Statement of
Inez M. Tenenbaum
Chairman
U.S. Consumer Product Safety Commission

Before the

Senate Committee on Appropriations

Subcommittee on Financial Services and General Government

July 17, 2012

Good afternoon, Chairman Durbin, Ranking Member Moran, and Members of the Subcommittee on Financial Services and General Government. I am pleased to be here today to discuss the U.S. Consumer Product Safety Commission's (CPSC) current efforts to implement performance requirements to reduce the fire risk of residential upholstered furniture.

Reducing deaths and injuries in residential fires where consumer products play a contributory role is a key strategic goal of the CPSC, and the flammability of upholstered furniture has been an area of significant concern by Commission staff. Upholstered furniture in a home is often a major source of combustible fuel for a fire. Once this furniture is ignited, it contains enough fuel to spread a fire very quickly when the upholstery filling materials start to burn.

The most recent fire loss estimates for 2006 through 2008 indicate that upholstered furniture was the first item to ignite in an average of 6,500 residential fires attended by fire services during that period. These fires resulted in more than 500 deaths, 860 injuries, and $343 million in property loss each year.[1]

On March 4, 2008, the CPSC issued a Notice of Proposed Rulemaking for a "Standard for the Flammability of Residential Upholstered Furniture."[2] The proposed standard would establish two possible pathways for upholstered furniture to meet the proposed standard. Manufacturers could either use upholstery cover material that complies with a prescribed smoldering resistance test (referred to as "Type I" furniture) or use an interior fire barrier that complies with specified smoldering and open flame resistance tests ("Type II" furniture).

During the development of the NPR, Commission staff was highly cognizant of the concerns expressed by many stakeholders over the use of flame retardant (FR) chemicals as part of any standard. While the U.S. Environmental Protection Agency (EPA) has primary jurisdiction over FR chemicals under the Toxic Substances Control Act (TSCA), CPSC's proposed rule has a performance based standard, as noted above. It does not specify any particular materials or designs, and does not require the use of any FR chemicals to achieve compliance with the proposed standard.

In this regard, the proposed rule's open flame barrier requirement is consistent with certain preliminary findings in a CPSC staff report,[3] conducted as part of the research on the upholstered furniture rule, which reviewed the effect of certain fire

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1 David Miller and Risana Chowdhury, 2006 – 2008 Residential Fire Loss Estimates, Division of Hazard Analysis, Directorate for Epidemiology, U.S. Consumer Product Safety Commission (released July 2011), available at http://www.cpsc.gov/LIBRARY/fire08.pdf.

2 *See* Notice of Proposed Rulemaking, Standard for the Flammability of Residential Upholstered Furniture, 73 Fed. Reg. 11,702 (Mar. 4, 2008).

3 *See* Memorandum from Shivanti Mehta to Dale R. Ray, "Upholstered Furniture Full Scale Chair Tests – Open Flame Ignition Results and Analysis" (dated May 9, 2012), available at http://www.cpsc.gov/library/foia/foia12/os/openflame.pdf.

barriers on the flammability of upholstered chairs. The foam used under the fire barriers in those tests represented both FR treated and non-FR treated foam. At the conclusion of those tests, staff noted that the addition of a "fire barrier markedly increased the fire safety of the furniture."[4] As part of the testing, staff also noted that "the fire-retardant foams did not offer a practically significantly greater level of open-flame safety than did the untreated foams."[5]

The proposal also aligns with previous Commission rules regarding the flammability of consumer products, such as the CPSC's 2006 final flammability rule for mattresses and mattress foundation sets, which also sets a performance-based standard that does not require the use of FR chemicals.[6]

Since issuance of the NPR in 2008, CPSC staff has worked diligently with stakeholders and other interested parties to finalize the rule and conduct associated testing. In doing so, they have faced several significant challenges.

One substantial challenge Commission staff has faced is the development of reasonable and repeatable testing requirements to ensure compliance with any new rule. One component of this is developing appropriate scale tests that can account for the diversity of upholstered furniture products. Unlike other products, such as mattresses, furniture comes in a multitude of sizes and shapes, making representative and repeatable testing mechanisms a substantial undertaking.

As part of this proceeding staff has also been working with other organizations, such as the National Institute for Standards and Technology (NIST), to develop standard reference materials (SRMs), such as standard test cigarettes and standard test foam, which can be part of the representative and repeatable testing mechanisms detailed above. As Chairman, I have recently allocated substantial additional resources to these efforts and we are making progress towards these goals.

The second and most significant challenge is the statutory requirement that the Commission issue any flammability standards for fabrics, related materials, or products including interior furnishings pursuant to section 4 of the Flammable Fabrics Act (FFA).[7] Like section 9 of the Consumer Product Safety Act (CPSA), section 4 of the FFA requires that the Commission make a series of very detailed and onerous findings before a final rule can be issued, including determinations that the standard is "needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage"; that expected benefits from the regulation bear a reasonable relationship to its costs; and that the regulation is the least burdensome

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4 *Id.* at 23.

5 *Id.*

6 *See* Final Rule, Standard for the Flammability (Open Flame) of Mattress Sets, 71 Fed. Reg. 13, 472 (Mar. 15, 2006); *see also* 16 CFR §1633.

7 15 U.S.C. § 1193.

alternative that prevents or "adequately reduces" the risk of injury. In addition, if there is a relevant voluntary standard that has been adopted and implemented, the Commission must determine that the voluntary standard is not likely to adequately reduce the risk of injury or that substantial compliance with it is not likely.

As part of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Congress recognized the burden that the CPSA section 9 requirements placed on the Commission's ability to issue mandatory rules protecting the public from a number of potential hazards, and moved to ease this burden in several areas. One key example is section 104 of the CPSIA, where Congress gave the Commission streamlined authority to adopt new mandatory standards for durable infant and toddler products.

Under section 104, the Commission must adopt standards for certain infant and toddler products that are "substantially the same as" relevant voluntary standards or "are more stringent than such voluntary standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated" with those products. This section has allowed the Commission to expeditiously adopt standards protecting infants and young children in cribs, play yards, bath seats, walkers, and toddler beds. Speaking personally in my capacity as Chairman, I believe an amendment to the FFA permitting this type of flexibility for rules regarding flammability of upholstered furniture would be very helpful and may allow for expedited consideration of the proposed rules.

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Chairman Durbin, thank you again for the opportunity to testify on the Commission's ongoing efforts to address the flammability of residential upholstered furniture.

I am happy to answer any questions you may have.