



governmentattic.org

"Rummaging in the government's attic"

Description of document: Written responses or letters from the Consumer Product Safety Commission (CPSC) to a Congressional Committee or Committee Chair, 2012 - 2013

Requested date: 2013

Released date: 19-September-2013

Posted date: 28-September-2013

Source of document: FOIA Requester Service Center
US Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, MD 20814
Fax: 301-504-0127

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

September 19, 2013

CERTIFIED MAIL

RE: Freedom of Information Act (FOIA) Request: #13-F-00416: Request a copy of each written response or letter from the CPSC to a Congressional Committee (not a congressional office) (or Committee Chair) in calendar years 2012 and 2013 to date.

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission ("Commission"). The records from the Commission files responsive to your request have been processed and are enclosed.

We have withheld portions of the enclosed information pursuant to the FOIA Exemptions 3, and 4, 5 U.S.C. § 552(b)(3), and (b)(4), and section 6(a)(2), of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. The files contain proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding those portions that would reveal submitted proprietary correspondence with product costs and supplier details including entire pages 18 and 19.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: **FOIA APPEAL**, General Counsel, ATTN: The

Secretariat - Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408.

Processing this request, performing the file searches and preparing the information, cost the Commission \$50.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact us by letter, facsimile (301) 504-0127 or telephone (301) 504-7923 or e-mail addressed to cpsc-foia@cpsc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alberta", with a long horizontal flourish extending to the right.

Alberta E. Mills
Freedom of Information Officer
The Secretariat – Office of the Secretary
Office of the General Counsel

Enclosure



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Released 9/19/13 to
requester with
redactions

AM 9/19/13

January 13, 2012

VIA HAND DELIVERY

CONTAINS CONFIDENTIAL INFORMATION
PROTECTED BY SECTION 6, CPSA (15 U.S.C. 2055);
PROVIDED PURSUANT TO SECTION 6(a)(7), CPSA
(15 U.S.C. 2055(a)(7))

The Honorable Mark Pryor
Chairman
Subcommittee on Consumer Protection,
Product Safety, and Insurance
Committee on Commerce, Science, and Transportation
United States Senate
428 Hart Senate Office Building
Washington, DC 20150

Dear Chairman Pryor:

Thank you again for inviting Mr. Neal Cohen, Small Business Ombudsman, U.S. Consumer Product Safety Commission (CPSC), to provide testimony at the Subcommittee's December 6, 2011, hearing titled, "Contaminated Drywall: Examining the Current Health, Housing and Product Safety Issues facing Homeowners."

At the hearing, Senator Mark Warner requested that Mr. Cohen provide additional information regarding any remaining "stockpiles" of problem drywall that the CPSC has identified in the United States, as well as information on the current status of those stockpiles. Through this letter, we respectfully respond to his request.

In late January 2009, the CPSC began to look into reports of noxious odors, corrosion of metal items in homes, and reports of short-term upper respiratory irritation in new and recently renovated homes. After identifying problem drywall imported from the People's Republic of China as a potential catalyst for these problems, the Commission set forth a multi-pronged, science-based plan to examine the issue. Key elements of the plan included establishing the amount of potentially problematic drywall that was imported, where that drywall was installed, and whether any problem drywall remained in the distribution chain.

By October 2009, the Commission had mapped out many of the contours of the distribution chain. As part of this investigation, the Commission also identified a limited number

of stockpiles of remaining inventory potentially linked to the drywall used in houses where metal corrosion and other problems were reported. The ownership, locations, and amounts of the principal stockpiles known to Commission staff are as follows:

(b)(3):CPSA Section 6(a),(b)(4)

In late October 2009, CPSC staff sent each of the entities managing or controlling these stockpiles a letter, by certified mail, requesting that they “notify us immediately regarding any possible sale, disposal, or transfer, of any sort, of any portion of your stock or inventory of Chinese drywall.” A copy of this letter is attached as Exhibit 1. To date, Commission staff has not received any responses from these parties that the stockpiles have been sold, transferred, or otherwise moved out of storage facilities and into commerce.

However, in an effort to continually monitor any remaining potentially problematic drywall inventories, Commission staff recently reached out again to the entities managing or controlling known stockpiles. Attached as Exhibit 2 are copies of recent letters from (b)(3):CP
(b)(3):CPSA Section 6(a),(b)(4)

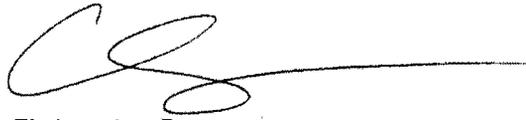
the drywall inventories they manage or control have not been released into commerce. It is our understanding from speaking with Habitat for Humanity staff in New Orleans that the stockpile under its control was destroyed according to local waste disposal laws. Commission staff obtained and retained samples of the stockpile prior to its destruction. In addition, it is the understanding of Commission staff that there are several entities that continue to retain possession of small amounts (500 pieces or less) of potentially problematic drywall. To date, Commission staff has no reason to believe that any inventory has been removed from these small stockpiles for use in new residential construction or renovations.

Finally, we note that this letter and associated attachments may contain confidential business information protected by section 6 of the Consumer Product Safety Act (CPSA), as amended (15 U.S.C. 2055). The Commission could not provide this information to the general public until staff followed all of the disclosure steps required by the statute. Pursuant to your request, however, we are respectfully providing the information pursuant to the Congressional Committee exception in section 6(a)(7) of the CPSA (15 U.S.C. 2055(a)(7)).

The Honorable Mark Pryor
January 13, 2012
Page 3

I hope this information is helpful to you. Should you or your staff have any questions or need additional information, please do not hesitate to contact me at (301) 504-7660, or by email at cday@cpsc.gov.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line that extends to the right and then loops back under the 'C'.

Christopher Day
Director
Office of Legislative Affairs

Exhibits (2)

Exhibit 1



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

OFFICE OF COMPLIANCE & FIELD OPERATIONS
Director, Defect Investigations Division
Email: dwoodard@cpsc.gov

Dean W. Woodard
Tel: 301-504-7651
Fax: 301-504-0359

VIA CERTIFIED MAIL

Re: CPSC File No. PI090017
Drywall Imports from the People's Republic of China

Dear [Sir/Madam]:

Per our prior communications, the U. S. Consumer Product Safety Commission ("Commission" or "CPSC") is an independent federal regulatory agency charged with the responsibility of protecting the public against unreasonable risks of injury and illness associated with consumer products. As you know, the Commission is investigating reports that drywall imported from the People's Republic of China and installed in homes in the United States has caused corrosion of metal components in those homes and various health problems to the occupants of the homes.

We understand your firm currently maintains a stock or inventory of such Chinese-made drywall. Given our concerns with this product and the related reported health and safety issues, pursuant to Section 27 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2076, we ask that you notify us immediately regarding any possible sale, disposal, or transfer, of any sort, of any portion of your stock or inventory of Chinese drywall.

Contact Information

Please direct any such notice to me directly by phone at 301-504-7651 or email at DWoodard@cpsc.gov. If I am not available, you may also direct any such notice to Mary Kroh, Compliance Officer, at 301-504-7886 or mkroh@cpsc.gov. Please address your correspondence to Mary Kroh's attention at the following address: Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, Room 613-15, 4330 East West Highway, Bethesda, MD 20814-4408. The Office of Compliance and Field Operations telefax number is (301) 504-0359.

Thank you for your cooperation.

Sincerely,

Dean W. Woodard, Director
Defect Investigations Division
Office of Compliance and Field Operations

Enclosures/Links:

Consumer Product Safety Act - <http://www.cpsc.gov/about/cpsia/legislation.html>
16 C.F.R. Part 1101, Information Disclosure - <http://www.cpsc.gov/ABOUT/guide.html>
Part 1115, Substantial Product Hazard Reports -
<http://www.cpsc.gov/BUSINFO/frnotices/fr06/E611758.pdf>

Exhibit 2

Office of Education, Global Outreach, &
Small Business Ombudsman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814
301 504-7651

*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!!



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

March 2, 2012

The Honorable Richard J. Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

Thank you for your letter of January 26, 2012, requesting that the U.S. Consumer Product Safety Commission (CPSC) expand its current outreach and education efforts regarding the dangers of television sets placed on unstable furniture to small children. In addition, you also request that the Commission collect additional information on the specific type and age of the television sets involved in the falls to better inform efforts to prevent future injuries.

First, let me say that I share your deep concern at the recent series of television tip-over deaths that have occurred in the State of Illinois. Since becoming Chairman of the CPSC, I have worked hard to educate the public about the dangers of television sets placed on unstable furniture – particularly in the homes of families with small children. In 2010, the Commission produced a series of video public service announcements, combined with an education campaign, that sought to graphically display the dangers of unstable televisions, as well as simple steps (such as anchoring furniture) families can take to avoid these types of tragedies.

In the wake of the tragedies in Illinois, I directed the Commission's Office of Communications to again highlight television tip-over information on the front page of our website – including links to the powerful tip-over prevention videos produced in 2010. Commission staff also conducted substantial outreach to media outlets in Chicago and around the State of Illinois to highlight tip-over dangers and spread lifesaving preventative information. We have also worked hard to get the message out through "new media" sources, and on February 16, 2012, hosted our first nationwide Twitter conversation with consumer advocates, medical professionals, and consumers on this issue. It is my understanding that information from that Twitter conversation reached hundreds of thousands of families and stakeholders.

I also addressed television tip-over hazards in a keynote address this week to more than 600 attendees at a conference hosted by the International Consumer Product Health and Safety Organization (ICPHSO). In that speech, I noted the Commission's continuing education and outreach efforts and also challenged the voluntary standards development organizations (SDOs)

The Honorable Richard J. Durbin
March 2, 2012
Page 2

that deal with furniture stability to explore new ways to strengthen the current stability standards for both children's and adult furniture. I am hopeful that this approach will yield further positive results in the near future.

The CPSC is also working hard to expand our collection of data in this area to the maximum extent possible. Attached is a Commission staff summary of the data the Commission currently collects, as well as additional information on types of additional data that we hope to collect and analyze in the near future.

Thank you again for your letter and for your continued support of CPSC and our mission to reduce deaths and injuries caused by unsafe products. Should you or your staff have any questions, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, by telephone at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in black ink that reads "Inez M. Tenenbaum". The signature is written in a cursive, flowing style.

Inez M. Tenenbaum

Attachment

CPSC Staff Responses to Questions from the Honorable Richard J. Durbin¹
TV Tip-Over Data
March 2, 2012

1. Where do child TV tip-over deaths/injuries rank in relation to the main (top 10) causes of child deaths/injuries from consumer products?

Table 1 lists the top ten product categories associated with reported fatalities of children younger than 10 years of age for 2007. CPSC staff received the highest number of fatality reports for the product categories swimming pools or spas; beds; and bathtubs or showers. Each of these product categories was associated with more than 100 fatality reports in 2007, the most recent year for which fatality reporting is complete. The majority of the reported incidents associated with the two product categories of swimming pools or spas and bathtubs or showers were fatal submersions. For the bed category, the majority of the hazards were related to unsafe sleep environments (suffocation/asphyxiation). There were 25 reported television tip-over fatalities for 2007 involving children younger than 10 years of age.

Table 1: Top 10 Product Categories Associated with Fatality Reports of Children Younger than 10 Years of Age in 2007

Product Category	2007 Fatality Reports
Swimming pools and spas	348
Beds*	210
Bathtubs and showers	104
Sofas, couches, etc.*	79
Cribs*	59
All terrain vehicles	57
Pillows (not water pillows)*	44
Bedding*	38
Mattresses*	35
Other heaters and heating systems	32
*Fatalities due to co-sleeping or unsafe sleep situations.	

Source: CPSC's NEISS, DTHS, IPII and INDP for 2007, the most recent year for which reporting is considered complete. Multiple reports may have been received for the same incidents.

For the same year, CPSC staff estimates more than 100,000 emergency department-treated injuries for seven product categories. These estimates, presented in Table 2, were produced using CPSC's National Electronic Injury Surveillance System (NEISS). The seven product categories that are associated with more than 100,000 emergency department treated injuries for children younger than 10 years of age are: beds, playground equipment, tables, toys, bicycles, floors or flooring material, and stairs or steps. The range of injuries for the product categories is very broad but the most prevalent types of injuries were cuts, fractures, contusions/abrasions, and internal organ injuries. For 2007, there were an estimated 10,000

¹ This document was prepared by CPSC staff and has not been reviewed or approved by, and may not necessarily reflect the views of, the Commission.

emergency department-treated injuries to children younger than 10 years of age associated with television tip-over incidents.

