramatically in recent years, many consumers are unaware of the proper procedures for burning a candle. The National Candle Association urges to you keep the following safety precautions in mind when burning candles.

- Always use a fire-resistant candleholder, and place candleholders on a stable, heat-resistant surface.
- Keep burning candles away from drafts.
- Always read and follow the manufacturer's use and safety instructions.
- Never touch or move a burning candle or when the wax is liquid.
- Burn candles in a well-ventilated room.
- Keep the wax pool free of wick trimmings, matches and debris at all times.
- Extinguish any candle if it smokes, flickers repeatedly, or the flame becomes too high. Cool, trim wick, check for drafts, and re-light.
- Do not allow the flame to come too close to the holder or container.
- For a margin of safety, discontinue burning a candle when 2 inches of wax remains (½″ if in a container).

For more information about candle safety, visit *www.candles.org*

Senator SMITH. Thank you very much, Bob. We thank you for your testimony.

And now, I'll call on Mr. Al Klancnik. Is that how you pronounce it?

Mr. KLANCNIK. Mr. Chairman, you did a fine job with my name. It's difficult, but you did great.

Senator SMITH. Thank you.

STATEMENT OF AL KLANCNIK, GROUP VICE PRESIDENT, SERTA, INC.

Mr. KLANCNIK. Mr. Chairman and Honorable Members of the Committee, my name is Al Klancnik, of Serta, Incorporated. I am here today to speak about open-flame resistant mattresses, the complexity of bedroom fire safety, and the science-based testing standard that exists today for mattress regulation.

For reference, Serta is the second-largest mattress manufacturer out of 700, with annual sales of $742 million. We are based in Itasca, Illinois, and have 26 factories across the country. Serta is the only national manufacturer that has voluntarily converted to open-flame resistant mattresses. This is more than one year in advance of the upcoming open-flame regulation for mattresses and box springs in California. We have done this because we believe we have a responsibility to offer safer mattresses as soon as possible.

Since last October, when we began introducing our open- flame-resistant products, we have sold approximately two million safer mattresses and box springs to consumers across the country. When you look at statistics published by the U.S. Fire Administration, the Consumer Product Safety Commission, and the National Fire Protection Association, you see there is a real need for safer mattresses. In the United States alone, approximately two people die in bedroom fires every day, a statistic that we can change now by implementing science-based regulations on a Federal level.

I have dedicated my career to pursing safety advancements in mattress flammability. I have been involved in the development of cigarette ignition and fire-resistant mattresses and testing standards for the past 30 years. During that time, I have worked to develop open-flame testing protocols with the CPSC, the National Institute for Standards and Technology, the Sleep Products Safety Council, and the California Bureau of Home Furnishings and Thermal Insulation.

With the involvement of this country's preeminent fire-resistance experts, we developed an open-flame testing protocol that accurately replicates the impact of bedclothing fires on a mattress. The burners for this test were developed by NIST to provide consistent conditions under which these tests are performed and documented. The protocol was ultimately used by California in Technical Bulletin 603.

During this process, we found that a 30-minute test with a 200-kilowatt heat threshold had sound scientific data to support the test, and was obtainable and replicable by manufacturers. More importantly, it will result in products that provide the critical time people need to detect and escape from a bedroom fire. This point is underscored by NIST research into human behavior during bedroom fires.

We also explored tests with time intervals up to 60 minutes and with lower heat thresholds, but found no scientific data that demonstrated a longer test duration would result in improved life safety. In fact, the materials we would use to meet a 60-minute test are more than triple the cost of our current safety components. They also make the products extremely uncomfortable. And if mattresses are unappealing to consumers, and are priced so they cannot afford them, then the standard is not viable on a mass-market scale. As a result, safer mattresses getting into homes would be delayed, and more lives would ultimately be lost.

By moving forward, Serta has demonstrated that the technology exists to manufacture and market mattresses that can help save lives today. We have a standard that is acceptable to both industry and government. And, at Serta, we have proven that the standard included in California's Technical Bulletin 603 is viable.

But I should point out that safer mattresses are only the first step in addressing the overall issue of bedroom fire safety. NIST, the Sleep Product Safety Council, and the California Bureau have all recommended that mattresses and bedclothes should be regulated together in order to achieve the greatest safety advancement.

Mr. Chairman, we encourage this Committee to allow the CPSC to adopt the final published standards in California's TB 603 as a Federal mattress open-flame regulation. But, in addition, if the in-

tent of this Committee is to save lives, other steps must also be taken. Bedclothing, or top-of-bed accessories, which have been proven time and again to be the first items to ignite in a bedroom fire, must also be safer. Regulating mattresses without also regulating bedclothes is only achieving half the safety equation.

Thank you for the opportunity to speak today. I'll be happy to answer any questions you have.

[The prepared statement of Mr. Klancnik follows:]

PREPARED STATEMENT OF AL KLANCNIK, GROUP VICE PRESIDENT, SERTA, INC.

Mr. Chairman, and honorable members of the Committee. My name is Al Klancnik of Serta, Incorporated. I am here today to speak about open-flame resistant mattresses, the complexity of bedroom fire safety, and the science-based testing standard that exists today for mattress regulation.

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Since last October when we began introducing our open-flame resistant products, we have sold approximately two million safer mattresses and box springs to consumers across the country.

When you look at statistics published by the U.S. Fire Administration, the Consumer Products Safety Commission and the National Fire Protection Agency, you see that there is a real need for safer mattresses. In the United States alone, two people die in bedroom fires every day, a statistic that we can change now by implementing science-based regulations on a Federal level.

I have dedicated my career to pursuing safety advancements in mattress flammability. I have been involved in the development of cigarette-ignition and fire-resistant mattresses and testing standards for the past 30 years.

During that time, I have worked to develop open-flame testing protocols with the CPSC, the National Institute for Standards and Technology, the Sleep Products Safety Council, and the California Bureau of Home Furnishings and Insulation.

With the involvement of this country's preeminent fire-resistance experts, we developed an open-flame testing protocol that accurately replicates the impact of a bedclothes fire on a mattress. The burners for this test were developed by NIST to provide consistent conditions under which these tests are performed and documented. The protocol was ultimately used by California in TB 603.

During this process, we found that a 30-minute test with a 200-kilowatt heat threshold had sound scientific data to support that the test was attainable and replicable by manufacturers. More importantly, it will result in products that provide the critical time people need to detect and escape from a bedroom fire. This point is underscored by NIST's research into human behaviors during bedroom fires.

We also explored tests with time intervals up to 60 minutes and with lower heat thresholds, but found no scientific data that demonstrated a longer test duration would result in improved life safety.

In fact, the materials we would use to meet a 60-minute test are more than triple the cost of our current safety components. They also make the products extremely uncomfortable. If mattresses are unappealing to consumers and are priced so that they cannot afford them, then the standard is not viable on a mass-market scale. As a result, safer mattresses getting into homes would be delayed and more lives would ultimately be lost.

By moving forward, Serta has demonstrated the technology exists to manufacture and market mattresses that can help to save lives today. We have a standard that is acceptable to both industry and government. And at Serta, we have proven that the standard included in California's TB 603 is viable. But I should point out that safer mattresses are only the first step in addressing the overall issue of bedroom fire safety. NIST, the CPSC and the California Bureau have all recommended that mattresses and bedclothes should be regulated together in order to achieve the greatest safety advancement.

Mr. Chairman, we encourage this Committee to allow the CPSC to adopt the final, published standards in California's TB 603 as a Federal mattress open-flame

regulation. But in addition, if the intent of this Committee is to save lives, other steps must also be taken. Bedclothes, which have been proven time and again to be the first items to ignite in a bedroom fire, must also be safer. Regulating mattresses without also regulating bedclothes is only achieving half of the safety equation.

Thank you for the opportunity to speak today. I am happy to answer any questions you have.

Senator SMITH. Thank you very much for your testimony.

And my first question goes to Bob Higgins. I'm going to create a fight between—Bob, between you and Mr. Dean here.

[Laughter.]

Senator SMITH. Rhetorically only. But, Mr. Dean indicates in his testimony that the standards cited in S. 1798 were developed largely by your industry, with input from NASFM. He further claims that your industry has, quote, "not moved forward with proposals to implement effective voluntary standards." To the contrary, you indicated in your testimony that your industry has moved rapidly in developing candle safety standards in the past. Do you wish to specifically respond to his testimony and explain to the Committee the reasons for the differences in your testimony? And then I'll ask Mr. Dean the same thing.

Mr. HIGGINS. Well, we'd be more than glad to work with the fire marshals to try to finalize, in their opinion, what needs to be done to have effective voluntary standards. In our minds, the industry is in compliance and we are improving the situation, and we plan on continuing to improve the fire standards.

Senator SMITH. Thank you.

Mr. Dean?

Mr. DEAN. Well, to this point, there has not been a real concerted effort to manage the producers' conformance. But by having a voluntary standard, they may or may not comply with it. It also speaks to the issue of imported products. With a voluntary standard, there's no protection there at all. Anything can be imported, and, since the standard is voluntary, there would be no recourse.

