

October 7, 1993

Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207

RE: Petition¹ FP 93-1 for Issuance of Flammability
Standard for Upholstered Furniture

These comments on the above-referenced Petition by the National Association of State Fire Marshals (NASFM), noticed in Vol. 58, No. 151, Federal Register, p. 42301, are submitted by the Polyurethane Foam Association (PFA).¹

The Consumer Product Safety Commission (Commission) should not consider the Petition of the National Association of State Fire Marshals for the following reasons:

(1) The Petition does not comply with the requirements of 16 C.F.R. § 1051.5, in that it is vague and ambiguous and is not clear as to which regulations it requests the Commission to adopt.

(2) The Petitioner has not demonstrated any "new or changed circumstances" which warrant the Commission's consideration of the Petition.

¹ The PFA is a trade association composed of manufacturers of flexible polyurethane foam and their chemical and equipment suppliers. The PFA represents a majority of the flexible polyurethane foam manufacturers in the United States.

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(1) NASFM Petition is Vague

It is unclear which California bulletins the NASFM wants the Commission to adopt. In its April 27, 1993, letter to the NASFM, the Commission asked NASFM to "provide a citation to each California regulation, or the text of each such regulation, containing the requirements which are requested for inclusion in a Federal flammability standard for upholstered furniture." At page 1, paragraph 2, of its response dated May 20, 1993, NASFM initially asks the Commission to adopt California Technical Bulletins 133 and 117. NASFM then, however, proceeds to respond directly to the Commission's request for citations to the applicable regulations, by stating at paragraph 4 that it has enclosed two packages -- "Flammability Information Package (Jan. 1992) and a Technical Bulletin 133 Information Package (Jan. 1992) supplied by the California Bureau of Home Furnishings and Thermal Insulation ("BHF")." Furthermore, it states that "[t]he information packages contain the law, regulations, BHF technical bulletins and other documents for inclusion in the Federal flammability standard for upholstered furniture." (emphasis added). The "Flammability Information Package" contains several bulletins in addition to Technical Bulletin 117, however -- namely, Technical Bulletins 26, 106, 116, and 121. Moreover, this package has an attachment whose index contains several additional topics outside these Bulletins, such as "Flammability Law" and "Flammability Regulations," which appear to be additional statutory provisions under several titles of the California Business and Professions Code.

As a result, it is unclear whether NASFM wants adoption of only Technical Bulletins 133 and 117, or, additionally, several other Technical Bulletins, or, beyond that, other statutory provisions as well. It is also unclear whether NASFM is arguing for Cal. T.B. 133, which only applies to public occupancies, to be mandated for residential and commercial uses as well. Consequently, individuals responding to the request for comments on the Petition are unable to focus their comments on the suggested regulations to be adopted, because the breadth of the regulatory framework proposed to be adopted is unclear. This is counter to 16 C.F.R. § 1051.5(5), which states that "[a] general request for regulatory action which does not reasonably specify the type of action requested shall not be sufficient for purposes of this subsection."

For these reasons, the Commission should not consider NASFM's Petition in its present form.

(2) NASFM Petition is Not Supported by the Facts

The Petitioner has not demonstrated any new evidence of a compelling need which warrants the Commission's consideration of the Petition. The Commission must address whether there is a need to protect the public from an unreasonable risk of the occurrences of fire leading to death, personal injury or significant property damage in evaluating the Petition. According to the agency rules, the Petitioner has the burden of proof in establishing the

necessity for a standard. A thorough examination of the facts demonstrates that the Petitioner has failed to show that a need exists to protect the public from an unreasonable risk of fire occurrences.

The NASFM attempts to support its petition with fire statistics showing the number of deaths and injuries due to upholstered furniture fires in California as compared to the rest of the nation. This comparison of fires resulting in deaths and injury in California to the rest of the U.S. is hardly valid. There are many variables that must be taken into account in making such comparison, i.e., demographics, climate, methods of keeping records, average age of population and regional factors such as length of the heating season. Thus, the Commission should disregard this statistical comparison as a basis for deciding to proceed with the petition because of the numerous variables not taken into account.

