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July 1, 2013

Office of the Secretary
Consumer Product Safety Commission
Room 82-
4330 East West Highway
Bethesda, MD 20814

Re: Upholstered Furniture Fire Safety Technology (Docket No. 2008-0005)

Dear Consumer Product Safety Commission,

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

On behalf of our members, we are responding to the Consumer Product Safety Commission's (CPSC's) request for comments on the Commission's proposed shift from a regulatory approach that addresses residential upholstered furniture fire deaths caused by smoldering ignition sources using bench scale models to one that relies on the use of fire barriers to address fires started by multiple types of ignition sources, including open flame. 78 Fed. Reg. 17140 (Mar 20, 2013). As discussed more fully below, retailers depend on their suppliers to establish the safety of their products and compliance with all applicable regulations. Nonetheless, information from our members suggests that the standard most recently proposed by the CPSC does not adequately reflect the risks of upholstered furniture fire (as opposed to mattress fires) and would require the unnecessary use of flame retardant chemicals, which are becoming of increasing concern to consumers. Moreover, the proposed approach conflicts with the standard that is being adopted in California pursuant to TB-117.

A. Background

On March 4, 2008, the Commission published a notice of proposed rulemaking for the flammability of residential upholstered furniture. 73 Fed. Reg. 11702 (Mar 4, 2008). The proposal was predicated on data in a petition submitted to the Commission in 1993 by the National Association of State Fire Marshals. The proposal would allow upholstered furniture to meet the safety standard using either of two approaches: (1) upholstery cover material that complied with the smoldering ignition resistance test or (2) an interior fire barrier that complied with specified smoldering and open flame ignition resistance tests. This approach would allow for increased fire safety without the need for flame

retardant chemicals. More recently, California has been in the process of updating its Technical Bulletin 117 (TB 117) to follow this approach and to build on the long-established voluntary industry standard that can be met without flame retardants.

After the CPSC's proposal's publication in 2008, the Commission conducted additional testing. According to the most recent notice, the Commission believes that "the bench scale performance did not demonstrate an adequate prediction of real furniture flammability performance, especially in the smoldering ignition tests." 78 Fed. Reg at 17141. The Commission is now asking for comments on finalizing the proposed rule with significant changes. That is, the Commission is considering switching from an approach that utilizes bench scale models to assess smoldering ignition sources to requiring the use of fire barriers in upholstered furniture.

As discussed more fully below, we do not believe that this approach is supported by the science or sound policy. Moreover, given the significant change that it represents from the 2008 proposed rule, due process and the Administrative Procedures Act mitigate in favor of re-proposing the intended regulation to allow the public sufficient opportunity to comment on the impacts and costs of the revised proposal if the Commission insists on this approach. Instead, the Commission could immediately adopt the smoldering ignition standard set forth in the 2008 proposal in order to reduce the use of flame retardant chemicals, while conducting additional research to determine whether an open flame standard is truly necessary.

B. Analysis

1. *Smolder Tests Are Appropriate for Upholstered Residential Furniture*

Smolder tests are the appropriate mechanism to establish the safety of upholstered residential furniture. Furniture fire deaths are represent a small and steadily decreasing number since they were first measured in 1980. Most deaths are currently attributed to smoldering ignition from cigarettes. As cigarette use continues to decline, we would expect this number to continue to fall as well.

Open flame ignition tests were designed for commercial furniture in high risk environments. The scope of residential upholstered furniture is broader than commercial furniture with more variation in materials and functional uses. Meeting the open flame ignition test will in most cases require the use of flame retardants and barriers. Consumer concern with flame retardants is growing – a fact that California has recognized by amending TB117 to recognize expressly the sufficiency of the smolder test. Adding barriers will significantly increase costs in many cases – an increase that will be borne by all consumers without a demonstrable increase in fire safety.

2. *CPSC's Plan To Replace the 2008 Proposal with a Single Barrier Requirement Is a Significant Change Worthy of Re-Proposal*

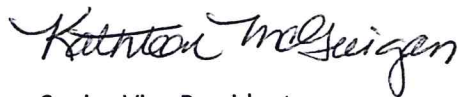
As discussed more fully above, the changes that the Commission lightly touches upon in its 2-page 2013 notice are significant amendments that would greatly impact the manufacture of upholstered furniture and set back the declining use of flame retardants significantly. For example, the use of barriers or high density foam would certainly increase the cost of furniture. Moreover, as drafted, the proposed standard could apply to a broad array of nontraditional upholstered products used in homes, and not just products traditionally considered furniture. The data upon which the CPSC relied to justify the 2008 proposal are now at least five years old and older than that in many cases. In addition, they reflect the alternative approaches permitted in the 2008 proposal. If the Commission adopts the approach that it signals in its most recent notice without a re-proposal, the public will not have had a meaningful opportunity to address the potential impacts as required by due process and the Administrative Procedures Act.

C. Conclusion

Accordingly, for the reasons set forth above, we strongly urge the Commission to reconsider the approach set forth in the 2013 notice. We recommend that the Agency either re-propose the rule in its entirety with current data to give the public an adequate opportunity to comment or at least move forward with no more than the smoldering ignition standard. This move will be consistent with current safety trends in other jurisdictions and will address consumers' concerns with chemical flame retardants. At the very least, if the Commission decides to finalize the rule, the Commission should allow no less than the one year effective date in the 2008 proposal and preferably allow the industry two years.

We appreciate the Commission's consideration of our comments. If we may be of assistance in any way, please do not hesitate to call on us.

Sincerely,



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