Table 2: Product Categories Associated with the Top 10 Number of Estimated Emergency Department-Treated Injuries for Children Younger than 10 Years of Age in 2007

Product Category	Estimated ED-Treated Injuries
Beds	183,500
Playground equipment	168,100
Tables (not changing, pool, or TV stands)	127,400
Toys	125,200
Bicycles	125,000
Floors or flooring materials	121,300
Stairs or steps (not folding or pull down)	117,700
Doors (non-glass)	91,300
Chairs	85,000
Child Poisonings (under five years of age)	71,500

Source: 2007 NEISS

- 2) How granular is the information we currently collect (i.e., does it record type/age of TV – CRT, LCD, etc.)? From the report, it looks like NEISS currently only has one code (572) for TVs.

Yes, there is one product code for TVs in NEISS. Each case in NEISS records information about the victim (age, gender) and injury specifics (diagnosis, body part affected, disposition). There is a short narrative that provided limited details about the hazard scenario. The product(s) involved in the incident are coded but information about specific product features is often not available.

Staff reviews narratives of cases associated with the TV product code to identify tip-over incidents. These tip-over incidents are assigned for a follow-up telephone survey to gather additional details about the products involved and the hazard scenarios. The motivation for this telephone tip-over study is to examine why and what types of televisions are falling on children. Staff developed the survey in five sections: contact/general questions, television tip-over scenario questions, television specific questions, television placement/mounting questions, and furniture associated with the television questions (if applicable). This survey is on-going. Staff will analyze and write a report once there are a sufficient number of completed surveys to project estimates nationally.

Staff also reviews incoming reported incidents for television tip-over fatalities. Television tip-over fatalities are assigned to our field investigators to collect the information that is available about the hazard scenario and the products involved but details about the televisions are often very limited. On average, CSPC staff is aware of and assigns about two such incidents a month. Staff analyzes and uses this information in the annual tip-over report.

- 3) Have we seen (or do we expect) any decrease in deaths/injuries based on the industry migration away from CRT TVs to plasma/LCD TV?

This is something to be examined using the television tip-over study when there is enough data. The survey has television questions such as type (CRT, LCD, etc.), screen size, dimensions, age, brand, and other characteristics. There are also questions about the placement or mounting of the television, victim interactions with the television, and the involvement of furniture. We are not able to predict at this time whether we should expect an increase or decrease in these incidents in the future.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

March 15, 2012

The Honorable Claire McCaskill
Chairman
Subcommittee on Contracting Oversight
Committee on Homeland Security and
Governmental Affairs
United States Senate
613B Hart Senate Office Building
Washington, DC 20510

The Honorable Rob Portman
Ranking Member
Subcommittee on Contracting Oversight
Committee on Homeland Security and
Governmental Affairs
United States Senate
613B Hart Senate Office Building
Washington, DC 20510

Dear Chairman McCaskill and Ranking Member Portman:

Thank you for your letter of February 28, 2012, requesting information regarding the U.S. Consumer Product Safety Commission's "contracts for the acquisition of public relations, publicity, advertising, communications, or similar services" awarded on or after October 1, 2008. As specified in your letter, attached please find a spreadsheet detailing all contracts executed by the Commission during the requested period for those services.

Should you or your staff have any questions, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, by telephone at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in black ink, appearing to read "Inez Tenenbaum".

Inez M. Tenenbaum

Attachment (Excel Spreadsheet)

Contract No.	Date of Contract Award	Contractor Name	Subcontractor Name(s)	Type of Competition	Base and Options Value	Obligated Amount	Contract Scope	Agency Initiative or Policy
CPSC-D-09-0001/0017	1/24/2012	CACI INC	N/A	Full and Open Competition	N/A	\$20,299.00	Toy safety video	Consumer awareness messages on holiday toy shopping safety
RFQ	3/13/2012	Unknown				\$900,000	Public Relations Campaign	Pool Safety Campaign (statutorily required under P.L. 110-140)

Contract No.	Date of Contract Award	Contractor Name	Subcontractor Name(s)	Type of Competition	Base and Options Value	Obligated Amount	Contract Scope	Agency Initiative or Policy
CPSC-F-11-0033	2/28/2011	PR NEWSWIRE	N/A	Full and Open Competition	\$55,280.00	\$10,500.00	News Monitoring Service	Measures consumer awareness of various safety campaigns
CPSC-F-11-0006/0005	6/24/2011	Program Support Center DHHS	Stratacomm LLC	Full and Open Competition	N/A	\$310,500.00	CPSC Membership Drive	Consumer awareness, hard-to-reach populations
CPSC-D-08-0002/0024	1/13/2011	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$6,071.70	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0025	2/23/2011	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$2,947.50	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0026	4/11/2011	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$1,650.60	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-09-0001/0011	4/11/2011	CACI INC.	N/A	Full and Open Competition	N/A	\$39,834.00	Video Monitoring Services	Consumer Safety Awareness (saferproducts.gov)
CPSC-I-10-0010/0002	7/12/2011	SAFE KIDS WORLDWIDE	N/A	Full and Open Competition	\$380,000.00	\$380,000.00	Training and Education Programs	Pool Safety Campaign (statutorily required under P.L. 110-140)
CPSC-D-08-0002/0027	6/16/2011	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$1,227.82	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-F-11-0006/0004	6/21/2011	Program Support Center DHHS	Synthesis Professional	Full and Open Competition	N/A	\$124,200.00	Survey	Measures consumer awareness of various safety campaigns
CPSC-D-09-0001/0012	6/27/2011	CACI INC.	N/A	Full and Open Competition	N/A	\$39,834.00	Video Production Services	Consumer awareness messages on fireworks safety/new testing lab
CPSC-D-08-0004/0009	8/3/2011	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$30,996.00	Distribution and Translation Services	Consumer Safety Awareness
CPSC-I-09-0012/0007	12/6/2010	GSA	Omni Studio	Contract Modification	N/A	\$6,396.48	Splash and Splash Project	Pool Safety Campaign (statutorily required under P.L. 110-140)
CPSC-D-08-0002/0028	7/7/2011	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$3,339.10	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-I-09-0012/0008	7/13/2011	GSA	Widmeyer	Contract Modification		\$42,000.00	GSA contract services fee	Pool Safety Campaign (statutorily required under P.L. 110-140)
CPSC-F-10-0016/0018	8/19/2011	Dept. of Interior (DOI)	The Ad Store	Exercised Option Year	N/A	\$19,081.95	Graphic Layout and Design	Consumer outreach and awareness on various campaigns
CPSC-B-10-0018/0002	9/21/2011	GLOBAL LINK LANGUAGE	N/A	Competed under SAP	N/A	\$4,400.00	Translation Services	Minority Outreach
CPSC-D-09-0001/0014	9/22/2011	CACI INC.	N/A	Full and Open Competition	N/A	\$39,834.00	Video Production Services	Consumer awareness messages on product safety (general)
CPSC-D-08-0004/0010	8/26/2011	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$11,000.00	Distribution and Translation Services - Spanish	Minority Outreach
CPSC-I-09-0012/0009	9/8/2011	GSA	Widmeyer	Contract Modification		\$21,000.00	GSA Contract Services Fee	Pool Safety Campaign (statutorily required under P.L. 110-140)
CPSC-D-09-0001/0015	9/22/2011	CACI INC.	N/A	Full and Open Competition	N/A	\$19,917.00	Video Production Services	Consumer awareness messages on magnet dangers
C1538551	9/7/2011	Government Printing Office (GPO)	N/A	N/A		\$43,000.00	Publication Printing	Consumer outreach and awareness on various campaigns
CPSC-D-09-0001/0016	9/22/2011	CACI INC.	N/A	Full and Open Competition	N/A	\$49,944.00	Video Production Services	Distribution of saferproducts.gov public service announcement
CPSC-D-09-0001/0013	9/12/2011	CACI INC.	N/A	Full and Open Competition	N/A	\$19,917.00	Video Production Services	Consumer awareness messages on mattress fire prevention

Contract No.	Date of Contract Award	Contractor Name	Subcontractor Name(s)	Type of Competition	Base and Options Value	Obligated Amount	Contract Scope	Agency Initiative or Policy
CPSC-8-10-0018/0001	9/29/2010	GLOBAL LINK LANGUAGE	N/A	Competed under SAP	N/A	\$3,838.46	Translation Services	Minority Outreach
CPSC-D-08-0002/0016	12/4/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$5,795.00	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0018	2/23/2010	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$2,875.00	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0017	2/23/2010	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$2,739.20	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0019	3/23/2010	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$8,262.00	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0020	5/10/2010	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$2,803.53	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0021	6/15/2010	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	12,009.68	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0022	8/4/2010	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$5,444.69	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0023	9/27/2010	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$3,620.17	Video Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0004/0006	8/31/2010	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$30,771.00	Distribution and Translation Services	Distribution of safety messages on various issues
CPSC-D-08-0004/0007	9/27/2010	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$6,875.00	Distribution and Translation Services	Minority Outreach
CPSC-D-08-0004/0008	9/30/2010	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$3,300.00	Distribution and Translation Services	Minority Outreach
CPSC-D-09-0001/0006	1/19/2010	CACI INC	N/A	Full and Open Competition	N/A	\$19,535.00	Video News Release	Consumer awareness messages on recalled stroller
CPSC-D-09-0001/0007	3/16/2010	CACI INC	N/A	Full and Open Competition	N/A	\$89,052.00	Video Production Services	Consumer awareness messages on Pool Safety Campaign training videos
CPSC-D-09-0001/0008	7/7/2010	CACI INC	N/A	Full and Open Competition	N/A	\$78,140.00	Video News Releases (four)	Consumer awareness messages on various issues including fireworks and toy safety
CPSC-D-09-0001/0009	9/28/2010	CACI INC	N/A	Full and Open Competition	N/A	\$19,535.00	Production/Distribution of Video News Releases	Consumer awareness messages on TV/furniture tipover
CPSC-D-09-0001/0010	9/27/2010	CACI INC	N/A	Full and Open Competition	N/A	\$19,535.00	Satellite Media Tour	Minority Outreach
CPSC-4-09-0012/0004	9/28/2010	GSA	Widmeyer	Full and Open Competition	N/A	\$561,999.93	Public Relations Campaign	Pool Safety Campaign (statutorily required under P.L. 110-140)
CPSC-4-10-0016/0005	7/14/2010	Dept. of Interior (DOI)	The Ad Store	Full and Open Competition	N/A	\$18,900.00	Graphic Design and Layout	Consumer awareness messages on various safety issues
CPSC-4-10-0016/0012	8/2/2010	Dept. of Interior (DOI)	The Ad Store	Full and Open Competition	N/A	\$5,329.44	Develop CPSC Logo	Consumer Safety Awareness
CPSC-5-10-0063	6/16/2010	THE FANS	N/A	Not Competitive Under SAP	N/A	\$8,460.00	Graphic Design/Printing Hand Fans	Minority Outreach
CPSC-5-10-0084	8/3/2010	CBS OUTDOOR	N/A	Not Competitive	N/A	\$100.00	WMATA Dioramas	Pool Safety Campaign (statutorily required under P.L. 110-140)
CPSC-5-10-0111	9/3/2010	OMNISTUDIO	N/A	Not Competitive Under SAP	N/A	\$4,823.00	Printing	Pool Safety Campaign (statutorily required under P.L. 110-140)