Senator SMITH. Do you have any reason to believe that stuff being produced outside the country comes in without meeting U.S. safety standards? Are you seeing that?

Mr. DEAN. I can't say for certain, but I would assume, since there is no mandatory standard, they are made to whatever standard they wish to make.

Mr. HIGGINS. Industry regulates that, sir, by itself. By educating the retailers in the awareness of fire safety, the retailers are demanding safe fire candles.

Senator SMITH. So the marketplace is working, in your view——

Mr. HIGGINS. That's right.

Senator SMITH.—in that regard. And——

Mr. HIGGINS. And they're regulating the imports, as well——

Senator SMITH. Retailers——

Mr. HIGGINS.—for the same reason.

Senator SMITH. In your view, retailers won't buy from someone who doesn't meet the safety standards from——

Mr. HIGGINS. That's correct. They're——

Senator SMITH. Domestic or foreign.

Mr. HIGGINS.—they're using independent testing labs to develop their own tests and test candles.

Mr. DEAN. May I?

Senator SMITH. Yes, please.

Mr. DEAN. Whatever is being done now, it obviously is not working, because we're seeing a dramatic increase in candle fires everywhere. So it—whatever is happening now——

Mr. HIGGINS. I haven't seen those statistics, sir.

Senator SMITH. Hmm?

Mr. HIGGINS. I haven't seen those statistics.

Mr. DEAN. We certainly have seen it in the fire service.

Senator SMITH. We'll get you all together after—and figure out whose——

Mr. HIGGINS. That would be a good idea.

Senator SMITH.—whose statistics are accurate.

I mean, it's a very, very serious issue, and I'm not trying to really pick a fight, but I am trying to point out that I'm hearing two different messages—they're working, they're not. Which is it?

Andy Counts, we've heard about the issue of retailers, and I guess this raises my question. How seriously does your industry view the threat of flame-retardant toxicity? And should chemicals used in flame-retardant backing prove harmful to consumers, who would be liable for the damages—the manufacturer, the retailer, or both?

Mr. COUNTS. Well, it's a very, very big concern for furniture manufacturers, and one of the reasons this process has taken so long was a study that was done by the National Academy of Sciences to identify that many of the chemicals that we have been utilizing in our furniture in the past, and would be forced to use in the future, are, in fact, harmful to human health and the environment.

We are working very closely with EPA, working very closely with producers of chemicals to find alternatives. We're confident that that will take place. We're confident that there will be alternatives out there for us to use. It's just going to take a little time to make sure those tests are done and that the chemical industry gets their production up to where it needs to be on those particular chemicals.

From a liability standpoint, we're not sure where that would stand when—if the regulation came through, if we would be held responsible if we had a TRISS- or PCB-type situation.

Senator SMITH. Are you aware of any litigation in the country that has made that judgment between retailers and manufacturers as to liability, in terms of toxicity of flame retardants?

Mr. COUNTS. I guess you can look at the asbestos situation, you can look at some of the other situations and see that they come back to the manufacturer in a lot of cases, from a liability standpoint.

Senator SMITH. So you have a real interest in making sure that whatever flame retardants there are, that they don't have collateral damaging effects.

Mr. COUNTS. That's correct.

Senator SMITH. Bob Higgins, I'm going to turn you over to Senator Hollings. I understand that you don't want to be in his bill.

And so, with that, Senator Hollings?

Senator HOLLINGS. Well, Mr. Counts, you're not recommending asbestos furniture.

[Laughter.]

Mr. COUNTS. No, sir. I was just using that as an example of where liability is concerned.——

Senator Hollings: Well, that's an example that doesn't apply to you whatever, I hope. I mean, good God, we have learned about asbestos.

Mr. COUNTS. It applies——

Senator HOLLINGS. And I would hope you wouldn't be making asbestos furniture.

[Laughter.]

Mr. COUNTS. To my knowledge, no one's making asbestos furniture.

Senator HOLLINGS. As an example? Come on. You're better representatives of the furniture industry. Isn't Serta a member of your organization?

Mr. COUNTS. No, sir.

Senator HOLLINGS. You all haven't—Serta hasn't joined the American Furniture Manufacturers Association? Well, what's the matter, Mr. Klancnik?

Mr. KLANCNIK. The mattress industry has its own trade association, known as the International Sleep Products Association.

Senator HOLLINGS. Yes.

Mr. KLANCNIK. And that is separate from AFMA.

Senator HOLLINGS. Well, your observations about the 30-minute test, and the distinguished Chairman's opening remarks about "the perfect" not being the enemy of "the good"; therein, I think, is the answer with respect to at least the 30-minute test. Now, the fire marshals, they all want a 60-minute, because it takes that long to get to the fire. On an average, it's over 45 minutes. But the 30 minutes, at least, is a good. You're manufacturing it, you're endorsing it. You're the manufacturer, you've gone through all the cost-benefit and sale-ability and the marketability, and everything else of that kind.

So, Chairman Stratton, who's still listening, that's why we've got the Consumer Product Safety Commission. You don't have to wait til it gets to a crisis, like this, where we've got a dozen cosponsors, bipartisan, and everything else like that. The idea is to be realistic. And with the Safety Commission, Chairman Stratton, that you can do just that, listen to the needs of the industry, the leaders, like Serta. You said—you look pretty good. You slept on a Serta last night?

Senator SMITH. I did, yes.

[Laughter.]

Senator HOLLINGS. I think he'd be a good model for it. I tell you that right now.

Senator SMITH. I come cheap, too.

Senator HOLLINGS. Yes.

[Laughter.]

Senator HOLLINGS. But, in all candor, that's—at least we ought to get that. I understand the fire marshals' concern, but that would be "the perfect," perhaps. But here "the good" that—Mr. Klancnik, that you have attested to. Don't you think that can be done?

Mr. KLANCNIK. I agree with you wholeheartedly. That's why Serta has taken the voluntary action of starting—meeting Cali-

fornia TB 603 and saving lives, starting last October. We really wish more people would do that. I can tell you that, economically, we are still selling our mattresses at all of the price points, we're saving the lives, and our sales are actually up. So the 30-minute standard, TB 603, is truly a viable life-safety standard, and we're meeting it.

Senator HOLLINGS. And it wouldn't, Mr. Counts, put the furniture industry out of business. Now, what's putting you out of business is what's—I'm glad to see Mr. Chapman is still here, because I started with his grandfather, in 1960. And, at that time, the testimony, Mr. Chairman, it was 10 percent of the clothing or textiles consumed in America would be represented in imports. And if it got up to 10 percent, it would decimate the industry, you just wouldn't be able to get clothing in the country anymore. At least that's what I was testifying to. Incidentally, Tom Dewey ran me around the room in 1960.

So we lost that case before the old International Tariff Commission. We went over to Jerry Persons, who was the chief of staff for Eisenhower. He said, "Oh, you'll win it. Don't worry about it." And we talked to President Eisenhower. He said, "Don't worry about it." But, in any event, when we lost, then I went to my friend, Jack Kennedy, and he set up the hearings, and he promulgated the seven-point program. And Mr. Jim Chapman, the chairman, was there.

Our textile industry, the thing about globalization—you've got to get with globalization—the inference is that you're just not competitive, you just don't understand, "You old fuddy-duddy, you don't want to compete, you don't want to face reality," and that kind of nonsense. The truth is, the textile industry has been the most competitive. But before you can open up Chapman Mills, or, now, Mr. Counts' furniture—because I'm very close to the Furniture Mart in High Point——

Mr. COUNTS. Yes, sir.

Senator HOLLINGS. I know it well. And, in fact, one of the chairmans of the board—I don't have to involve him—of the largest in High Point, North Carolina, met me on the Isle of Palms not too long ago on the beach. He said 50 percent of the furniture consumed now in the United States was coming out of China, all that Rooms To Go and everything else like that. So you're facing the same thing we did, first from Japan, then from Malaysia, then from Korea, and then from Mexico, and now from China. And you can see what Inman Mills, Mr. Chapman's group, why, they're trying to face the competition and find a niche and at least go to the most advanced product—namely, the safest, and everything else like that—making the materials. And here is a leader, Serta, selling it. I mean, they're using it. So it's a success. You don't have to worry about the benefit. Here's Serta saying it's a wonderful benefit, and we're selling it, and the Chairman's sleeping on it. I mean, how're you going to beat that?

[Laughter.]

Mr. COUNTS. If I could make a clarification——

Senator HOLLINGS. Yes, sir.

Mr. COUNTS.—mattress and furniture are two separate things. The mattress standard, California 603, is an actual standard that's

been put in place by California. It's a proven standard that's based on real science, real test methods. California 117, which applies to furniture, is not proven. It has not been finalized by California, and they have no plans to finalize it.