Nevertheless, assuming arguendo that the NASFM statistical approach were valid, the Petition still fails to show any new or changed circumstances to warrant the Commission's consideration of the petition. Analysis of the National Fire Incident Reporting System (NFIRS) and the California Fire Incident Reporting System (CFIRS) statistics demonstrates that while California's average decrease in fire deaths per year per million population have improved, they have improved at a lower rate than the rest of the

nation. In fact, the California fire deaths as a percentage of total U.S. fire deaths did not significantly change during the period from 1980 to 1989 (see Table No. 1). The data presented by the NASFM on its face shows that the average rate of change in deaths per million people in California (0.073/year) is less than the average rate of change in deaths/million people in the rest of the United States (0.193/year) (see Table No. 2).

During the same ten-year period, the percentage of fires caused by open flame increased only three percent. The percentage of deaths caused by open flame during this same period remained the same. In California, the percentage of fires caused by open flame went from 13 percent in 1980 to 17 percent in 1989. The percentage of deaths in California changed from 7.5 percent in 1980 to 14 percent in 1989. This data clearly shows that the open flame incidence in both fires and fire related deaths and injuries is no better in California than in the rest of the United States.

WFAC is Effective

It is clear from the NFIRS statistical information on fires in the United States that, while good progress has been made in reducing fires and fire related deaths and injuries, the largest fire problem in the United States continues to be cigarette ignition. The number of fires from cigarette ignition are significantly larger than ignition from open flames. The furniture industry has addressed ignition from cigarettes through its 15 year

old voluntary program for residential upholstered furniture. In fact, in the decade analyzed by NASFM, there has been a significant reduction in the number of fire deaths and injuries associated with the cigarette ignition of residential upholstered furniture (See Table No. 1). According to the furniture industry, the UFAC program now covers 80 to 90 percent of the dollar volume of residential upholstered furniture sold in the United States. The UFAC program is more flexible than a mandatory standard and can be more easily adapted to meet changes in technology. In addition, the program has several other features which have contributed to its success:

1. It has a compliance verification program. Suppliers are required to certify to each upholstered furniture manufacturer that all of the relevant supplied materials are in compliance with the UFAC criteria. In addition, all residential upholstered furniture manufacturing participants must send all relevant UFAC materials annually to an independent third party laboratory for confirmation of compliance.

2. The technical advances in fire technology are reviewed on a regular basis by the UFAC Technical Committee. The program can be modified as appropriate to incorporate new technologies in the UFAC construction criteria.

3. UFAC has an extensive educational program for both consumer and industry sectors.

Accordingly, the reduction in residential upholstered furniture fires throughout the United States is evidence that the UFAC program is working.

PFA Supports Improved Fire Safety

The PFA has supported the adoption of California Bureau of Home Furnishings and Thermal Insulation Technical Bulletin 133 for furniture to be used in public occupancies. In March 1989, the Polyurethane Foam Association publicly endorsed the American Furniture Manufacturers Association's and the International Association of Fire Fighters' announcement of model state legislation based on Cal. T.B. 133 mandating flammability requirements for furniture used in public occupancies. PFA supported this approach for several reasons. First, California Technical Bulletin 133 is a combustibility test that addresses the composite system of furniture as an assembled unit rather than testing individual components separately. Second, cooperation between the furniture industry and the fire community would improve fire safety education and help improve furniture combustion performance. The PFA concluded that in high risk occupancies such as jails, prisons, nursing care homes, health care facilities, public auditoriums, hotels and motels, open flame ignition might pose a problem. It was also understood that the release of toxic

gas, carbon monoxide, was a serious problem in any fire. Thus, the PFA determined that the public interest required supporting Technical Bulletin 133, since it was a composite test and contained criteria for carbon monoxide and open flame. Legislation based on Cal. T.B. 133 has been adopted in three states other than California -- Illinois, Ohio and Minnesota. Several other states currently have the model bill under consideration.