Contract No.	Date of Contract Award	Contractor Name	Subcontractor Name(s)	Type of Competition	Base and Options Value	Obligated Amount	Contract Scope	Agency Initiative or Policy
CPSC-D-08-0002/0005	10/9/2008	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$572.00	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0006	10/28/2008	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$5,038.09	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0004/0002	10/28/2008	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$2,500.00	Distribution and Translation Services	Minority Outreach
CPSC-D-08-0002/0007	12/8/2008	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$493.15	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-09-0001/0001	9/12/2009	CACI INC.	N/A	Full and Open Competition	\$835,044.00	\$19,535.00	Video News Release	Consumer awareness messages on fire (holiday decorations)
CPSC-D-08-0002/0008	2/10/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$2,945.80	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0009	2/23/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$2,217.00	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0004/0003	7/28/2009	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$2,500.00	Distribution and Translation Services	Minority Outreach
CPSC-D-09-0001/0002	3/24/2009	CACI INC.	N/A	Full and Open Competition	N/A	\$19,535.00	Video News Release	Consumer awareness messages on TV/furniture tipover incidents
CPSC-D-09-0001/0003	4/2/2009	CACI INC.	N/A	Full and Open Competition	N/A	\$19,535.00	Video News Release	Consumer awareness messages on recalled highchair
CPSC-D-08-0002/0010	4/8/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$1,289.43	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0011	5/27/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$2,919.10	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0012	6/16/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$1,572.70	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-F-09-0095	7/14/2009	PROMOTIONS PLUS INC.	N/A	Full and Open Competition	N/A	\$7,200.00	Computer Mouse Pads	Resale Store Campaign
CPSC-S-09-0054	7/14/2009	DIEGO J VEGA	N/A	N/A Below Micro	N/A	\$740.40	CPSC handbook spanish trans	Minority Outreach
CPSC-F-09-0098	7/20/2009	4IMPRINT INC	N/A	Full and Open Competition	N/A	\$17,175.00	Cotton Tote Bag	Resale Store Campaign
CPSC-D-08-0004/0004	8/4/2009	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$27,000.00	Distribution and Translation Services	Consumer awareness messages on various safety issues
CPSC-D-08-0004/0005	8/12/2009	PR NEWSWIRE	N/A	Full and Open Competition	N/A	\$1,500.00	Distribution and Translation Services	Minority Outreach
CPSC-D-09-0001/0004	9/2/2009	CACI INC.	N/A	Full and Open Competition	N/A	\$19,535.00	Video News Release	Consumer awareness messages on drywall
C1531610	9/10/2009	Government Printing Office (GPO)			N/A	\$15,000.00	Publication Printing	Consumer awareness publications on various subjects
CPSC-D-08-0002/0014	9/10/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$5,067.22	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-D-09-0001/0005	9/12/2009	CACI INC.	N/A	Full and Open Competition	N/A	\$39,070.00	Video News Release	Consumer awareness messages on window cords (strangulation) and drywall
CPSC-D-08-0002/0015	9/25/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$1,846.14	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns
CPSC-I-09-0012/0003	9/28/2009	GSA	Widmeyer	Full and Open Competition	N/A	\$3,595,282.00	Public relations campaign	Pool Safety Campaign (statutorily required under P.L. 110-140)
CPSC-I-09-0012/0004	9/28/2009	GSA	Omni Studio	Full and Open Competition	N/A	\$188,162.23	Interactive website	Pool Safety Campaign (statutorily required under P.L. 110-140)
CPSC-I-09-0012/0005	9/28/2009	GSA	PR Newswire	Full and Open Competition	N/A	\$10,466.00	Print monitoring	Measures consumer awareness of various safety campaigns
CPSC-D-08-0002/0013	8/17/2009	VIDEO MONITORING SVS AM	N/A	Full and Open Competition	N/A	\$553.65	Broadcast Monitoring Services	Measures consumer awareness of various safety campaigns



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

May 17, 2012

The Honorable Richard J. Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

Thank you for your letter of May 10, 2012, requesting that the U.S. Consumer Product Safety Commission (CPSC) accelerate efforts to finalize the proposed rule setting flammability standards for residential upholstered furniture.

I share your concern about the use of potentially hazardous chemicals in any consumer product. While the U.S. Environmental Protection Agency (EPA) has primary jurisdiction over flame retardant (FR) chemicals under the Toxic Substances Control Act (TSCA), CPSC staff has long been mindful of the concerns expressed about FR chemicals used in fabric covers and interior filling materials. It is for that very reason that the Commission's 2008 proposed rule on upholstered furniture flammability focused on performance standards that do not require manufacturers or importers to use any FR chemical additives in order to achieve compliance.¹

In response to the proposal, CPSC received approximately 85 comments from interested parties regarding the draft furniture flammability rule. Many of these comments contained detailed technical comments and questions, and CPSC staff has been working diligently, along with other partner agencies such as the National Institute of Standards and Technology (NIST), to address these questions and finalize the rule pursuant to the rulemaking requirements of the Consumer Product Safety Act (CPSA), as amended, and the Administrative Procedure Act (APA).

The comments raised questions regarding the proposed flammability test methods detailed in the proposed rule. Specifically, several comments requested more detailed specifications for the standardized materials, such as polyurethane foam filling, which would be

¹ The CPSC has emphasized performance-based flammability standards for many years. For example, the Commission's 2006 final flammability rule for mattresses and mattress sets also contains a performance-based standard that does not require the use of FR chemicals. 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.

The Honorable Richard J. Durbin

May 17, 2012

Page 2

used in conjunction with the proposed tests. To address these concerns, CPSC staff has been working with NIST to develop foam standard reference material (SRM). It is my understanding that NIST's project to develop test foam SRM will be completed this year. Once the foam SRM is procured, CPSC staff will then complete its validation testing and analyses on an expedited basis, and present the final rule to the Commission for consideration as soon as possible.

In the interest of full transparency, I also directed CPSC staff to finalize and clear for public release the staff report titled "Upholstered Furniture Full Scale Chair Tests – Open Flame Ignition Results and Analysis" that was referenced in your letter. A copy of that report is attached, and will also be posted for public review on the Commission's website.

Thank you again for your letter and for your continued support of CPSC and our mission to reduce deaths and injuries caused by unsafe products. Should you or your staff have any questions, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, by telephone at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in black ink, reading "Inez M. Tenenbaum". The signature is written in a cursive style with a large, sweeping initial "I".

Inez M. Tenenbaum

Attachment



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

Memorandum

Date: May 9, 2012

TO : Dale R. Ray, Project Manager, Upholstered Furniture Project

THROUGH: George A. Borlase
Associate Executive Director, Directorate for Engineering Sciences

Patricia K. Adair
Director, Division of Combustion and Fire Sciences

FROM : Shivani Mehta
Fire Protection Engineer, Division of Combustion and Fire Sciences

SUBJECT : Upholstered Furniture Full Scale Chair Tests – Open Flame Ignition Results and Analysis.

1 BACKGROUND

The U.S. Consumer Product Safety Commission (CPSC) proposed a flammability standard for residential upholstered furniture under the Flammable Fabrics Act (FFA).¹ The proposed standard establishes performance requirements to reduce the likelihood of smoldering-induced ignition of upholstered furniture. Manufacturers of upholstered furniture could choose one of two possible methods for compliance: (1) use cover materials that are sufficiently smolder resistant to meet the specified cigarette ignition performance test, *i.e.*, “Type I” furniture; or (2) incorporate fire barriers between the cover fabric and interior filling materials that meet smoldering and small open-flame resistance tests, *i.e.*, “Type II” furniture. The proposed standard also details labeling requirements for upholstered furniture. The proposed rule would require manufacturers of upholstered furniture to certify compliance with the standard and to comply with certain record-keeping requirements.

In developing the proposed flammability standard to address smoldering ignition of residential upholstered furniture, CPSC staff considered the available hazard information and existing standards development research, together with the latest CPSC test results and technical information developed by other organizations. Economic, health, and environmental factors were also considered.

The proposed standard addresses resistance to smoldering ignition and limited fire growth by means of bench-scale performance tests for cover fabrics or, alternatively, for fire barriers. Cover fabrics must meet smoldering ignition-resistance requirements. If fire barriers are chosen as the means of compliance, they must meet both small open-flame and smoldering ignition-resistance requirements. The proposal adapts elements and variations

¹ 73 F.R. 11702. “16 CFR Part 1634, Standard for the Flammability of Residential Upholstered Furniture; Proposed Rule” March 4, 2008.

of existing standards, including California Technical Bulletin 117,² ASTM E-1353³ (tests from the Upholstered Furniture Action Council (UFAC) industry-consensus voluntary guidelines), and United Kingdom regulations (based on British Standard BS-5852⁴).

CPSC staff is performing bench-scale and full-scale tests to assess the potential effectiveness and benefits of the proposed standard. Testing will include an evaluation of Type I (smolder-resistance of cover fabrics) and Type II (smolder- and small open-flame resistance of fire barriers) compliant upholstered furniture. This report presents staff's evaluation of open-flame ignition resistance of full-scale, Type II upholstered chairs.

The proposed standard does not require full-scale tests for compliance of any materials. The objective of conducting full-scale tests was to characterize the performance of proposed bench-scale tests as a reliable predictor of full-scale furniture fire performance. Specifically, the purpose of the testing is to evaluate the effectiveness of the fire barrier for chairs of different fabrics and foams, as measured by the peak heat release rate and the time to reach the peak heat release.

2 TEST DESCRIPTION

Flammability performance of full-scale furniture constructed with Type II barriers was compared with flammability performance of furniture constructed without fire barriers. Since there are no standard test procedures or pass/fail criteria for fire barriers in full-scale furniture, the CPSC tasked the National Institute of Standards and Technology (NIST) to aid in developing a test protocol and to perform the tests at the NIST Large Fire Laboratory (LFL).

2.1 Test Room

An ISO 9705-⁵compliant room, as shown in Figure 1, was constructed and instrumented. An ISO 9705-size room is typically used when evaluating the heat release rate (HRR) of upholstered furniture.

- The wood-stud constructed walls were covered with two layers of Type C gypsum wallboard on the interior surface. The wallboard paper covering was burned off before testing because the burning paper could generate a sharp HRR spike that would interfere with the test furniture heat release data.
- A piece of Durock^{®6} was placed in a catch pan under the test specimen to collect any debris during testing.
- A heat flux gauge was placed in the middle of the room at floor level, pointing up toward the ceiling.

² CA TB 117, Test Procedures and Apparatus for Testing the Flame Retardance of Resilient Filling Materials Used in Upholstered Furniture. 2000.

³ ASTM E1353, Standard Test Methods for Cigarette Ignition Resistance of Components of Upholstered Furniture.

⁴ BS-5852, Methods of test for assessment of the ignitability of upholstered seating by smouldering and flaming ignition sources. 1990.

⁵ ISO 9705:1993, Fire tests - Full-Scale Room Test for Surface Products.

⁶ Durock[®] is a cement board.

- Two thermocouple (TC) trees were placed in the room to measure the vertical temperature gradients at two different locations. Each tree consisted of eight thermocouples positioned at eight heights, including one inch from the ceiling and at seven, 1-foot intervals from the ceiling. One tree was located near the chair and the other in the front of the room, near the doorway.
- Carbon monoxide (CO) and carbon dioxide (CO₂) sensors were located directly outside the room at door height and were used to measure CO and CO₂ levels in the upper gas layer in the room.
- Two paper signs were located at 48 and 72 inches above the floor, one at standing height and one at seated height, to note the rate of smoke layer growth in the room by observing loss of visibility of the paper signs when viewed from the doorway.
- Video cameras were placed at four locations: two cameras were focused on the chair seat, one on a side arm and one under the chair.

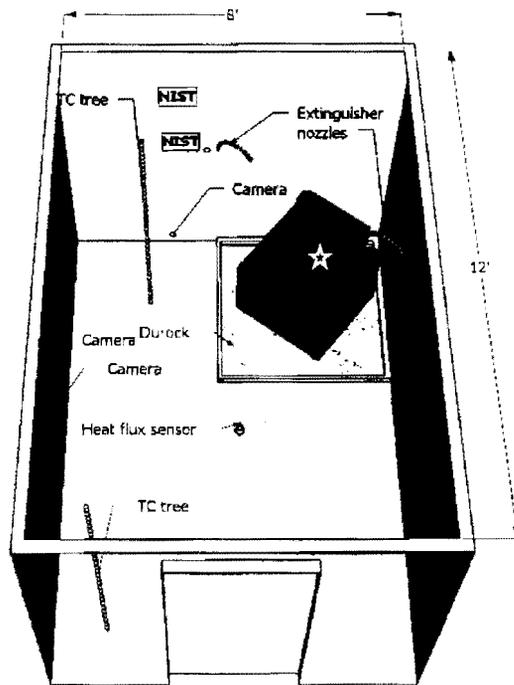


Figure 1. Schematic of ISO Room

2.2 Test Procedure

The sample chairs were conditioned at $21 \pm 3^\circ\text{C}$ ($70 \pm 5^\circ\text{F}$) and at a relative humidity of between 50 percent and 66 percent for at least 48 hours at the NIST LFL. After conditioning and within 10 minutes of ignition start time, a sample chair was placed on the Durock® board in the far right corner of the ISO 9705 room for the tests, as shown in Figure 1.

A 240 mm butane flame⁷ was applied at in the center of the crevice of the seat and back cushion for 70 ± 1 seconds (see star on Figure 1). The heat release rate data were observed in real time on an overhead monitor. The test was allowed to continue until the peak heat release rate (PHRR) was observed. Time to melt dripping,⁸ smoke obscuration, and full sample involvement in the fire were visually observed and annotated while tests were being conducted.

Sixty-four chairs were tested in this evaluation. The chairs were constructed with different combinations of a fire barrier, foams, and cover fabrics to characterize their flammability performance, in accordance with a statistical plan developed by the CPSC Directorate for Epidemiology staff. A description of the materials and combinations is detailed in the next section of this report.

⁷ This is the same ignition source specified in the proposed standard to test mock-ups with barriers.

⁸ In this report, melt dripping refers to the melted foam dripping as a liquid.

3 DESCRIPTION OF TEST SAMPLES

The chairs used in this evaluation were made to order based on CPSC staff specifications for fabrics, foams, and a fire-barrier installed on a basic wooden frame. The materials, chosen on the basis of previous bench-scale testing by CPSC Directorate for Laboratory Sciences (LS), were all commercially available and were purchased by the furniture manufacturer.