The product that's made by Inman Mills applies to mattresses and not to furniture. TB 117 does not allow for Inman Mills product to be utilized in furniture. It requires you to treat the fabric. It requires you to treat the foam. It doesn't allow you to use the interliner option that we're in favor of. And that's the proposal that we put forward to the CPSC, and that's the proposal that we would like to see bring safer furniture to the market.

The Senate Bill 1798, which includes 603 for mattresses, is very different when it comes to 117 for furniture.

Senator HOLLINGS. Well, again, as Mr. Klancnik attested, it's got to be a comprehensive approach. There's no use to do the mattress if you don't do the bedding clothes and everything else related.

Mr. Chapman, do you want to comment with respect to Mr. Counts' observation?

Mr. CHAPMAN. Well, we have done very little work in the furniture side of the business. Most of ours has been concentrated in the mattresses. And we can pass either the 30- or the 60-minute test with ours. We don't prefer or oppose either one. We just—we want a national standard so we can move forward and sell product, the niche products that you referred to.

Senator HOLLINGS. Isn't the standard just a matter of introducing the bill, talking to the fellow Senators, certainly listening to the experts and the authorities and the experience of producers and everything else, like some of the witnesses here? It's better handled at the Consumer Product Safety Commission level, Mr. Chairman, but unless they move, we're going to have to continue to move.

Senator SMITH. Senator Hollings, when you said that you were a friend of Jack Kennedy's, I was afraid you were going to notice, I'm no Jack Kennedy.

[Laughter.]

Senator HOLLINGS. You're better looking than Jack Kennedy. Yessirree.

[Laughter.]

Senator SMITH. Anyway.

Senator HOLLINGS. There you go.

[Laughter.]

Senator SMITH. I think——

Senator HOLLINGS. That's the first time I've complimented a Republican.

[Laughter.]

Senator SMITH. Well, I'll tell you, when Senator Hollings leaves the Senate, the Senate will lose one of its greatest personalities and one of its greatest human beings. And so it's a high privilege for me to—my daddy worked for Eisenhower, and so I'm talking to a man who was a friend to those men, and it's a—when you work with Senator Hollings, you're sometimes feeling like you're touching the hem of history.

Senator HOLLINGS. No, it's not that. You're too kind. But, no, we've been in it a long time, and you've seen it, and now it's—that's

not the actual product. That's what you've got to wake up America into the production.

If anybody wants to read a very interesting book, they ought to read about Hamilton. In fact, Hamilton has become more my hero than John C. Calhoun, from South Carolina. And, incidentally, I'm seated at John C. Calhoun's Senate desk right this minute. But he built up the bricks, absolutely forbad manufacture. In fact, if they had, out at that old Arkwright plant, up in the Scotland area, which was the best, if any of those personnel left, they followed the personnel to make sure they didn't take the technology with them and teach the colonists how to produce, and that kind of thing. So the first order of business was to try to develop a manufacturing capacity. That's Hamilton's famous report on manufacturers. And that's what built up this economic giant.

And the best impression I had, going down with my friend Bob Dole to see the World War II Veterans Memorial—incidentally, the wind was blowing, and the fountains were going all over us, and everything else, and we renamed it Viagra Falls.

[Laughter.]

Senator HOLLINGS. But you see, on the right-hand side going in, an observation by President Roosevelt in 1942 thanking Rosie the Riveter. We started in Africa, and, 3 years later, ended up in—first, in Austria at the end of that war, and there was no question that Rosie the Riveter was as important as any element. And it was the productivity and everything else.

And that's what disturbs this Senator as he leaves, is that we're not competing. Everybody is for free trade, just like everybody's for world peace. How do you attain world peace? Well, the old saying, the best way to prepare for peace is prepare for war, and the best way to, by gosh, get to free trade is to compete. To a barrier, you raise a barrier, and then remove them both. But we've been rolling over dead for 50 years, given up our production in order for capitalism to defeat communism in the cold war, and it's worked, with Marshall Plan and everything else, and we're proud of it. But now is the time to start rebuilding, and these gentlemen here, here's another standard of living.

I vote for the Australia Free Trade Agreement, because we've got relatively the same standard of living. The same with Canada, we've got the same standard. Uh-uh, not Mexico. Like old Moynihan, I can see him standing in the well, "They've got to develop a free market before they get free trade." And there's your problem.

Here, we're going to—so the American standard of living—I was very cautious in putting this bill in, in talking to the cosponsors, for the simple reason that we've got to get to that cost benefit and make sure we're not putting ourselves out of business, internationally or globally. That's the main concern, and that's why, Chairman Stratton, I'm glad you're still here and can listen to this exchange here, because the Chairman and the witnesses have raised important considerations, and I wish you'd study this testimony, and you can see where we're headed. We need it. It's been 20 years Consumer Product Safety Commission's been studying, and you made findings and found out—your word was—well, you said, "a top priority," back—that was 6 years ago.

Thank you, Mr. Chairman.

Senator SMITH. Thank you, Senator Hollings. I think, to sum up your point, perhaps S. 1798 won't be as necessary if, in fact, the Commission does its work.

Senator HOLLINGS. Yes.

Senator SMITH. And you were saying that that's where the issue is best resolved.

So, with that, ladies and gentlemen, and no further questions, this has been a productive hearing, and, I hope, enjoyable for all of you, and we're adjourned.

[Whereupon, at 10:50 a.m., the hearing was adjourned.]

A P P E N D I X

STATEMENT FROM THE AMERICAN BURN ASSOCIATION

S. 1798 "American Home Fire Safety Act"

- *Upholstered Furniture.* According to the CPSC, in 1998 an estimated 10,200 residential fires involving upholstered furniture killed 520 people, injured more than 1,400 and caused more than $200 million in property damage. A safety standard adopted in California more than 25 years ago has resulted in a significantly lower furniture death rate than the rest of the Nation.
- *Mattresses and Bed Clothing.* In 1998, mattress and bedding fires caused 410 deaths, 2260 injuries and more than $250 million in property damage.
- *Candles.* There were 12,800 candle fires in 1998, resulting in 170 deaths, 1200 injuries and nearly $175 million in property damage.
- Of the many items first ignited in residential fires, upholstered furniture is the product most frequently involved in fire deaths, followed by mattresses and bedding. Cigarettes and candles are the heat sources most likely to ignite the deadliest fires.
- The American Burn Association represents the Nation's burn surgeons, nurses, therapists, and other members of the burn team, and the Nation's leading medical institutions with burn centers.
- Congress should implement the heightened safety standards for upholstered furniture, mattresses, bed clothing, and candles included in S. 1798, to substantially reduce the rate of consumer injury and death resulting from residential fires.

The American Burn Association strongly supports the heightened fire-safety standards included in S. 1798, the American Home Fire Safety Act, and applauds the efforts of its sponsors: Senators Hollings, Breaux, Snowe, Boxer, Graham, Chafee and Reed.

The American Burn Association represents the Nation's burn surgeons, nurses, therapists, and other members of the burn team, and the Nation's leading medical institutions with burn centers. The ABA has been a long-time advocate of fire-and burn-prevention efforts, supporting improved child sleepwear standards and fire-safe cigarette legislation, among other efforts.

Of the many items first ignited in residential fires, upholstered furniture is the product most frequently involved in fire deaths, followed by mattresses and bedding. Cigarettes and candles are the heat sources most likely to ignite the deadliest fires. S. 1798 addresses this issue by establishing comprehensive fire safety standards for upholstered furniture, mattresses, bed clothing and candles. The stricter standards included in this bill are "substantially the same" as standards which have been implemented or tested elsewhere and have proven to be effective.

For example, upholstered furniture standards in this bill are based on those included in similar legislation passed in California 25 years ago, which resulted in a "significantly lower furniture death rate than the rest of the Nation." Mattress and bed clothing standards are also based on proposed or implemented legislation in California. Candle standards were generated by the American Society for Testing and Materials.

The need for stronger standards is apparent from just a few examples in newspaper headlines across the nation: In Anchorage, a four-year-old girl dies after her mattress catches on fire; in New Jersey and eight-year-old girl dies after a damaged extension cord ignites a sofa; a three-year-old boy dies in a Chicago after a sofa catches on fire; in Lake Worth, Florida, three die when a fire ignited by a candle consumes a home.

Sadly, such preventable fires are the cause of a high number of injuries and death as well as millions of dollars in property damage. According to 1998 figures from the Consumer Product Safety Commission, an estimated 10,200 residential fires involving upholstered furniture killed 520 people, injured more than 1400 and caused

greater than $200 million in property damage. Fires involving mattresses and bedding that same year caused 410 deaths, 2260 injuries and cost more than $250 million in property damage, while candle fires accounted for 170 deaths, 1200 injuries and almost $175 million in property damage. These figures do not take into account the countless costs to textile manufacturers and producers (costs which are eventually passed along to consumers) which are sued annually for fires involving their products, even though they pass current Federal requirements.

It is the American Burn Association's position that the implementation of the heightened standards for upholstered furniture, mattresses, bed clothing, and candles included in S. 1798, the American Home Fire Safety Act, will substantially reduce the rate of consumer injury and death resulting from residential fires and will not affect the functionality or performance of the such items.