The statistical data in the NASFM petition imply that the California experience of fewer fires and fire deaths and injuries was related to the imposition of both Technical Bulletin 117 and TB 133. However, the data presented by NASFM represented fires and fire deaths and injuries in residential occupancies only and for the period of 1980 to 1989. TB 133 was only adopted by California in March, 1992, thus the NASFM data could not have any relevancy whatsoever as to whether TB 133 has had any impact on fires and fire related deaths and injuries in California. While the PFA has supported the adoption of model TB 133 legislation for public occupancies in individual states, it has serious reservations about the Commission adopting TB 133 for residential upholstery. Significant differences exist between upholstered furniture made for public occupancies and upholstered furniture made for residential uses. We are unaware of any Technical Bulletin 133 type research and testing that has been performed on upholstered furniture made for residential occupancies. Furthermore, because

of its recent implementation, there is no documented evidence on the TB 133 test method in actual use.

No test method or regulation can claim to totally eliminate the possibility of fire. Furthermore, no single approach can eliminate fires. The PFA has long supported multiple approaches dealing with fire safety. For example, in addition to supporting the composite testing method of Cal. T.B. 133, PFA has supported programs that advocate the use of smoke detectors. Along with other associations and organizations, PFA has supported the use of residential sprinklers. PFA participates in Operational Life Safety's efforts to increase the use of smoke detectors and to educate the public on the effectiveness of residential sprinklers. PFA has also been a strong supporter of public education programs to increase the awareness of consumers regarding fire safety in the home. Public service announcements for television and radio were created and have been widely used by many broadcast stations.

CONCLUSION:

The UFAC program has demonstrated success in dealing with fires from cigarette ignition. The statistics on fires and fire related deaths and injuries have shown a significant decline during the 1980s. PFA is pleased at this downward trend and believes that the trend will continue as more older, non-UFAC furniture is discarded. PFA does not believe that the NASFM has fulfilled its responsibility to carry the burden of proof showing new or changed

circumstances to warrant the Commission's consideration of the
Petition.

TABLE 1

COMPARATIVE FIRE DEATH STATISTICS

NASFM Data	NFIRS & CFINS Data
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	CA Fire Death Rate	US-CA Fire Death Rate	CA pop (mill.)	CA Fire Deaths	CA Fire Death Rate	US-CA pop (mill.)	US Fire Deaths	US Fire Death Rate	US-CA Fire Deaths	US-CA Fire Death Rate	CA/US Fire Deaths	CA Rate % US Rate
1980	1.14	4.97	23.67	27	1.14	202.88	1150	5.08	1123	5.54	2.35	0.22
1981			24.29	30	1.24	205.48	1190	5.19	1160	5.65	2.52	0.24
1982			24.82	45	1.81	206.84	990	4.27	945	4.57	4.55	0.42
1983			25.36	23	0.91	208.43	860	3.68	837	4.02	2.67	0.25
1984			25.85	26	1.01	209.98	870	3.69	844	4.02	2.99	0.27
1985			26.44	27	1.02	211.48	803	3.38	776	3.67	3.36	0.30
1986			27.11	14	0.52	213.03	780	3.25	766	3.60	1.79	0.16
1987			27.78	23	0.83	214.51	710	2.93	687	3.20	3.24	0.28
1988			28.47	23	0.81	216.03	810	3.31	787	3.64	2.84	0.24
1989	0.41	3.04	29.22	12	0.41	217.60	670	2.71	658	3.02	1.79	0.15

Notes: US-CA = US less CA
 Death rates are expressed per million population

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TABLE 2

	Change In Deaths/Million From 1980 to 1989	Average Rate of Change In Deaths/Million/ Year
United States	1.93	0.193
California	0.73	0.073

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* The average rate of change was obtained by dividing the change in deaths/million by the length of the study period or 10 years, i.e., $1.93/10 = 0.193$ deaths/million/year and $0.73/10 = 0.073$ deaths/million/year.