3.1 Test Samples

CPSC contracted with a residential furniture manufacturer to procure materials for and assemble 64 chairs in 16 combinations. The materials that make up the 16 combinations are listed in Table 1. A schematic of the chairs is shown in Figure 2, and a partially upholstered chair is shown in Figure 3. The chair manufacturer obtained the materials as specified above. The chairs were assembled with either nonfire-retardant (SPUF) or fire-retardant (FR) foam, covered with either a fire barrier or typical polyester batting, and the specified cover fabric.

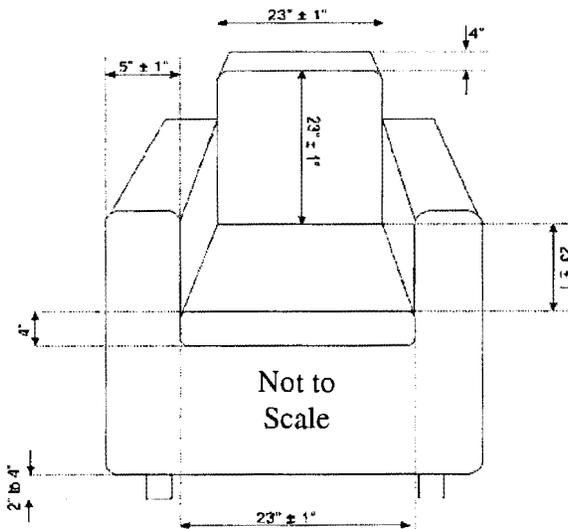


Figure 2. Schematic of Sample Chair



Figure 3. Prototype of Partially Upholstered Chair

Table 1. Chair Material Combinations for Full-Scale, Open-Flame Testing

Combination	Foam	Polyester batting	Barrier	Cover Fabric	Number of chairs
1	SPUF		✓	1a	4
2	SPUF	✓		1a	4
3	FR		✓	1a	4
4	FR	✓		1a	4
5	SPUF		✓	1b	4
6	SPUF	✓		1b	4
7	FR		✓	1b	4
8	FR	✓		1b	4
9	SPUF		✓	2a	4
10	SPUF	✓		2a	4
11	FR		✓	2a	4
12	FR	✓		2a	4
13	SPUF		✓	2b	4
14	SPUF	✓		2b	4
15	FR		✓	2b	4
16	FR	✓		2b	4

3.2 Cover fabrics

Four groups of 16 test chairs were constructed with four different cover fabrics as described in Table 2. Fabrics 1a and 1b were shown to be highly smolder prone, while Fabrics 2a and 2b were shown to exhibit inconsistent smolder resistance, as determined in prior testing conducted at the CPSC Laboratory.⁹ The fabrics were selected because of these smoldering characteristics.

Table 2. Cover Fabrics for Full-Scale Tests

Fabric Code	Fiber	Weight (oz/yd ²)	Weave
1a	100% cotton	8	Twill
1b	100% cotton	20	twill (denim)
2a	100% cotton	7	Jacquard
2b	100% cotton	8	Matelasse

3.3 Foam

Full-scale chairs were constructed with commercially available foams, including SPUF and FR foam to observe any difference in flammability behavior when a barrier was used. The

⁹ In the bench-scale tests, these fabrics were neither always smoldering nor never smoldering when exposed to a burning cigarette.

batch of foam used in this test series was not tested in mock-ups prior to the tests. The foams were specified from the foam manufacturer as follows:

Non-FR SPUF Foam:

- Density: $1.8 \pm 0.1 \text{ lb/ft}^3$;
- Indentation Load Deflection (ILD): 25% to 30%;
- Air Permeability: Greater than $4.0 \text{ ft}^3/\text{min}$; and
- No flame-retardant chemical treatment, as determined by post production chemical analysis.

FR foam was specified as foam that meets California Technical Bulletin 117 (TB 117) requirements.

3.4 Fire-Barrier System

The purpose of the open-flame tests is to evaluate the performance of fire barriers. A series of tests conducted by CPSC Directorate for Laboratory Sciences staff identified a fire-barrier system consisting of a combination of polyester batting over a commercially available fire barrier, which met the requirements for the proposed Type II tests. **Error! Bookmark not defined.** This fire-barrier system was used for the full-scale testing.

- The fire barrier was a needle-punched sheet barrier containing 47 percent fiberglass, 50 percent modacrylic and 3 percent polyester fibers.
- The 100% polyester batting was nominally 4 oz/yd^2 , 0.375" thick, nonwoven construction.

3.5 Polyester Batting

The chair design was intended to represent conventional residential furniture as found in the market. CPSC staff has been advised by manufacturers that it is common practice to place a thin layer of polyester batting between the foam cushion and cover fabric. The 100% polyester batting was nominally 7 oz/yd^2 , 0.75 inch thick, nonwoven.

4 DATA AND OBSERVATIONS

During the tests, specific events in each test were observed and noted. Heat flux was measured in the center of the room, and CO and CO₂ levels were recorded from the effluent gases in the exhaust hood. Additionally, flame spread across the cushions, melt dripping, pool fires, smoke layer, and full involvement of the chair were observed during the tests. Thermocouple trees located in the room measured temperature, and HRR was also measured via oxygen consumption calorimetry in the hood.

4.1 Heat Release Rate Data

Heat release rate (HRR) is used to describe quantitatively the size of a fire. It is the rate at which the combustion process produces heat and is a driving force in the spread of fire. The peak HRR (PHRR) indicates the point at which the fire produces the most heat (*i.e.*, the instantaneous largest size of the fire). The time to the PHRR indicates how fast the fire has grown and is considered an important parameter of fire growth characterization.

The HRR was measured in the effluent from the room, using oxygen consumption calorimetry. Plots of all HRR data from all 64 tests are detailed in Appendix A. An example of an HRR progression is shown in Figure 4. As seen in the Figure 4 plot, the burn sequence featured two peaks in the heat release profile. The first peak occurred when the soft materials (cushions, fabric, and batting on arms) were burning intensely. The second peak was observed once the wood frame was fully involved in the fire and much of the upholstery materials were consumed. The proposed standard addresses the performance of the soft materials only; the contribution of upholstery materials has little effect on the second peak. Thus, the first PHRR value and time to this PHRR will be examined as the principal measures of effectiveness of the proposed standard and will be closely examined in this report

Figure 5 shows the value of the first PHRR for each of the fires involving the 64 chair samples. Figure 6 shows the time at which these PHRR occurred for each of the 64 chairs. In some cases, the first peak was not well defined; so an average was taken in the area of the peak in the data to account for uncertainty in the exact PHRR. The fires were suppressed with water after the second peak was reached, which caused the heat released to drop quickly within the test room.

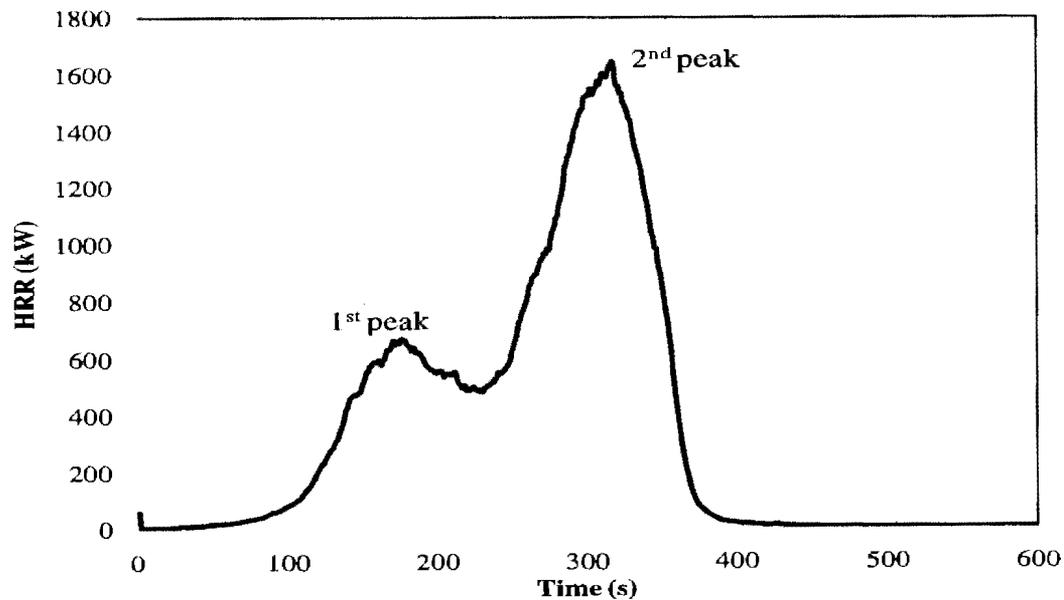


Figure 4. Heat Release Rate Curve Demonstrating Two “Peaks”

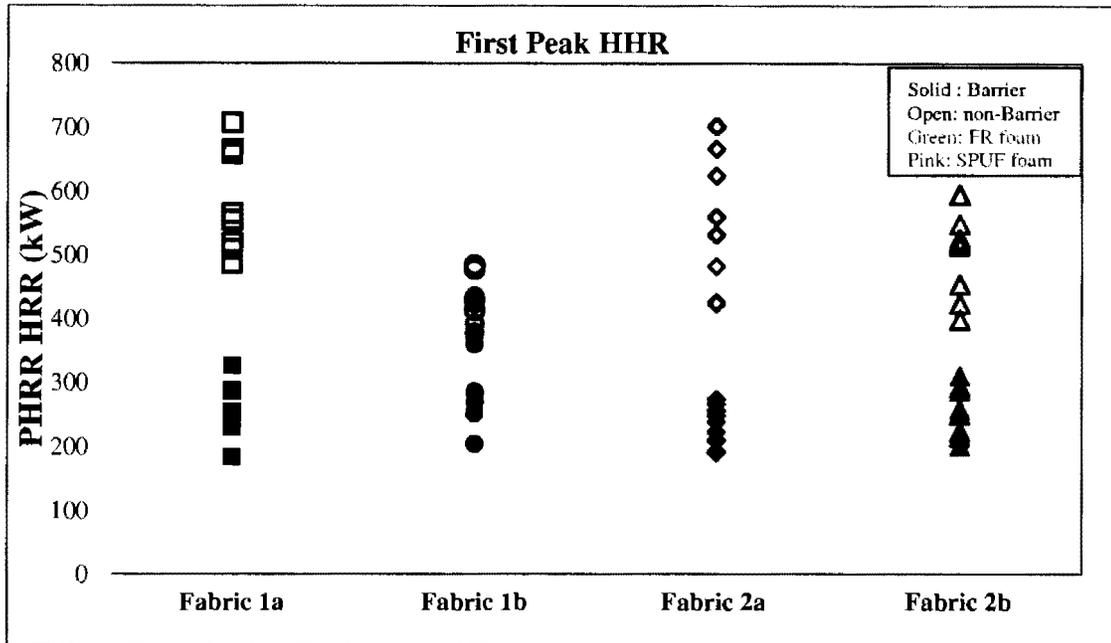


Figure 5. First Peak Heat Release Rates for All 64 Tests, by Fabric

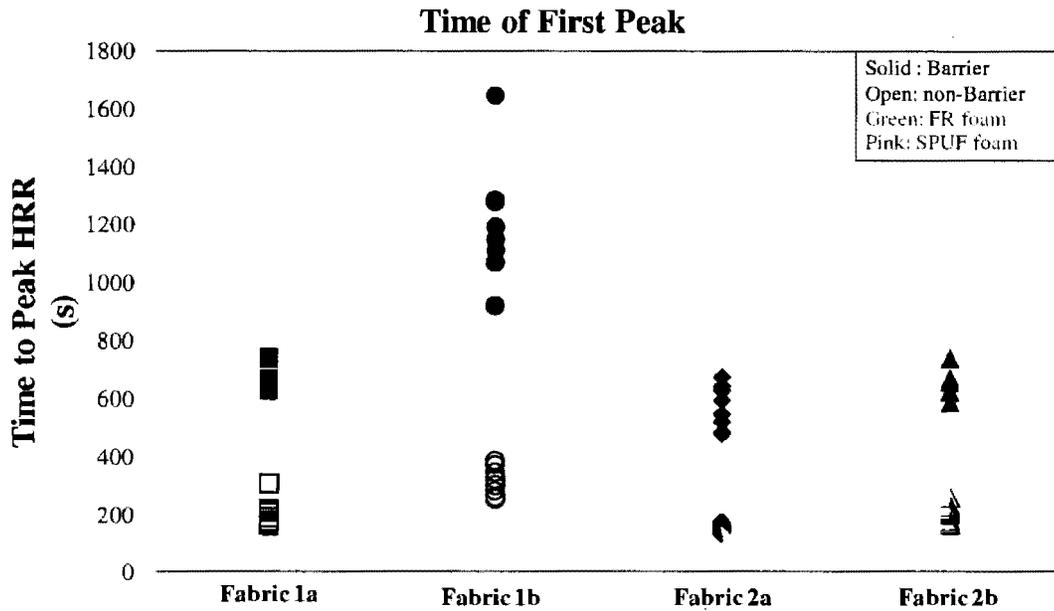


Figure 6. Time to First Peak Heat Release Rate for All 64 tests, by Fabric

4.2 Temperature Data

Temperatures were recorded at two locations to characterize the convective heat transfer from a burning chair to the test room. The temperature distributions along the thermocouple trees indicate the growth of the hot layer and provide insight into tenability for occupants, among other useful information.