ASTM Candle Fire Safety Task Group

10/10/03

Geoffrey Faires
The Dial Corp.

Dave Buri
S.C. Johnson, Inc.

Rob Harrington
Blyth Industries, Inc.

Richard Signorelli
Belmay, Inc.

Jim Becker
Candle Solutions

George Pappas Sr.
Lumi-Lite Candle Co.

John Witham
Candle-Lite, Inc.

Evelyn Bicknese (IGCA Representative)
Bicknese & Bicknese, Inc.

Ed Calcote
Shell Global Solutions, U.S.

Robert Weitzel
Green Township Fire Chief

Christy Wheeler
Atkins & Pearce, Inc.

William Comber
Libbey Glass

John Tedeschi
Bath & Body Works

John Baker
Pier 1

Robert Moss
SEA, Ltd.

Jim Hoebel
Erols

Allyson Tenney
CPSC

David Morrison
Penreco

Mark Gerwitz
Bureau Veritas Consumer Products & Services

Tom Acklin (for AFIA)
Autograph Foliages

Valerie Cooper
NCA

Charles D. Moses
Arizona Chemical Company

Dan Zipes
Home Interiors & Gifts

Walter Smittle
Retired WV State Fire Marshal

CROSCILL HOME
November 29, 2004

Dear Ms. Sunita Krishna:

We are a manufacturer of sheets, comforters, and pillows in a variety of constructions and contents with all comforters having polyester fiberfill.

We employed 1.500 people prior to an influx of imported product and currently employ approximately 900 associates in North Carolina.

We are against Bill #S. 1798 for reasons that go beyond the true necessity of regulation (which we question.)

Those reasons include but are not limited to:

1. Test standard requires a twenty second exposure to open flame. Is this reasonable, or a longer exposure time than real life situations?
2. Who will police the market to assure that both domestic and foreign suppliers are conforming to the new regulations? (From what I understand, there are not resources available to act as inspectors to monitor any law.) Foreign resources are more likely to risk violation putting us at a competitive disadvantage.

3. Have studies been done as to the carcinogenic potential of FR treatments that may be used to meet these new requirements? Will we be exempt if such findings are made subsequently?
4. Has the California TB604 current small scale test version written in Oct. 03 been validated as reproducing large scale results?
5. Additional financial burden on an already suffering U.S. textile industry. Not only are the new treatments a much higher cost than what is commonly used, but fabrics, labels, inserts, marketing materials, etc will need to be replaced unless adequate time is given for transition of product *i.e.,* 1 year.

Respectfully submitted,

DOUGLAS J. KAHN,
Chief Operating Officer.

PREPARED STATEMENT OF THE DECORATIVE FABRICS ASSOCIATION AND THE COALITION OF CONVERTERS OF DECORATIVE FABRICS CONCERNING THE PROPOSED AMERICAN HOME FIRE SAFETY ACT

Introduction

The Decorative Fabric Association (DFA) and the Coalition of Converters of Decorative Fabrics (CCDF) submit this statement in connection with the proposed American Home Fire Safety Act (the "Act"), and most specifically in connection with its provisions relating to upholstered furniture.

The DFA and CCDF are on record as favoring the prompt adoption of a Federal mandatory upholstery furniture flammability regulation. Such a regulation, however, must effectively address the risks posed by upholstery furniture fires and do so in a cost effective way. Otherwise, consumers will be deprived of the opportunity to purchase products they want to put in their homes.

The Act will not achieve these objectives. To the contrary, it will undermine important work soon to be completed by the Consumer Products Safety Commission that will result in an upholstery furniture regulation reflecting the interests of all stakeholders, including consumers.

Specifically:

- The Act would mandate the adoption of an unproven *draft* technical standard that would impose unworkable and ineffective requirements.
- The mandated *draft* technical standard would cause many DFA and CCDF products to become unsaleable and cost prohibitive, and consumers would be deprived of the opportunity to obtain such products. Because of the nature of DFA and CCDF type products, a majority could not pass the mandated test even if treated with flame retardant chemicals or the fabrics would be ruined if treated.
- The Act would ignore the important work that is close to completion by the Consumer Product Safety Commission to develop a technical standard that effectively addresses the risks of upholstered furniture fires in an effective and economically sound way, and which is supported by a consensus of all stakeholders.

Accordingly, the DFA and CCDF strongly urge the Committee to allow and encourage the CPSC to finish its work and not to adopt legislation that will be *less* effective, *more* burdensome, and that will not reflect either the best technical or economic thinking to address the problem at hand.

The Decorative Fabrics Association

The DFA is comprised of approximately 60 companies that sell highly styled decorative fabrics. The DFA membership includes the vast majority of wholesale distributors of such decorative fabrics in the United States.

Based upon 2002 data, reported aggregate sales of DFA member companies totals approximately $1.2 billion. DFA member firms, however, are relatively small: 38 percent had sales of less than $5 million; 22 percent had sales of between $5 million and $10 million; 20 percent had sales of between $10 million and $20 million; and 20 percent had sales in excess of $20 million. Accordingly, any regulation will have a decided impact on these businesses.

Sales by DFA companies are overwhelmingly for residential use, such sales comprising 82 percent of total sales. And, 96 percent of total sales are made to customers in the United States, primarily on a COM (customer's own material) basis through interior designers. This means that fabric selections are made by consumers, with the assistance or at the direction of a professional interior designer, usually as one component of an overall interior decorating project. The interior de-

signer then purchases the fabric from a DFA company. The DFA company, however, typically does not know the use for which the fabric will be put—*e.g.,* furniture, window treatments, wallcoverings, pillows, bedspreads, other bedding, etc. Accordingly, DFA members typically sell on a "cut order" basis, with an average order being 8 or 9 yards of fabric.

DFA member companies do not manufacture the fabrics they sell. Nor do they perform fabric treatment or maintain facilities for fabric testing. Likewise, many of the suppliers to DFA companies, which include the few remaining quality mills in the United States, do not treat or test fabrics.

To meet the wide range of consumer tastes, DFA members maintain inventories of thousands of different fabric styles. On average, DFA members carry over 5,500 different stock keeping units (SKUs), with small companies averaging 1,760 and larger companies averaging over 16,000. Aside from their different patterns, these fabrics differ significantly in fiber combinations, weave structure, weight, and finish. Approximately 75 percent to 80 percent of these fabrics are made from fibers such as silk, which is a protein, or linen, rayon and cotton, which are cellulosic.

One of the most important characteristics required to meet consumer demand for DFA type fabrics is the aesthetic appearance (look and feel) of a particular item. Color, texture and hand (the way a fabric feels to the touch) are all critical selling points. Accordingly, a significant cost for DFA members (approximately 8 percent of gross sales) relates to samples. Samples are required to provide consumers with the ability to see and touch the actual fabrics prior to making their purchase selections.

The Coalition of Converters of Decorative Fabrics

The CCDF membership includes leading home furnishing and decorative fabric converters in the United States, with in excess of $1 billion in sales annually. CCDF members account, by volume of business, for a vast majority of the home furnishing fabrics converting industry in the United States. As converters, CCDF's members create or acquire proprietary rights in original designs, which they then cause to be printed, woven or otherwise fabricated by third parties onto a variety of fabric types. The finished fabrics are then sold for a variety of home furnishing and decorative end uses.

CCDF converter members distribute their products through a variety of channels, generally from facilities located in the United States. Most of the CCDF members maintain their principal distribution facilities in South Carolina. Their customers include wholesalers, furniture and other miscellaneous manufacturers, and retailers. CCDF members also maintain showrooms and display facilities, exhibit at trade fairs and have sales personnel visit customers with samples of fabrics.

Like DFA companies, CCDF converter members generally do not manufacture or finish the fabrics they sell. Also like DFA companies, a significant percentage of the fabric they sell consists of a wide variety of fiber combinations, weaves and weights. These fabrics are also used for a variety of applications. The visual, textural and other aesthetic attributes of these fabrics are critically important to converters' commercial success.

Another CCDF member is Calico Corners, a national retailer of fabric and furniture, with approximately 116 stores in 33 states. Calico Corners specializes in retailing decorative fabrics sold directly to consumers, making it one of the largest purchasers of decorative fabrics in the country, buying from major converters, wholesalers and jacquard mills.

Calico Corners' custom furniture program has been rapidly growing in recent years. It differs from "off-the-floor" furniture sales in that the retail customer is afforded a very wide range of fabric choices, and is able to select a frame style from over 250 choices. In the average Calico Corners store the customer then has the choice of over 5,000 fabric SKUs to put on the frame.

Thus, in 2002, Calico Corners' customers purchased approximately 28,000 pieces of custom upholstered furniture and covered them in 4,500 different fabrics. About half of these fabrics (48 percent) were designed specifically for upholstery use. In addition, many Calico customers routinely select print fabrics for use on furniture. These fabrics are technically not considered upholstery weight, but they too are used for many purposes. Because of the wide range of consumer tastes, in 2000 only three fabrics sold over 1,000 yards; 41 fabrics sold between 500 and 1,000 yards; and the average sale per fabric was 10.4 yards.

Discussion

A. The DFA And CCDF Support A Mandatory Federal Upholstered Furniture Flammability Regulation

The DFA and CCDF membership has actively worked with the Consumer Products Safety Commission and state regulators, specifically in California, in connection with the development of a mandatory upholstery furniture flammability regulation. Most recently, in October 2003, the DFA and CCDF provided comments to the CPSC urging the prompt adoption of a Federal standard because "[i]ndustry needs certainty."[1] Further, the DFA and CCDF endorsed the approach reflected in the CPSC staff's most recent draft upholstered furniture regulation, most importantly because it provides for use of a barrier system—an interliner or other barrier material placed between the outer fabric and the filling material—as an alternative to treating the outer fabrics with flame retardant chemicals.

The absolute necessity of a "barrier alternative" for DFA and CCDF members has been well documented.[2] In short:

- Most DFA fabrics and many CCDF fabrics will not pass a flammability test *even if* treated with FR chemicals.
- DFA and CCDF companies could not economically comply with a standard that required treatment of their fabrics with FR chemicals and compliance testing.
- Use of FR chemicals on many DFA and CCDF fabrics would destroy any aesthetic appeal, which is the most critical selling factor for such goods, and could create unwarranted health risks for employees and consumers potentially now and in the future.

A barrier alternative, on the other hand, would allow for upholstered furniture to be constructed consistent with a regulation that effectively addresses the risk of upholstered furniture fires. As contemplated by the most recent CPSC proposed draft standard, a furniture manufacturer would be permitted to use certified barrier materials and thereby avoid testing or treatment of every other component of that piece of furniture, including the outer fabric. As a result, the outer fabric would not have to be treated with FR chemicals. Yet, the approved barrier materials would prevent a flame from reaching the filling material of the piece of furniture, and as a result would prevent the very dangerous situation that could arise if the filling materials ignited.

B. The Act Would Not Allow For A Barrier Alternative

The Act would not allow for use of an effective barrier alternative. Rather, it would mandate adoption of a *draft* technical proposal issued by the State of California Department of Consumer Affairs, Bureau of Home Furnishings and Thermal Insulation in February 2002. This technical proposal would require a component test involving the treatment of outer fabrics with FR chemicals, or a composite test that involved a barrier and the burning of the outer fabric. Such tests have never been established as either technically or economically effective. Indeed, we understand that the State of California is no longer pursuing the approach reflected in its draft technical proposal and is instead working closely with the CPSC staff and other interested stakeholders to finalize a draft proposed regulation that will be presented to the Commission within the next few months.

The current focus of the California regulators shows the wisdom of allowing the CPSC's work to be completed, and not to have legislation adopted that would require the promulgation of a standard that reflects poor science, poor economics, and is contrary to the positions developed by all interested parties. Requiring adoption of the draft California technical proposal, which does not include a real barrier alternative, would also severely threaten the viability of all DFA and CCDF members, and as a result the ability of consumers to retain their ability to have access to the products they want. These ramifications are highlighted by the following.

First, cellulosic and protein fabrics constitute most of the fabrics sold by DFA companies and much of the fabric sold by CCDF companies. We understand, how-

[1] Comments of the Decorative Fabric Association, the Coalition of Converters of Decorative Fabrics and Calico Corners, Inc., before the Consumer Products Safety Commission, October 23, 2003. *See also* Statement of Rosecrans Baldwin on behalf of the Decorative Fabrics Association and the Coalition of Converters of Decorative Fabrics to the Consumer Products Safety Commission, dated August 27, 2003.

[2] *See, e.g.,* Statement of Cary Kravet, Kravet Inc., to the Consumer Products Safety Commission, June 18–19, 2002; Statement of Roger Gilmartin, Covington Industries, Inc., to the Consumer Products Safety Commission, June 18–19, 2002; Statement of Jan Jessup, Calico Corners, to the Consumer Products Safety Commission, June 18–19, 2002.

ever, that chemical FR treatment of such fabrics is difficult, and that many if not most of them, even if treated, are not likely to pass the component test contemplated by the draft California technical proposal. In addition, if such fabrics and many others were required to be FR treated, their aesthetics (the most significant characteristic in customer selection) would be dramatically altered. Both the look and feel of the product would be changed in ways that would cause them to be highly unattractive, and in most cases unsaleable.

Second, DFA members and converters typically do not know the end use to which a particular fabric will be put. Accordingly, if treatment were required vendors would have to either maintain duplicate inventories of treated and non-treated fabrics, or have specific orders treated when it is known that they will be used for an upholstered furniture application. Neither alternative is workable.

- To maintain duplicate inventories vendors would have to increase the volume of fabric they purchase without generating corresponding increases in sales to consumers.
- Duplicate inventories will result in higher costs to vendors (and ultimately consumers), including carrying, sampling and handling costs, and the need for additional showroom and warehouse space. These costs are already a significant percentage of gross sales, and the increases would make most DFA and CCDF companies unprofitable.
- Treatment of small orders, such as the "cut orders" sold by DFA members and the average orders sold by Calico Corners and other decorative fabric retailers, will be subject to minimum charges by finishers, which can run from $65 to $150 per order regardless of the yardage involved, again resulting in higher prices to consumers and unprofitable operations for vendors.
- Testing will also require use of additional yardage for certification and machine operability purposes. Some DFA fabrics sell for well over $100 per yard at wholesale, and 2 to 2½ extra yards per order may be required on a typical order of 8 to 9 yards.
- DFA and CCDF members may face shortages in finishing capacity. Available capacity may be allocated to larger orders, and finishers have stated a disinclination to handle small orders, especially of more expensive fabrics.
- Small orders may lack consistency in quality, requiring retesting and retreatment. Stitching together fabrics of different weights and compositions will not permit a uniform application of FR chemicals resulting in double testing and treatment for heavier fabrics, and either an unsatisfactory "bubble" effect or a totally unacceptable "board" effect.
- Delivery time and costs will be increased.
- Compliance with the draft component test may raise health risks that may even be prohibited by California's Proposition 65 and other environmental regulations and legislation.

Thus, if DFA and CCDF companies were required to certify compliance with the fabric component test that would be imposed by the Act, the likely result will be that consumers will not be able to obtain the wide variety of fabrics that are now available. Some products simply would not be able to pass, and even if they could, they would be so aesthetically displeasing no consumer would want them in their home. Those fabrics that could pass would also be available only for dramatically higher prices which may eliminate any market demand for them as well.

The contemplated composite test under the draft California technical proposal would also inadequately address the risks of upholstered furniture fires. Passing or failing the proposed composite test would require assembling a piece of furniture as it would exist for sale. In other words, the frame would be assembled with the actual fabric and filling materials that would be used. To pass the test would then depend upon, among other factors, an evaluation of the overall weight loss of the tested unit. Certain fabrics, however, will constitute a disproportionate percentage of the weight of the overall unit, and even though a barrier might be used, and a flame would be extinguished before igniting the filling material that would emit the greatest amount of heat, the unit would fail. Thus, even though risks of injury and possible death as the result of flashover would be averted, and we believe this is the properly defined risk that should be addressed, consumers would still be deprived of products they desire.

Further, the costs of compliance with the draft composite test would be, if anything, more prohibitive than in connection with the component test. The same negative economic effects—for consumers and industry—would therefore result, without

effectively addressing the risks that should be the target of a properly focused regulation.

C. The Act Will Eliminate Important Statutory Protections

The Act would make inapplicable important provisions of the Consumer Product Safety Act. In particular, no evaluation would be made of the mandated standard's costs or benefits, whether the standard is reasonably necessary to eliminate or reduce the risks posed by upholstery furniture fires, what the effect of the standard would be on limiting the availability of products to consumers, or whether less burdensome alternatives are available that are equally effective. Further, the opportunity for interested parties to be heard on the advantages and disadvantages of the standard would be eliminated.

These statutory provisions ensure that any regulation that is adopted will be technically and economically sound, and eliminating their applicability will simply confirm the inappropriateness of the upholstered furniture flammability standard contemplated by the Act.

Conclusion

For all of the foregoing reasons, the DFA and CCDF urge the Committee to not support the American Home Fire Safety Act. An appropriate Federal regulation is being developed by the CPSC that will effectively address the risks of residential upholstered furniture fires, in a cost effective manner, and in a way that will allow consumers to enjoy the products of their choice.

PREPARED STATEMENT OF DAVID K. ORDERS, VICE PRESIDENT, ADMINISTRATION, PARK PLACE CORPORATION ON BEHALF OF THE INTERNATIONAL SLEEP PRODUCTS ASSOCIATION

Background

Mr. Chairman, Ranking Member Hollings and distinguished members of the Committee:

My name is David Orders. I am the Vice President, Administration of the Park Place Corporation, a mattress manufacturing company in Greenville, SC.