In this test series, temperatures were recorded near the door and near the chair, at eight heights. As expected, the thermocouple tree data shows a vertical temperature gradient, as illustrated by the typical profiles depicted in Figures 7 and 8. High temperature smoke was produced, which rose to form a hot upper layer and a cool lower layer from which fresh air was entrained to feed the fire. The upper layer temperatures followed the same profile with respect to time as the HRR; there was a sharp rise, followed by a dip, and then another sharp rise.

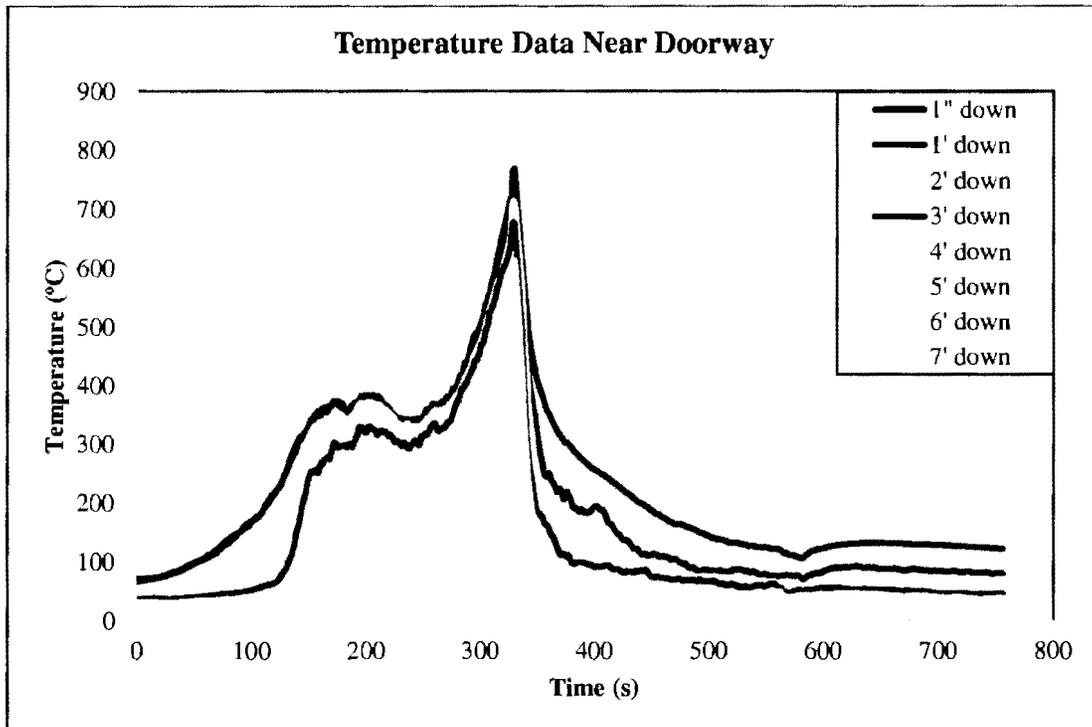


Figure 7. Typical temperature profile near doorway, measured down from the ceiling

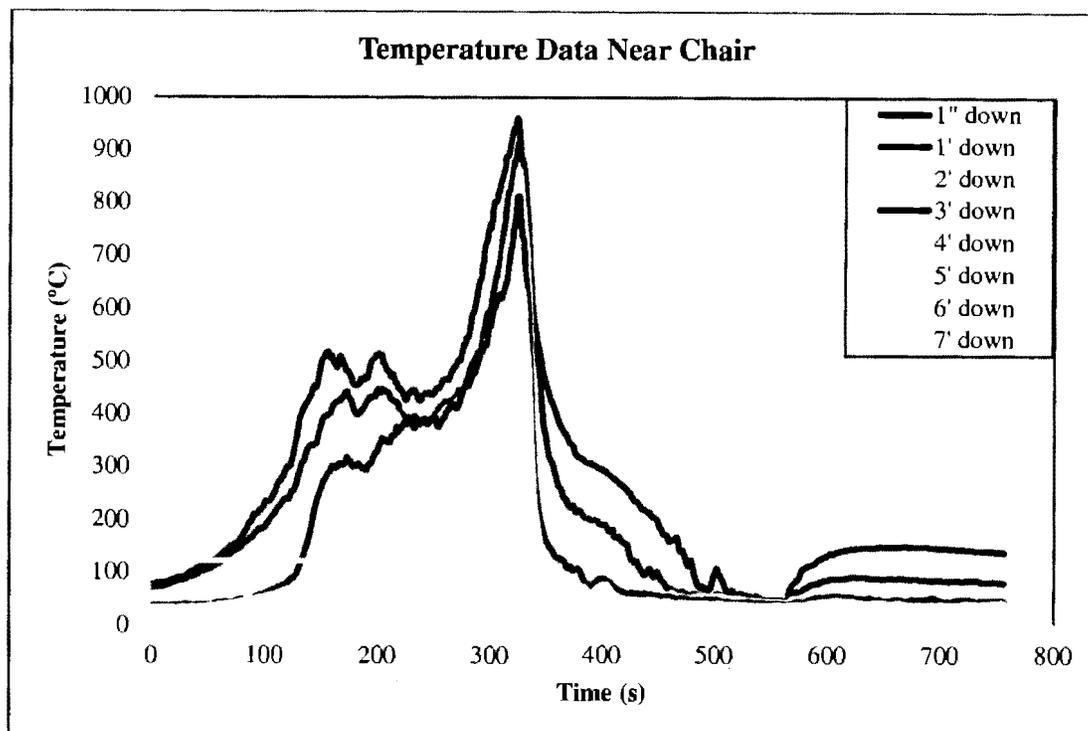


Figure 8. Typical temperature gradient near chair, measured down from ceiling

4.3 Observations

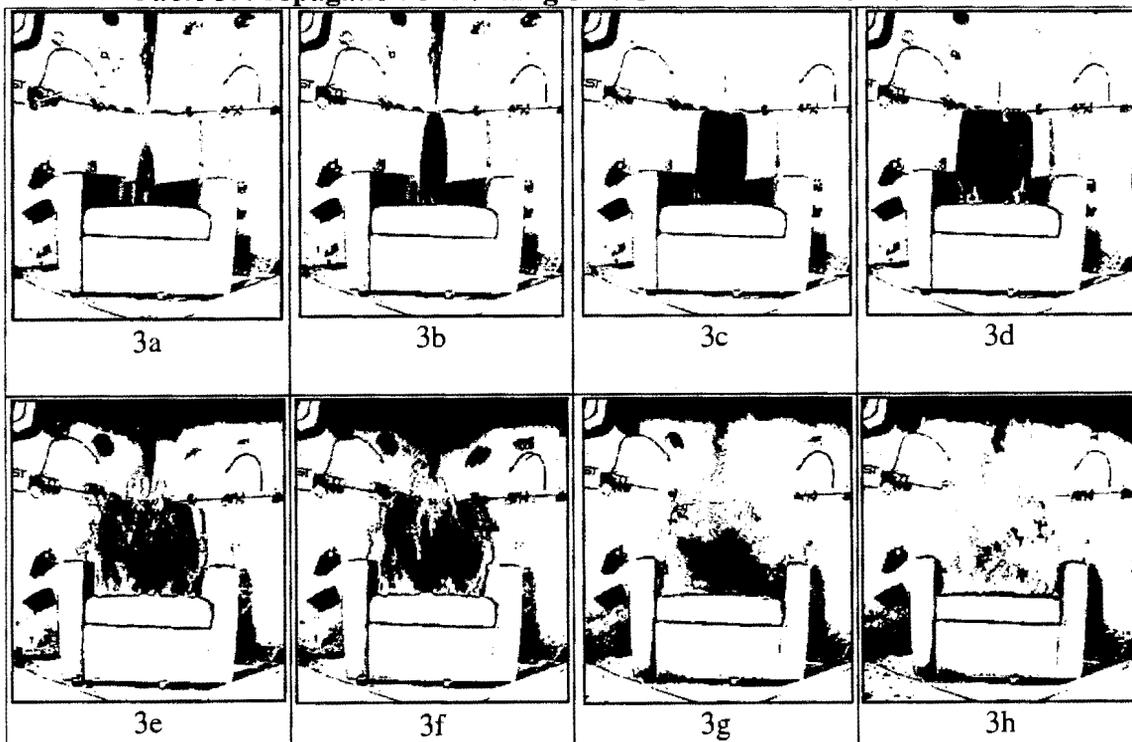
In addition to recording the HRR of the test samples, visual observations during all 64 tests provided qualitative differences in the burning behaviors of the chair samples.

4.3.1 Flame Spread

The propagation of flames on the chairs was observed to be similar in all the tests of this series. Photographs 3a through 3h included in Table 3 show an example using a chair with a fire barrier. As the ignition source flame was applied (flame application time = 70s), the cover fabrics formed a thin char layer (3a). The char then split open and allowed the heat from the flames to reach the layers of material below the cover fabric (3b). As the flames progressed along the back/seat cushion crevice, the flames also spread up and across the back cushion (3c). The seat cushion started to show some charring and flames as the materials in the back/seat cushion crevice burned more intensely (3d). Once the flames spread to the edges of the back/seat cushion crevice, the arms of the chair became involved (3e). When the flames spread to the edges of the back cushion, the flames traveled around the cushion (3f). This flame progression provided heat to the back frame of the chairs and eventually involved the fabric and wood from that part of the chair (3g). As flames moved around the back cushion, flames also progressed down the seat cushion toward the front of the chair (3h). The flame front on the seat cushion moved slower than on the back cushion, involving the chair arms as it progressed toward the front edge of the chair. In many of the chairs that contained a fire barrier, the back cushion fell forward onto the seat, presumably because the support provided by the seat cushion burned away, causing a faster rate of burning for the remainder of the chair.

The major difference between the fire-barrier and nonfire-barrier chairs was the rate of flame propagation, as evidenced by the times to peak HRR (shown earlier in Figure 6). The fire barrier slowed down the progression of flames on the faces of the cushions. However, once the flames started to wrap around the back cushion and came into contact with the chair back, the flames grew in magnitude; there was no fire-barrier material on the chair frame in any of the chairs. Another difference between the fire-barrier and nonfire-barrier chairs was that at the end of the test, the chairs with a fire barrier kept the general shape of the cushion with the interior foam burned, while the chairs without a fire barrier lost the entire cushion.

Table 3. Propagation of Burning on a Chair with a Fire Barrier



4.3.2 Melt Dripping

For most samples, melt dripping was observed during the tests. The melt drippings are created by liquefied foam that falls under and around a burning chair. As the flames get closer to the bottom of the chair, the melt drippings form a pool. The vapors from the pool are heated by the surrounding fire, causing a pool fire. The pool fire then also provides heat from below the chair and increases fire growth. An example of a pool fire observed in this test series is shown in Figure 9. Pool fires occurred in tests regardless of chair material combinations but occurred earlier in tests involving nonfire-barrier chairs than in tests with fire-barrier chairs. It is unclear whether this is because the foam took longer to melt or the barrier was able to contain the melted foam longer without dripping.



Figure 9. Example of a Pool Fire

4.3.3 Fire Growth

As mentioned earlier, the heat release data indicate that the chairs with fire barriers were associated with lower peak heat release rates and slower fire growth. Enhanced fire resistance of chairs with fire barriers was also evident during observations of the tests. Photographs taken during the tests demonstrated the differences in fire growth times between the chairs with and without fire barriers. A snapshot of the test chairs four minutes after ignition for the 16 fabric/foam/fire-barrier combinations tested are shown in Table 4. Additionally, the photographs illustrate the slower progression of flames in fabric 1b, which was more than twice the weight of the other three fabrics (1a, 2a, and 2b).

Table 4. Photographs of Chair Samples Four Minutes After Ignition. Each photograph shows a sample of one of 16 fabric/foam/fire-barrier combinations.

Fabric	Nonfire Barrier, SPUF	Nonfire Barrier, FR	Fire Barrier, SPUF	Fire Barrier, FR
1a	 <p data-bbox="327 1059 480 1098">Combination 2</p>	 <p data-bbox="637 1059 791 1098">Combination 4</p>	 <p data-bbox="948 1059 1101 1098">Combination 1</p>	 <p data-bbox="1258 1059 1412 1098">Combination 3</p>
1b	 <p data-bbox="327 1691 480 1730">Combination 6</p>	 <p data-bbox="637 1691 791 1730">Combination 8</p>	 <p data-bbox="948 1691 1101 1730">Combination 5</p>	 <p data-bbox="1258 1691 1412 1730">Combination 7</p>

Fabric	Nonfire Barrier, SPUF	Nonfire Barrier, FR	Fire Barrier, SPUF	Fire Barrier, FR
2a	 <p data-bbox="323 1023 485 1059">Combination 10</p>	 <p data-bbox="632 1023 794 1059">Combination 12</p>	 <p data-bbox="941 1023 1103 1059">Combination 9</p>	 <p data-bbox="1250 1023 1412 1059">Combination 11</p>
2b	 <p data-bbox="323 1664 485 1700">Combination 14</p>	 <p data-bbox="632 1664 794 1700">Combination 16</p>	 <p data-bbox="941 1664 1103 1700">Combination 13</p>	 <p data-bbox="1250 1664 1412 1700">Combination 15</p>

5 ANALYSIS AND DISCUSSION

The three components evaluated in this study were the fabrics, the foams, and the fire barrier. Determining the effect of the fire barrier on the flammability performance is the primary goal of this evaluation and is discussed below. Interactions among the components of the chairs can also have effects on the flaming behavior; they are also examined for the following combinations: cover fabric and foam, fire-barrier and foam, and fire-barrier and fabric. Each interaction contributed in varying levels to the heat release rates and temperatures. These interactions are further discussed below. It is important to note that results of this test series using selected combinations of components cannot be generalized over the entire market of materials that may be incorporated into furniture

5.1 Fire-Barrier Effect

Since the proposed standard only requires open-flame tests to evaluate the fire barrier, this test series was designed primarily to assess the behavior of the fire barriers. Examining the PHRR data for all 64 tests using the fire barrier as the discriminating factor demonstrates the effect of the fire barrier. There is a clear difference in the PHRR and the time to PHRR, as shown in Figures 10 and 11. The fire barriers work to increase the time to PHRR while decreasing the actual size of the fire. The Directorate for Epidemiology (EPI) estimates that a fire barrier in the chair results in a time to PHRR that is 3.323 times longer than for the chairs without fire barriers.¹⁰ The effect of the fire barrier as an interaction with the other components is detailed below.

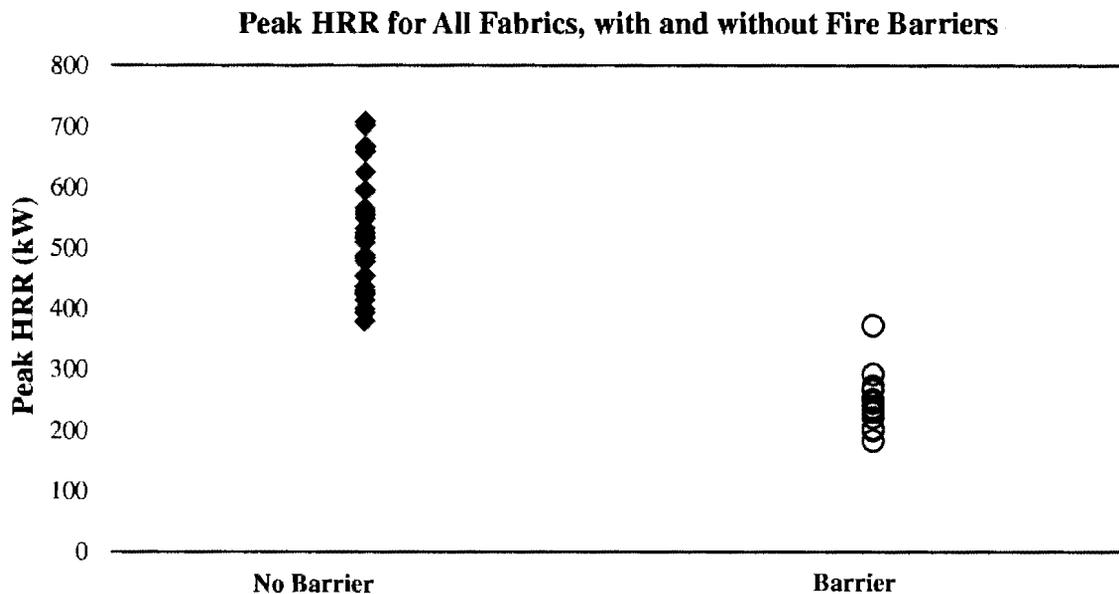


Figure 10. PHRRs for All 64 Tests, Separated by Fire Barrier Use

¹⁰ "Analysis of Chair Open- Flame Data" Memo to Dale Ray, Project Manager, from David Miller, Directorate for Epidemiology, Division of Hazard Analysis. September 16, 2010.

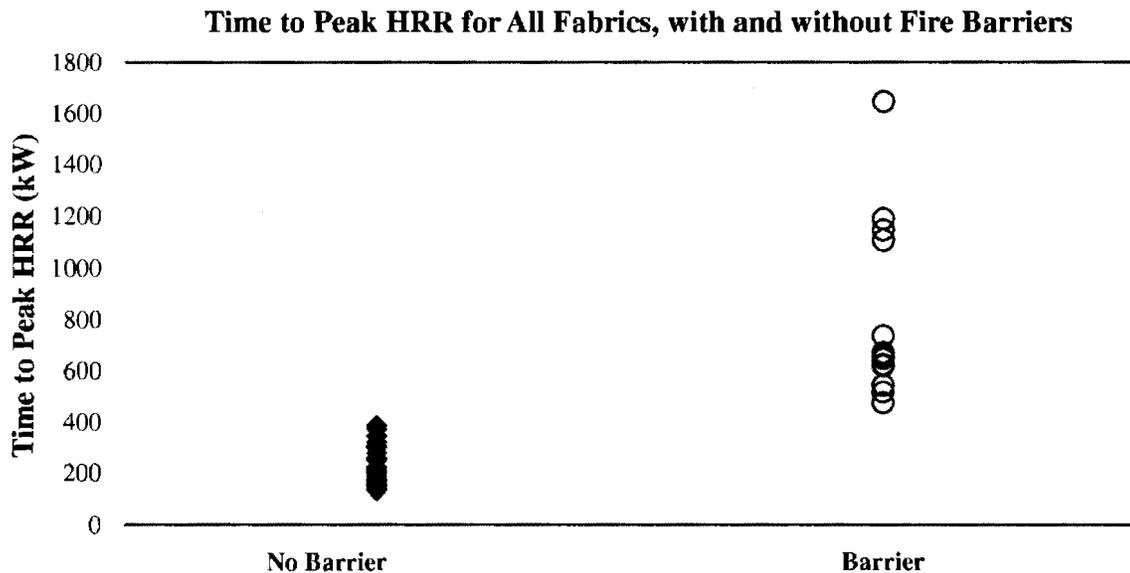


Figure 11. Time to PHRR for All 64 Tests, Separated by Fire Barrier Use

5.2 Foam and Fire Barrier Interaction

To determine whether there is an interaction between the fire barrier and the type of foam used, the data for all the tests without the fabric identifier were examined. All of the PHRR data are shown in Figure 12 to demonstrate the relationship between barriers and foam type. In both cases (*i.e.*, chairs constructed with fire barriers and chairs constructed without fire barriers), there is no clear distinction between the PHRR values for the two types of foam. Additionally, statistical testing of the data shows a 7 percent mathematical difference. The graphs and statistical testing indicate that for open-flame ignitions, the type of foam does not have a practically significant effect on barrier performance as measured by PHRR.

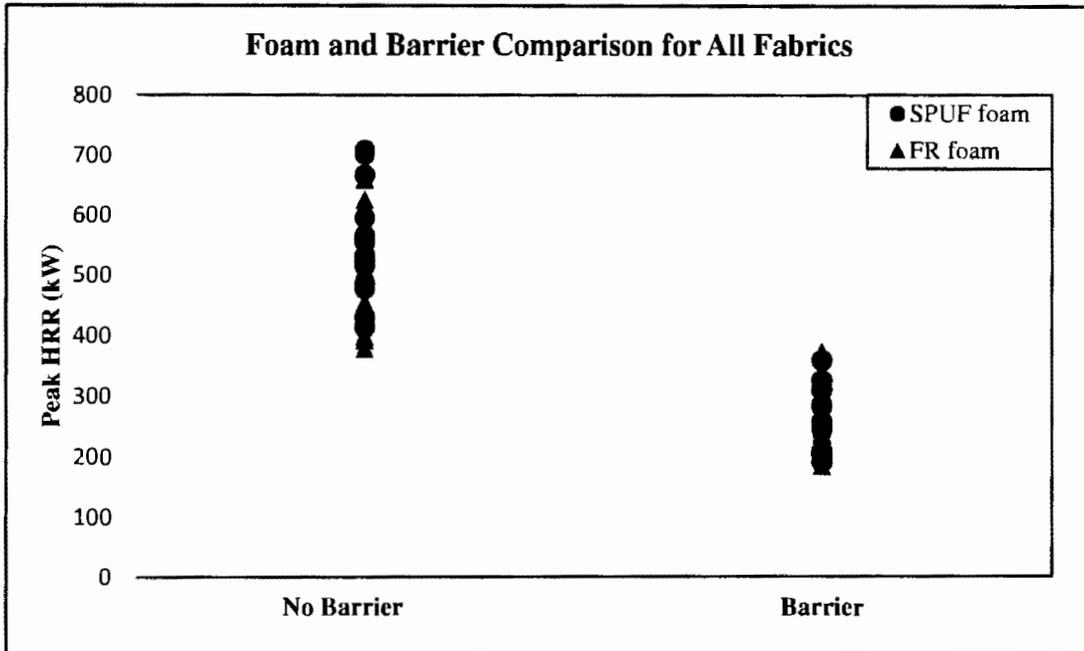


Figure 12. Peak HRR for All Tests

5.3 Fabric and Foam Interaction

As detailed earlier, four fabrics (1a, 1b, 2a, and 2b) that previously demonstrated a range of smolder propensity were included in this study. Two commercially available foams were used in this study—one FR and one non-FR (SPUF)—as found in the marketplace.

The test data for chairs with the fire barrier were reviewed to observe the interaction between fabrics and foams, with the fire barrier as a parameter in the behavior. The HRRs for chairs constructed with fabric 1a and with either SPUF or FR foam are shown in Figure 13. The first peaks in the heat release rate for the chairs with SPUF and with the FR occur in the same region. The values of the peaks are not significantly different and overlap in some cases.

The same observations were made for the chairs with the fire barriers in place, as shown in Figure 14. Figures 5 and 6 are compilations of the values and times of the first peaks for all the fabrics. There are no distinct separations for the data between the types of foams, indicating a similar performance for all the fabrics. This observation is further confirmed by the analysis provided by EPI,¹⁰ in which a statistically significant interaction was not found between the fabrics and foams and their effect on the PHRR of the chairs.