I appreciate the opportunity to submit comments to you today on behalf of the International Sleep Products Association (ISPA) about S. 1798, the "American Home Fire Safety Act." ISPA is a trade association that represents approximately 750 mattress manufacturers and component suppliers in the United States and abroad.

In my testimony, I will show that the mattress industry has a long history of responsible stewardship and has aggressively sought regulation where scientific standards showed benefits to the consumer.

I intend to make clear that the "American Home Fire Safety Act" would not impose science-based standards, but instead implements draft California standards that were subsequently rejected by the State of California.

The Consumer Product Safety Commission will shortly propose standards that will establish scientifically developed product safety requirements. The industry is committed to assisting the CPSC with that effort.

Finally, I think that it is important that the CPSC be encouraged to develop regulations in the manner established by Congress when it created the CPSC, without Congress imposing poorly considered standards that can be counterproductive to improving consumer safety.

My grandfather founded our company in 1931 during the Depression. With my eldest son joining the company several years ago, the Orders family has now begun our fourth generation of owning and operating Park Place.

Today, our approximately 200 workers make approximately 1600 mattresses daily (or about 400,000 units annually). We sell our mattresses primarily throughout the Southeast, but also distribute some products nationwide. We offer a full line of mattresses, from relatively simple constructions to the more up-scale luxury lines. Our main business is in traditional foam-inner spring mattress designs, but we also manufacture so-called air-beds and mattresses that use heat-sensitive foam.

In addition to my work with Park Place, I am currently the Vice Chairman of the Board of the International Sleep Products Association (ISPA), and will become the Chairman of the ISPA Board next year.

Since 2002, I have also served on the Board of Directors of the Sleep Products Safety Council (SPSC), a separate organization formed by ISPA in 1986 to conduct mattress safety research and develop public education programs that focus primarily on residential fire safety and how to avoid mattress fires.

The mattress industry has a proud 35-year record of responsible product stewardship when it comes to mattress flammability issues. During the mid-1970s, research showed that unattended cigarettes were the primary cause of mattress fires and fire-related deaths and injury. Our industry worked with the Consumer Product Safety Commission (CPSC) to develop the mattress cigarette ignition standard, which has been a major factor in reducing residential mattress fires over the past three decades.

Because Park Place has manufactured mattresses for over 70 years, we have been an active part of the tremendous safety innovations that the mattress industry has made over the years. For example, my brother Jimmy Orders led the ISPA Board of Trustees as the industry implemented the cigarette-ignition standard. Compliance with that standard today is excellent and it is clear that this standard has played an important role in improving residential fire safety. For example, the most current fire statistics released by the U.S. Fire Administration show that over the 20-year period from 1980 to 1999, both the number of mattress fires in the United States and the number of deaths from mattress fires fell by two-thirds, all this while the U.S. population grew by over 25 percent during the same period.

These numbers show that the industry is moving in the right direction, and that the industry's safety record is outstanding. But our work is clearly not finished. The mattress industry and my company fully support regulatory efforts to set a new Federal safety standard that is effective and practical in requiring mattresses to be more fire resistant to open-flame ignitions. Nevertheless, our industry has a number of concerns with the "American Home Fire Safety Act."

Specifically, we believe that:

- S. 1798 would set a bad flammability standard that is not scientifically supported and will in fact be counterproductive to home fire safety;
- S. 1798 implements a draft standard rejected by the state of California;
- S. 1798 is unnecessary at this point because the Consumer Product Safety Commission is making substantial progress on this issue and plans to propose a new Federal mattress standard this fall, and
- S. 1798 would restrict the CPSC's ability to correct or even improve the standard that it requires if warranted at some point in the future.

Open-Flame Ignitions and Regulatory Efforts at the CPSC and in California

As the mattress safety record improved dramatically with the steps taken to reduce fires caused by cigarettes, the industry's focus shifted to tackling open-flame ignitions of mattresses. Our understanding of the causes and science of open-flame ignitions was virtually non-existent when the industry, fire safety officials and government regulators began looking into this problem in the mid-1990s.

To remedy this situation, the SPSC initiated a joint study with the National Association of State Fire Marshals (NASFM) to determine the causes of over 200 actual mattress fires in four U.S. cities. This research showed that:

- a majority of mattress fires are set by young children playing with matches and lighters;
- bedclothes (top-of-the-bed accessories like comforters, pillows) are usually the first items ignited in a bed fire; and
- poorer families are those most at risk from mattress fires.

Following this research, the industry met with then-CPSC Chair Anne Brown to discuss how best to address the open-flame ignition problem. Chair Brown attended a mattress industry meeting in Palm Beach, Florida in 1997, at which the ISPA leadership resolved to explore the possibility of establishing a mandatory national mattress standard to address open-flame ignitions, provided that the standard was effective in addressing the problem and practical to implement.

The industry (through the auspices of the SPSC) then supported a series of groundbreaking studies by the National Institute of Standards and Technology (NIST) to improve our understanding of mattress fires. Among other findings, NIST concluded that the safety risks posed by ignited bedclothes alone are significant. NIST also developed a test apparatus that could accurately and consistently simulate the impact of burning bedclothes on a mattress so that our products could be reliably tested under simulated "real world" conditions. Throughout this research, the SPSC regularly consulted with staff of the CPSC and the California Bureau of Home Furnishings (CBHF), given both agencies' interest in effectively addressing the open-flame ignition issue.

Throughout this period, the SPSC has actively promoted public education messages informing consumers about how to use mattresses safely. The SPSC has car-

ried this message through a variety of media, including its own website (which is largely targeted at parents, teachers, children and the media), joint efforts with various government agencies, and a hangtag that most mattress producers attach directly to their products warning consumers about the dangers of mattress fires and how to avoid those dangers.

Based on NIST's research, the CPSC issued an Advance Notice of Proposed Rulemaking in October 2001. The industry has worked closely with the CPSC as it develops the new mattress standard. The CPSC is expected to propose its new standard later this fall.

In February 2003, the CBHF began its separate rulemaking, California Technical Bulletin 603 (TB603), to address the open-flame issue by publishing a preliminary draft standard. Initially, California proposed that mattresses and box springs sold in that state must be ignited using a test method and apparatus developed by NIST, and that the peak heat release from the resulting fire must not exceed 150 kW for 60 minutes. Following extensive scientific research and after analyzing comments submitted by industry, consumers and other groups, California issued the final version of TB603, which modified the performance criteria such that the peak heat release must not exceed 200 kW over a 30-minute period. California properly concluded that these performance criteria will lead to significant improvements in home fire safety.

Separately, the CBHF began initial work on a bedclothes flammability standard (to be called Technical Bulletin 604 or TB604). California, however, has yet to formally propose the requirements of TB604. Thus, a major contributor to the bedroom fires—as found by California, NASFM the mattress industry and others—has yet to be addressed.

The mattress industry fully supports the performance criteria in the final version of TB603. Depending on their geographic market, mattress producers are at varying stages in their efforts to meet the TB603 requirements. Some producers are already offering product that meets the performance requirements in California a full six months before the effective date of the standard, and others are on track to meet the new requirements.

In issuing the final version of TB603, California recognized that the standard provides a valuable 30-minute window for consumers to detect and escape a fire. Furthermore, the low peak heat release limit will substantially delay the growth and intensity of the fire. Combined, these requirements will significantly reduce the risk of rapid flashover to other parts of the residence and will substantially expand the opportunity for consumers to escape a bedroom fire. Thus, NIST research shows that the TB603 performance criteria have the potential to reduce bed fire casualties by one-half to two-thirds. Further improvements are possible if the fire performance of bedclothes also is improved. For these reasons, the industry is working with the CPSC to incorporate theTB603 criteria in the Federal open-flame mattress standard and to address the flammability of bedclothes.

Finally, the industry is concerned that meeting a 60-minute standard might inadvertently create more problems than it purports to solve. To meet a 60-minute requirement might force producers to use combinations of exotic materials that have never been used to make mattresses. How those materials will interact with each other is often unknown.

The "American Home Fire Safety Act" (S. 1798)

The "American Home Fire Safety Act" (S. 1798) requires the CPSC to issue Federal flammability standards for several products including mattresses and box springs. As for mattresses and box springs, S. 1798 requires that the Federal standard be based on the *preliminary draft* of California's TB603. It ignores the fact that California, based on scientific research and extensive comments from the mattress industry and other stakeholders, substantially revised those criteria before issuing the final version of TB603, as I have just described. In short, while the *preliminary draft* of TB603 limited the peak heat release rate to 150 kW for 60 minutes, the *final version* of TB603 limited the peak heat release rate to 200 kW for 30 minutes. It is also important to understand that no scientific research shows that a 60-minute standard will be any more effective in improving safety than the significant improvements that can be achieved with a 30-minute standard.