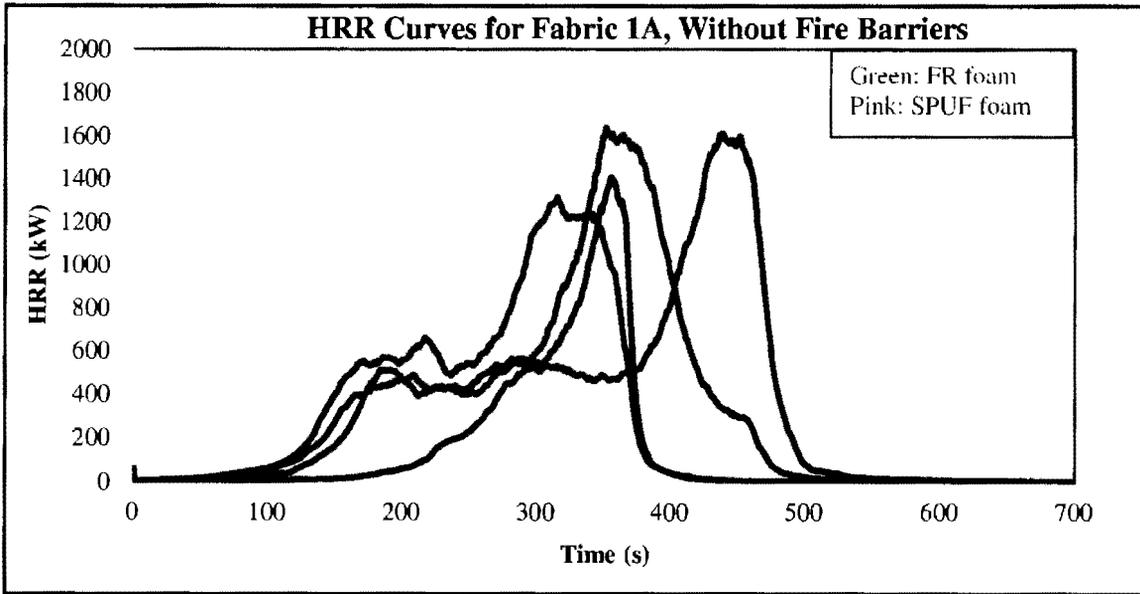


Figure 13. Heat Release Rate Curves for Fabric 1a Without Fire Barriers for SPUF and FR Foam

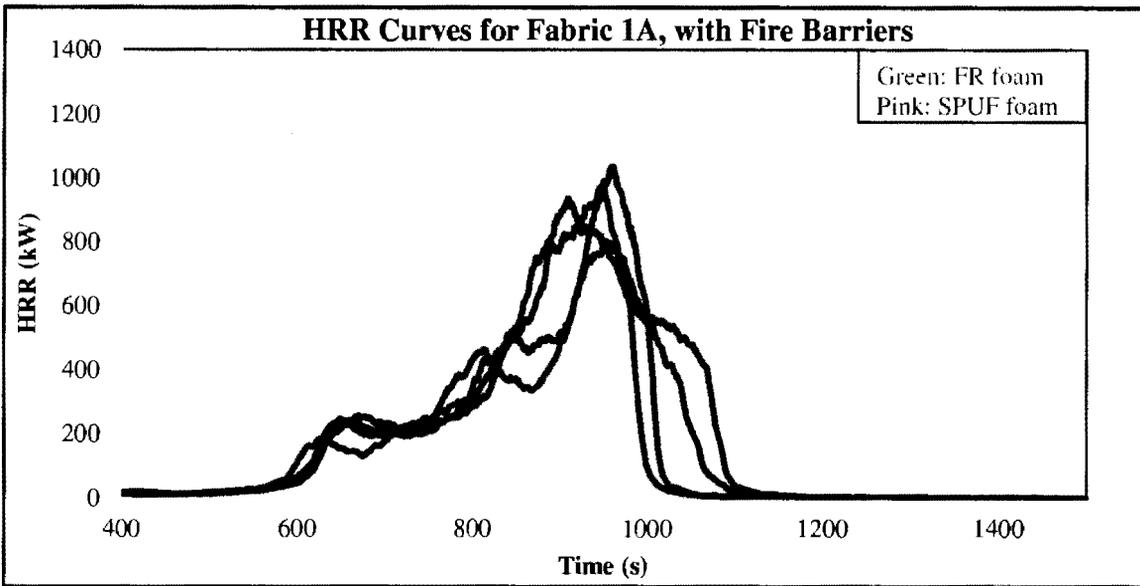


Figure 14. Heat Release Rate Curves for Fabric 1a with Fire Barriers for SPUF and FR foam

5.4 Fabric and Fire Barrier Interaction

The fabrics used in the test chair samples were fabrics that either have a high propensity to smolder, (fabrics 1a and 1b, consistent smolder behavior), or have a moderate propensity to smolder, fabrics 2a and 2b (inconsistent smolder behavior). Staff expects that under the proposed standard these fabrics would require a fire barrier.

Between the highly smolder-prone fabrics (1a and 1b), fabric 1b was the better performing fabric when no fire barrier was present; the tests resulted in the lowest PHRRs and the highest times to PHRR (as shown in Figures 5 and 6). However, adding a fire barrier did not significantly change the results for fabric 1b as it did for fabric 1a. The PHRR values for fabric 1b are very close for the chairs with and without fire barriers, as shown in Figure 13. Fabric 1a showed a considerable decrease in PHRR and increase in time to PHRR when a fire barrier was present.

The moderately smolder-prone fabrics (2a and 2b) demonstrated similar flammability behavior in the open-flame ignition tests. Chairs with both cover fabrics and the fire barrier showed a lower value of PHRR and substantial increase in time to PHRR—indicating a slower growing, smaller fire—than chairs without fire-barriers. While the addition of a fire barrier affected the fire behavior of the chairs, the magnitude of the difference varied. Three of the four fabrics—1a, 2a and 2b—demonstrated a sizeable change in the value of PHRR and the time to PHRR. These three fabrics had similar area densities, while fabric 1b was more than twice the weight. The results suggest that the area density of the cover fabric has a beneficial influence on the effect that the fire barrier has on the flammability behavior of the chairs.

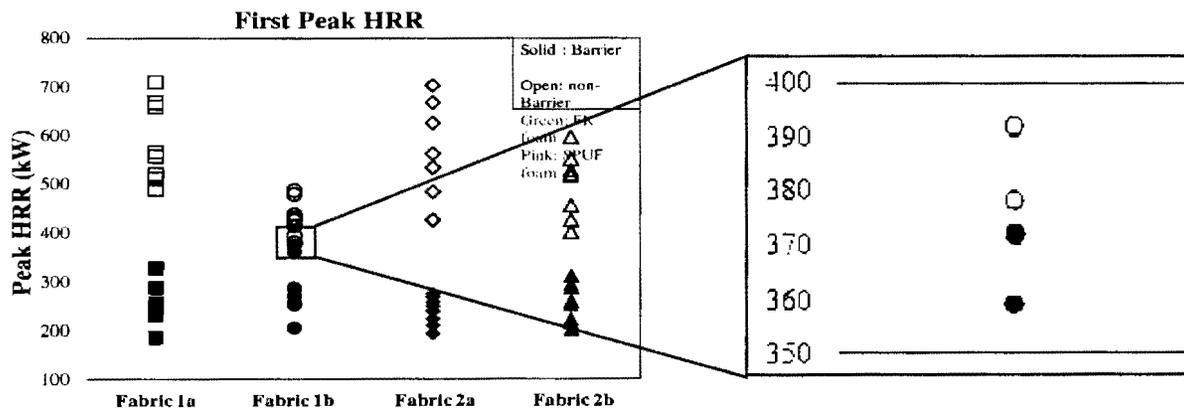


Figure 15. Close-Up of Fabric 1b Data

5.5 Effect on Life Safety

The life safety hazards associated with a fire may include: heat (heat flux and temperature), toxic gases, and smoked obscuration (loss of visibility for quick egress). In these experiments, quantitative measures of heat release rates and temperature were made; and qualitative measures of visibility were made by test operators.

5.5.1 Temperature and Heat Flux

Heat is transferred from the source to surrounding objects by conduction, convection, and radiation, either singularly, or in combination. Frequently, the hazard from the fire to a person is simplified as an exposure temperature for a prescribed duration. In the room of origin, an occupant will be exposed to heat primarily through convection and radiation, quantified by temperature and heat flux.¹¹ It is generally estimated that the tenability limit

¹¹ Heat flux is defined by heat release rate over an area (kW/m²).

due to convected heat near the occupant is 120°C (248°F) or to radiant heat fluxes above 2.5kW/m².¹² Above this limit, the onset of pain is rapid, and burns can develop within a few minutes or less, as temperatures increase above this threshold. These limits are affected by factors that influence the rate at which the skin temperature itself is elevated, such as clothing, fit of clothing, humidity, air flow, and skin thickness, which can mitigate or exacerbate the impact of the heat transfer to the victim's skin for a given heat level and exposure time. Therefore, the numerical values of temperature (120°C) and heat flux (2.5kW/m²) are used as a basis for discussion rather than as absolute limits.

Comparisons of the effects of the various chair constructions on tenability are made by examining the temperatures at approximately five feet above the floor, two feet above the floor, and the heat flux at the floor, in the center of the room. The 5-foot elevation can be considered the face height of a typical, standing person, the lower elevations depicting a crawling person. Figures 16 and 17 show the time at which the tenability limit of 120°C occurs near the chair and near the door, respectively, at two different heights. Figure 18 shows the time at which the tenability limit of 2.5 kW/m² occurs at the center of the room, at floor level.

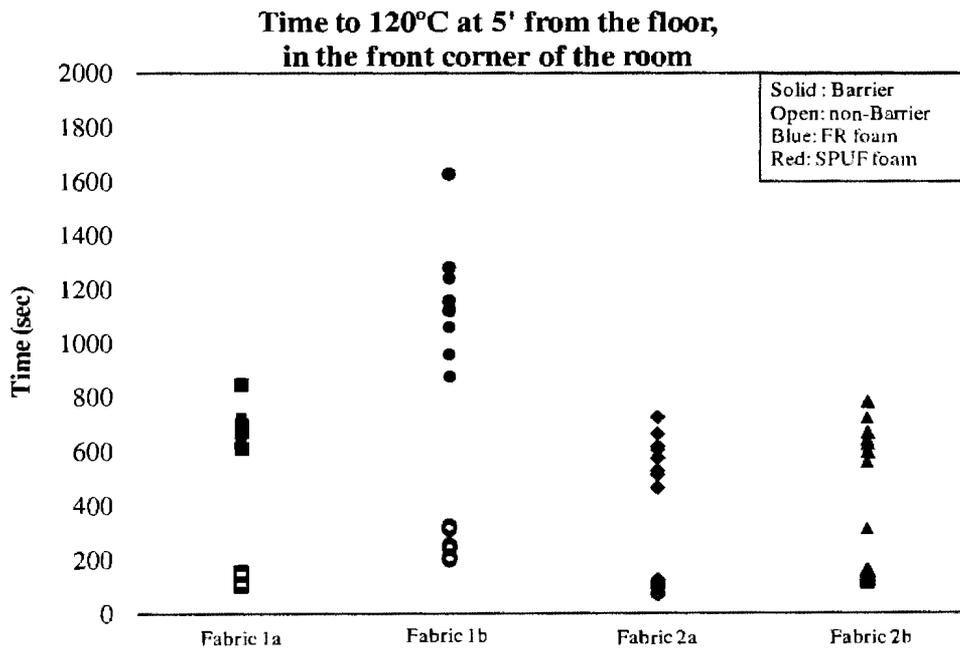


Figure 16 a. Time to 120°C for All 64 tests, Taken at Five Feet from Floor, Near Door

¹² Purser, D.A., "Assessment of Hazards to Occupants from Smoke, Toxic Gases, and Heat" The SFPE Handbook of Fire Protection Engineering, 4th Ed, 2008. Pp 2-141-142.

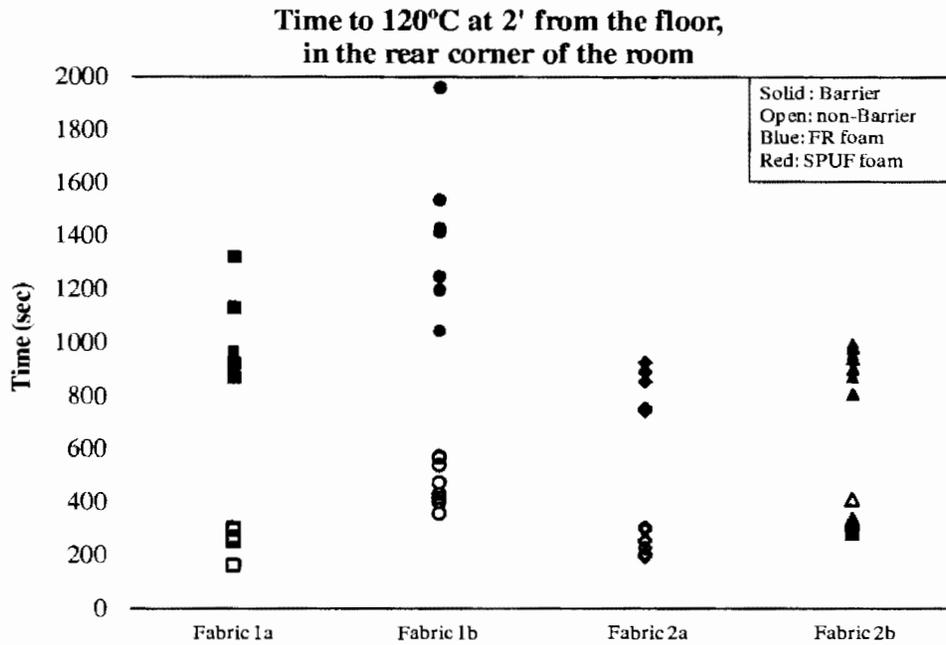


Figure 17 b. Time to 120°C for All 65 Tests, Taken at Two Feet from the Floor, Near Chair