I stress that the difference between a 60-minute test and a 30-minute test is significant. The longer a fire burns, the more unpredictable it becomes. This unpredictability is analogous to the ability of a meteorologist to provide a reasonably accurate 2-day forecast, compared to the substantially greater variation from the weatherman's predictions when it comes to making a 60-day forecast. As a result, I think that those supporters of S. 1798 that make FR materials and others knowledgeable about fire behavior would agree that the variability of fires forces mattress pro-

ducers to use substantially larger amounts of fire resistant materials to meet a 60-minute test than would be required for a 30-minute test.

The 30-minute standard has been challenging, but will be met using innovative materials and designs. In this process, the industry has invested heavily in technology, new materials, product design, employee training and capital acquisitions as we seek to develop solutions that will preserve the mattress comfort that consumers have grown to expect in a manner that adds minimal expense to the consumer.

However, a 60-minute test would require different materials and designs. These materials tend to make the mattresses harder and less resilient, and would cost considerably more. As a result, S. 1798 would in effect force customers to select from less comfortable—yet more expensive—mattresses, but for no scientifically-justified reason.

In addition, most mattress manufacturers would likely shift all of their mattresses to "single-sided" to meet an S. 1798 standard, because it is easier and cheaper to make those products pass a 60-minute test. This change would have the unintended impact of harming U.S. textile producers in my home state of South Carolina and elsewhere, an industry that can ill-afford additional economic stress. This is because single-sided mattresses require less of the high-quality fabric cover known as "ticking," and instead use much cheaper material on the lower side of the mattress.

CPSC and a Science-Based National Standard

S. 1798 also ignores the CPSC's considerable work toward a new Federal mattress standard. The CPSC, which is charged by Congress with developing and enforcing standards such as this, has considerable expertise in flammability issues. The CPSC has already issued an Advance Notice of Proposed Rulemaking and plans to propose an open-flame standard this fall. The industry has cooperated fully with the CPSC during this process by providing technical and economic data, as well as by funding major research to create new testing methods. I would ask that the Congress allow the CPSC to complete its work and to issue a new Federal mattress standard. That, after all, is the real purpose behind S. 1798.

Setting new flammability standards is a complex task. Allowing CPSC to set the Federal standard would offer two important benefits. First, the CPSC will use its expertise to make certain that its criteria are based on scientific research, are practical and justified. Second, sometimes flaws in product standards emerge only after they are implemented. A standard set by CPSC could be readily amended whereas S. 1798 would require another Act of Congress to fix the problem.

The existing Federal law provides a good process for CPSC to issue technical flammability standards. The CPSC has both the legal authority and the expertise to set this standard. I would ask that the Congress refrain from in effect overruling the Commission's tremendous efforts toward establishing a new mattress standard, and allow it to complete its rulemaking process.

Consumer Issues

Mattress manufacturers and retailers have invested considerably in market research. Not surprisingly, consumer purchases of mattresses are motivated primarily by comfort and price. The performance criteria in the final version of TB603 would have a minimal impact on both of these criteria, whereas S. 1798 would have a significant negative impact on both.

As I mentioned earlier, a mattress that would meet the S. 1798 criteria of a 60-minute burn test would look and feel much different from the mattresses on the market today. They would be rigid and inflexible, instead of the current mattresses that consumers have grown to expect and enjoy.

Unlike a TB603 mattress, S. 1798 mattresses would be much more expensive. In fact, the price increases that S. 1798 would require would discourage a large number of consumers from purchasing the new mattresses—especially the poorer families that need affordable fire resistant mattresses the most—compared to the impact of a 30-minute standard on mattress prices.

For example, given typical retail markup rates, the costs that a mattress producer will incur to meet a 30-minute standard will likely increase from $10 to $20 per queen-size unit. However, given current input prices, a number of mattress producers estimate that to meet the S. 1798 standard, manufacturing costs would increase $50 to $70 per queen-size unit. Based on a study that the industry commissioned last year in connection with the TB603 rulemaking, we estimated that price increases of this magnitude alone would reduce mattress sales by 25 percent or more, compared to a reduction of no more than 10 percent for the 30-minute standard. The consumer disincentive that S. 1798 would create will be even more if you factor in the reduced comfort that results from using the substantially stiffer materials needed to make beds that pass a 60-minute test.

In other words, at least 1-in-4 consumers that would otherwise want to buy a new fire-resistant mattress would instead defer their mattress purchase and spend their money on something else if S. 1798 were enacted. That means that the law itself will be counterproductive because it will discourage consumers from buying safer products. The price disincentive will be disproportionately greater for poorer consumers who will be less able than middle or upper class consumers to pay the higher prices that this bill would impose.

Instead, when those poorer families require new beds, their only alternative will likely be mattresses offered by an unscrupulous segment of the market that "recovers" used mattresses with new fabric and then deceptively sells their wares as "new." Many of these operators—who are euphemistically called "renovators"—sell their products in inner cities and poorer communities where their customers are highly price conscious and unwittingly think that they are buying perfectly normal new products. What these consumers don't know is that they are really sleeping on a used bed and that the renovator has often made no effort to clean or sterilize the old product, which is often filthy, stained with urine, blood and feces, and can be infested with dust mites, molds, insects, germs and other unsanitary contaminants. These "renovated" beds pose real health hazards, especially for consumers that are susceptible to allergies, mold and dust, and certainly will not meet the fire protection standards of either California or the Federal Government.

Complying with TB603 alone will be challenging and expensive for legitimate mattress producers. But because unscrupulous renovators operate on the fringes of the market, I would expect few of them will make any effort to meet the even more burdensome S. 1798 rules.

As a result, S. 1798 would—

- force the retail price of legitimate new mattresses beyond the reach of poorer consumers—the very segment of society that needs fire-resistant beds the most—and
- push the poorer consumers into the waiting arms of unethical purveyors of unhealthy renovated mattresses that have been recovered by parties that have no intention of meeting the S. 1798 rules.

Not only will these families miss any benefit that S. 1798 is intended to create, but they will risk allergic reactions, asthma and other possible effects of sleeping on recovered used mattresses.

Conclusion

Mr. Chairman, I feel that the mattress standard set forth in S. 1798 is the wrong standard, and that Federal law already authorizes the CPSC regulate this important area. As the incoming Chairman of ISPA, I can assure you that the mattress industry is fully behind setting a Federal flammability standard with criteria similar to those set in California TB603. I do not feel that the draft standard of TB603—the standard referenced by S. 1798—is practical for manufacturers nor do I believe that it will benefit consumers. S. 1798 would result in mattresses that few consumers would want to buy because they will be more expensive and less comfortable.

Increased costs and reduced sales could easily shut down many mattress manufacturing plants in the U.S. I am concerned that these increased commercial pressures may drive much of the lost business overseas. I am also alarmed by reports of other regulated industries that foreign mattress producers might not meet the relevant U.S. safety standards. As with other products, it would be difficult for the CPSC to catch such products because by the time that many of these products enter the stream of commerce and are detected by the authorities, the manufacturer of those goods has either changed its name or moved onto other markets.

Park Place provides the Greenville community with 200 well-paying jobs that I would not wish to see jeopardized. Mattress manufacturing as a whole is a well-paying industry. The average hourly wage of a mattress factory employee nationally is approximately $11. In a complex economy, job losses and plant closures to our manufacturing segment have a ripple effect that hurts our component suppliers as well as the thousands of retail stores to which we sell.

Mr. Chairman, the mattress industry believes that an effective and practical national open-flame ignition standard for mattresses and the continued success of mattress manufactures in the U.S. are not mutually exclusive objectives. We fully support the criteria set forth in the final TB603 and hope that the CPSC will incorporate these criteria in the new Federal mattress standard. They will dramatically improve safety, and should be applied nationally. I believe that the criteria in S. 1798 will do significant harm to industry and consumers without providing any additional safety benefit.

I believe that the CPSC is firmly committed to issuing an effective and practical standard and that it would be in the best interests of consumers and industry to allow that agency to finish its valuable work instead of legislating a regulatory standard. The system is working, Mr. Chairman, and I ask that you and this Committee allow it to finish working.

To the extent that Congress really wants to help consumers, I suggest that you consider increasing the CPSC's enforcement capabilities and help to educate parents, teachers and children about the importance of fire safety. In respect to enforcement, the first step would be to help stop unscrupulous renovators from selling recovered used mattresses as new products to unsuspecting consumers.

The second would be to enhance the CPSC's ability to enforce existing and future Federal safety standards with respect to imported products *before* those goods ever hit our shores. Many in the manufacturing community at large are increasingly concerned that imports of all types of products—not just mattresses—do not meet minimum U.S. safety requirements and that the U.S. government lacks the ability to eliminate these noncomplying goods from the marketplace before they have been sold to consumers. ISPA has provided Senator Hollings and others on the Committee with several options that Congress could consider in this regard and we would be pleased to discuss these options further with you at your convenience.

I thank the Committee for the opportunity to submit this statement today. I look forward to answering any questions you may have following this hearing.

PREPARED STATEMENT OF THE NATIONAL TEXTILE ASSOCIATION (NTA)

The National Textile Association (NTA) is pleased to present comments on the American Home Fire Safety Act. NTA is the largest textile trade association in the United States and its comments are filed primarily on behalf of the Textile Bedding Committee whose members are responsible for supplying American consumers with over 90 percent of the sheets, comforters, pillows and other "top of the bed" products sold in the U.S.

The domestic textile bedclothing industry has annual sales exceeding 5 billion dollars and supplies products that are vital for the normal lifestyle of all consumers. The industry is proud of the way it has provided an almost endless assortment of products for consumers in the U.S. and around the world for over a century, and we intend to continue supplying safe, functional, and stylish bedding for our customers.

While the intentions of the American Home Fire Safety Act, S. 1798, are laudable, the bill would interrupt an important process that has been underway since the California General Assembly approved AB 603 in 2001. This sudden interruption would be caused by S. 1798's mandatory requirement that all affected bedclothing meet the October 22, 2003 draft of Technical Bulletin 604, a draft that is expected to be amended by California before implementation because it does not consistently predict large scale fire performance.

Our concern is that the unknown changes to the test method could likely require new and more costly solutions for manufacturers that supply filled products. The 90-day implementation period in S. 1798 gives only a small window of time for manufacturers to decide on the materials necessary to meet the standard and to determine if adequate supplies are available. Our experience has been that regulations like this require new materials, many which may not be available in adequate capacity for months or even years. Any shortages of materials will clearly be detrimental to consumers who will bear the economic burden of shortages.

By passing this legislation, the cooperative work between our industry and the CBHFTI could be irrelevant and all consumers in the United States would be penalized by a preemptive standard that severely restricts consumer choice and leads to significant increases in cost of material and manufacturing operations. Although we are not opposed to flammability regulations of filled bedclothes, we clearly oppose S. 1798 as written.

Our industry is committed to safe and functional products. We have a long history of providing consumers with products that meet consumer expectations for style, color, design, fit, appearance, feel and many other aesthetic and physical characteristics. We listen carefully to consumers and their desires and we work extremely hard to ensure that their expectations are met. Our zeal to continue meeting this objective is strong.

It is extremely important to recognize that California's draft TB 604 limits regulation to filled textile bedclothes such as comforters, mattress pads and pillows. All technical studies and regulatory development have been focused in this area, and we support a similar provision in any Federal regulation considered by CPSC.

The textile bedclothes industry has worked diligently to learn more about the flammability performance of filled products. During the short period since CBHFTI has begun to study bedclothing flammability, our member companies have evaluated their products individually with the CBHFTI. They have also evaluated the impact of product construction, material substitutes, and other research and development aspects to determine the best solutions to meet the anticipated California regulation. While these companies are members of the NTA, they preserve their unique approaches to the manufacture of complying products and each is focused on meeting consumer demand when California's stringent regulation becomes effective.

Once a regulation is promulgated, it is critical that it be applicable nationally. The Textile Bedding Committee envisions the California standard being applied nationally by the CPSC within the scope of its development. With high volume manufactured products like comforters and mattress pads, a national standard is essential to ensure that interstate commerce is not disrupted. Our industry will begin discussing this essential aspect of regulation when the CPSC begins its public review of textile bedding flammability. We stand ready to work with the commission, as we have worked with the California Bureau, to develop a standard that is effective, technically feasible and clearly in the interest of U.S. consumers.

It is also critical that any textile bedding flammability standard, whether at the state or national level, be enforced fully regardless of the product's origin. Domestic manufacturers have an impressive record of consistently meeting flammability standards in the United States and our members will ensure that this high level of compliance is maintained. We encourage the responsible government bodies to also work to ensure a high level of compliance for imported goods in order to provide safe products for all American consumers.

In summary, NTA believes that S. 1798, in its present form, would be disruptive to the textile bedding industry and consumers alike, and would de-rail an important process that has been underway for over a year. NTA members have been working cooperatively with California Office of Consumer Affairs to develop a mandatory standard for filled bedding products and much progress has been made. We strongly encourage this Committee to allow the textile bedding industry to complete California's administrative process and then to work with the Consumer Product Safety Commission to develop an appropriate national flammability standard for this industry.

PREPARED STATEMENT OF MARK BUCZEK, CHAIRMAN, AMERICAN FIRE SAFETY COUNCIL

The American Fire Safety Council (AFSC) is a non-profit member organization that is dedicated to promoting fire safety through the responsible use of flame retardant products. Every year nearly 4,000 Americans die in fire-related incidents and 75 percent of these deaths occur from residential fires. The AFSC strongly supports the initiative of Senator Ernest Hollings to bring national fire safety standards to residential furniture, bedding and bedclothes. We are also encouraged by the recent progress of the U.S. Consumer Product Safety Commission, under the leadership of Chairman Harold Stratton, in addressing this long-standing need. We believe that the Committee's consideration of the American Home Fire Safety Act (AHFSA) has been successful in bringing added focus to the issue. We agree with Senator Hollings that should there be any further delay in the Commission's issuance of national fire safety standards, additional action by the Committee with regard to the AHFSA may be required.

The AFSC has taken several steps to help move this issue forward. We have participated in a multi-stakeholder industry group, which includes the American Furniture Manufacturers Association, the International Sleep Products Association and numerous others. This group has worked to bring a proposal to the CPSC that offers a significant level of increased fire safety for the public, is practical to implement and will not place an undue economic burden on manufacturers, consumers or U.S. jobs. We hope that the CPSC will consider this proposal in developing its national standards.

In addition, the AFSC recognizes its responsibility to encourage sustainable and environmentally preferable approaches for achieving fire safety standards. We have entered into a partnership with the Environmental Protection Agency (EPA), furniture manufacturers and non-governmental organizations such as GreenBlue, in the EPA's Design for the Environment program. This innovative partnership will allow us to develop safe and environmentally sound approaches to fire safety at a time when the need for flame retardants is increasing and certain flame retardants are being phased out due to environmental concerns.

The AFSC is committed to support the development of national fire safety standards in residential furniture, bedding and bedclothes. Our members are spending millions of dollars each year in research to bring the most advanced technologies to support fire safety efforts.

We thank the Committee for the opportunity to comment.

WESTPOINT STEVENS INC.
New York, NY, July 13, 2004

Hon. JOHN MCCAIN,
United States Senate,
Washington, DC.

Dear Senator McCain:

On behalf of WestPoint Stevens Inc. (WPS), please let me share with you and the Commerce Committee some concerns we have about the current draft language in the American Home Fire Safety Act (the "Act"), S. 1798. WPS is one of the Nation's leading manufacturers of bed and bath home fashions products, including mattress pads, feather and fiber beds, bed pillows, sheets, towels and bath accessories, comforters and down comforters, blankets and bedding accessories. Many of these products are covered by the Act.

First, let me make it clear that WPS is not opposed to flammability regulations for our products. We take pride in providing safe, fashionable bed and bath products demanded by consumers. However, the Act as currently worded calls for the immediate (within 90 days) adoption of the October 22, 2003, draft California TB 604 test method for filled bedclothing. This test method is still under review in California and state representatives have indicated that it will be modified because it does not consistently mirror full-scale test results. In our opinion it would be highly unusual to incorporate into a national standard a test method that is still under development.

It is important to realize that filled bedclothing products do not have the same history of evaluation for flammability as other textile products covered by the Act. The Consumer Product Safety Commission, the Department of Commerce, California's Department of Consumer Affairs and other organizations have studied upholstered furniture and mattress products for many years. Test procedures for those products have been developed after substantial evaluation and peer review. However, filled bedclothing products have not received that level of study. In fact, it was only after California made the decision to address the flammability of filled bedclothing in late 2002 that public regulatory review began for these products. Since that time, WPS and the other major producers of filled bedclothing (Springs Industries, Inc. and Dan River Inc.) have worked (and continue to work) closely with California to develop an accurate and predictable test method. Many of the options open to furniture and mattress manufacturers (barriers, flame-retardant finishes, etc.) are not applicable to filled bedclothing because of the nature and use of these products and the intimate contact that they have with the users.

Any regulation of filled bedclothing should also contain provisions to enforce compliance equally between domestic products and imported products. As currently structured, the burden of compliance will rest on the manufacturer. This might not be readily applied to a manufacturer of imported goods. It would be prudent to place some responsibility for compliance on others in the supply chain who provide products to the consumer to help ensure that they sell compliant goods. The California legislation contains no provision to require labeling of compliant bedclothing. A labeling requirement would provide purchasers with a basis for reliance upon manufacturers for compliance with a flammability standard.

We request that our comments as stated in this letter be included in the public record of the July 14 Commerce Committee hearing on the Act. We also call attention to our support of the written testimony submitted by the National Textile Association on behalf of its Textile Bedding Committee of which we are a member.

Thank you for the opportunity to present our views. We will be glad to answer any questions that you or other members of the Committee might have.

Sincerely,

M. L. FONTENOT,
Chief Executive Officer,
WestPoint Stevens Inc.

c: The Honorable Lindsey O. Graham
The Honorable Ernest F. Hollings

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