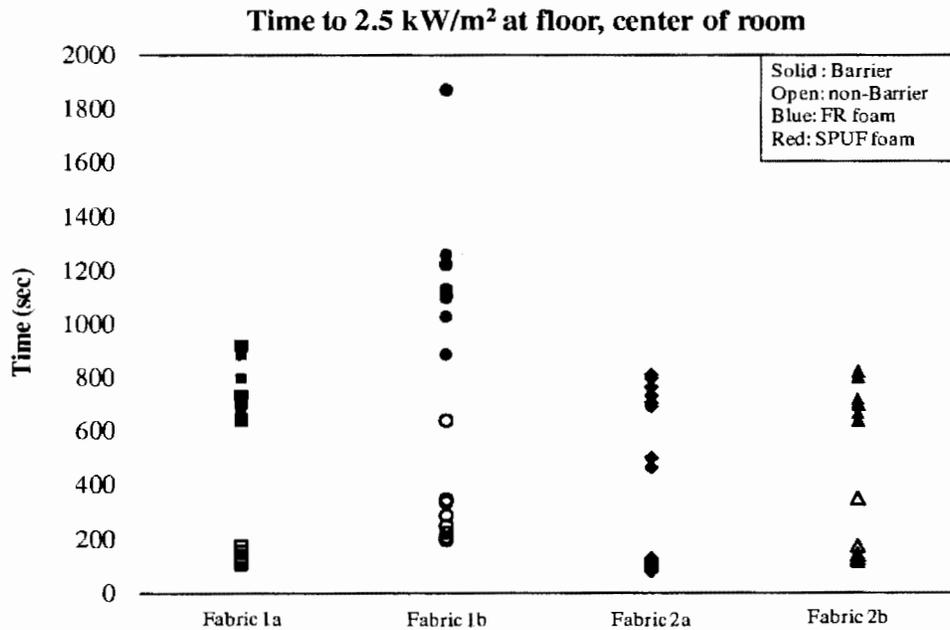


Figure 18. Time to 2.5kW/m² for All 64 Tests, Taken at the Floor

Although the absolute times for which the limits occur differ, the distribution of the data is similar to the time to PHRR, indicating that the chairs with fire barriers markedly improve tenability time, regardless of metric used.

5.5.2 Visibility Measurements

Qualitative visibility measurements were taken during each test. A paper sign with “NIST” printed on it was placed on the far wall of the room at four feet from the floor. Since only one of the test operators noted when he could no longer see “NIST,” the observation was made from the same height each time. In this test series, obscuration of the sign was not consistently indicative of the tenability conditions in the room. Either thick white or black smoke obscured the sign. When the fire was growing quickly and the smoke was full of thick black soot, the sign could often be seen until the time of flashover, whereas in slow growing fires, the sign was obscured early in the fire. These measurements do not aid in examining the effect of the fire barriers in the chairs on egress time improvement.

5.5.3 Carbon Monoxide Measurements

Often, carbon monoxide (CO) measurements are also used in determining tenability of a space during a fire. In this test series, the data were taken outside the room, under the hood. The data were extremely noisy and did not provide any insight into the behavior of CO generation from the chairs.

6 CONCLUSIONS

This test series examined the results of open-flame ignition tests conducted with upholstered furniture chairs. Specifically, the aim of the study was to determine the effect that the selected fire barrier had on the flammability characteristics of the chairs. Sixteen combinations of materials were chosen from materials previously tested by CPSC staff. The cover fabrics used in this series would likely require the use of a fire barrier under the proposed rule. The foams were chosen to represent both an FR and non-FR-treated (SPUF) foam. The data presented in this report are valid only for the materials used in this series; other fabrics, foams, and fire barriers may behave differently. The fabrics chosen for this series, however, represent differing levels of smolder propensity, and thus, they can be expected to illustrate different levels of fire performance with the fire barriers.

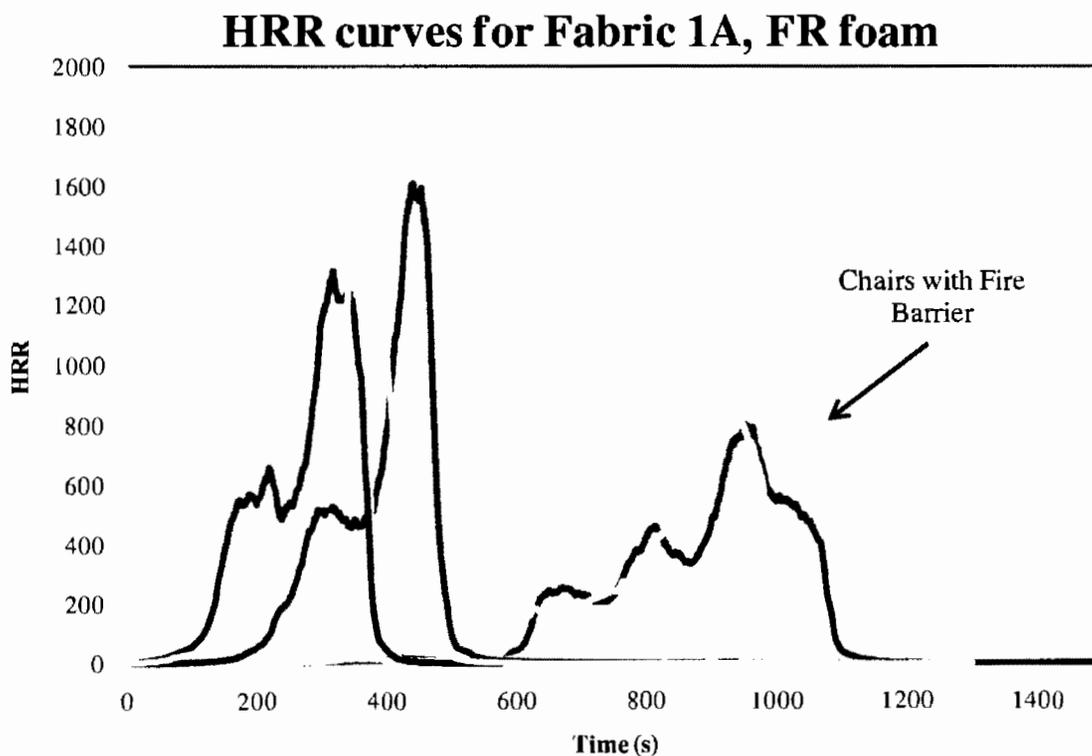
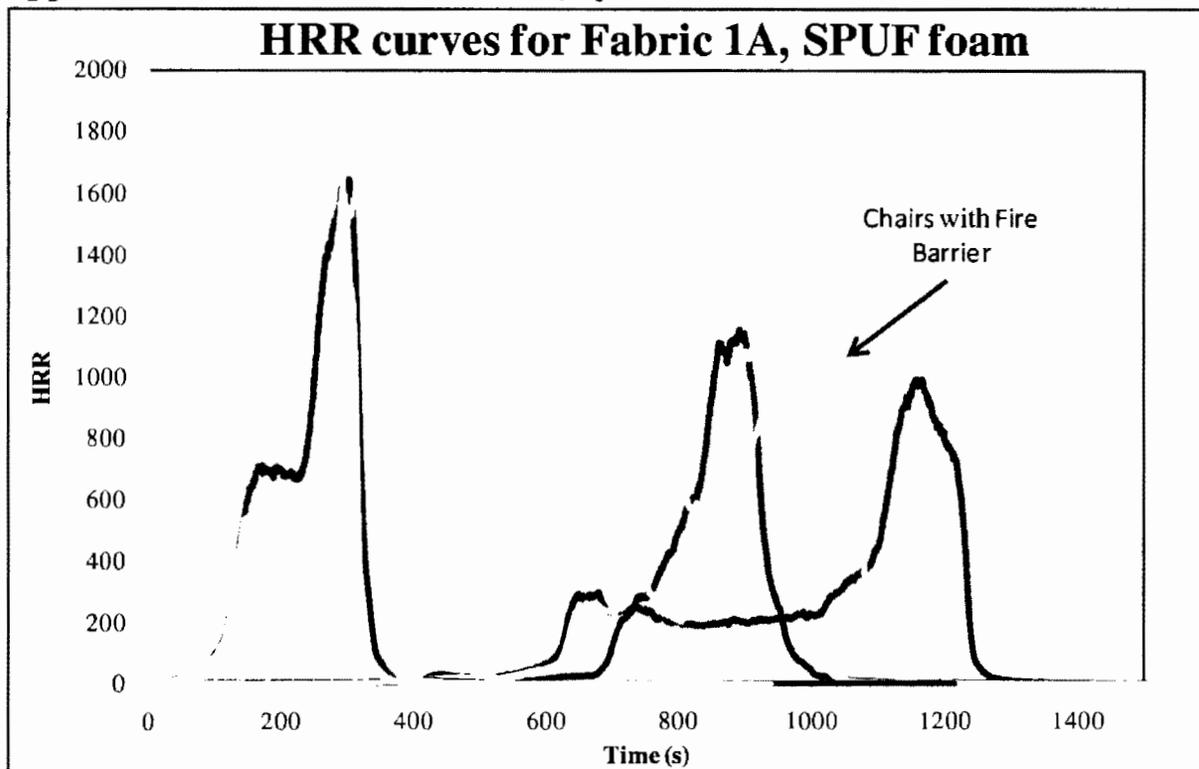
The four fabrics were categorized into two types: very smolder prone and moderately smolder prone. The very smolder-prone fabrics exhibited different burning behaviors from each other with respect to fire size and growth time. Conversely, the moderately smolder-prone fabrics performed similarly to each other and to one of the very smolder-prone fabrics (fabric 1a). This tends to support the widely held view that fabric smolder propensity is not necessarily a good indication of open-flame ignition performance.

Overall, the results demonstrated that the addition of a fire barrier markedly increased the fire safety of the furniture. The data indicated that the fire sizes were smaller and the time to reach the peak fire size was slower with fire barriers, regardless of the fabric or foams used. Among the other effects examined, a relative difference was noticed in the foams, but the fire-retardant foams did not offer a practically significantly greater level of open-flame safety than did the untreated foams.

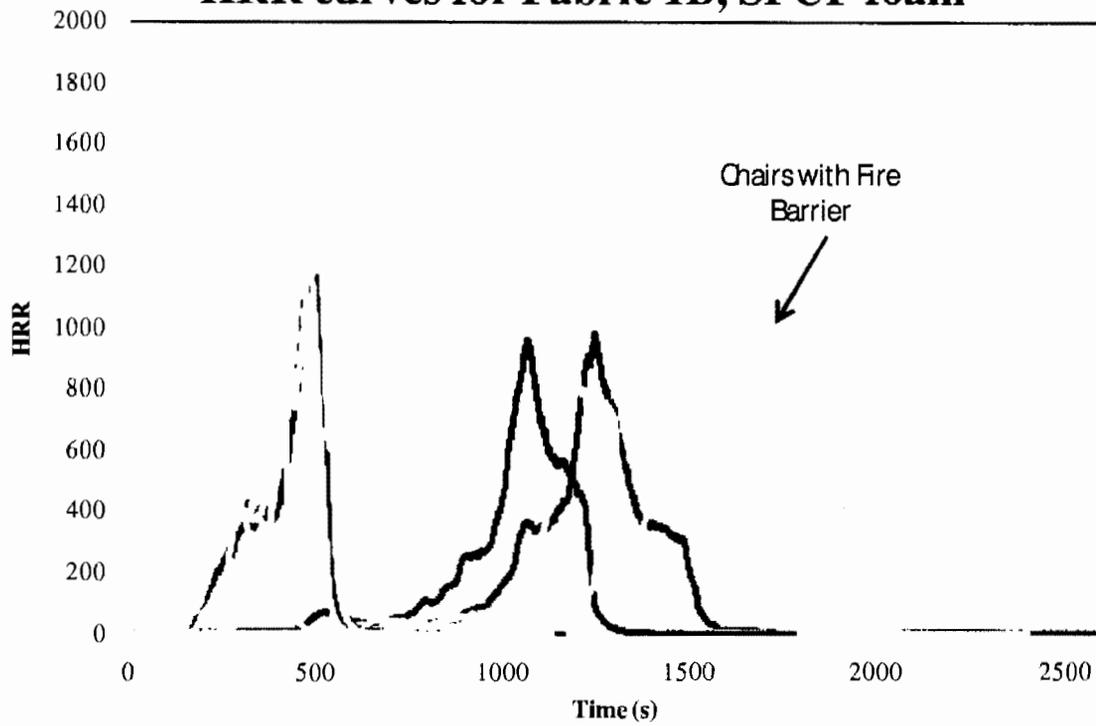
7 APPENDICES

- Appendix A. HRR Curves for Tests, by Fabric and Foam Combinations
- Appendix B. Temperature Curves for Tests by Fabric and Foam Combinations.
- Appendix C. Heat flux curves for the Tests by Fabric and Foam Combinations.
- Appendix D. Test Plan

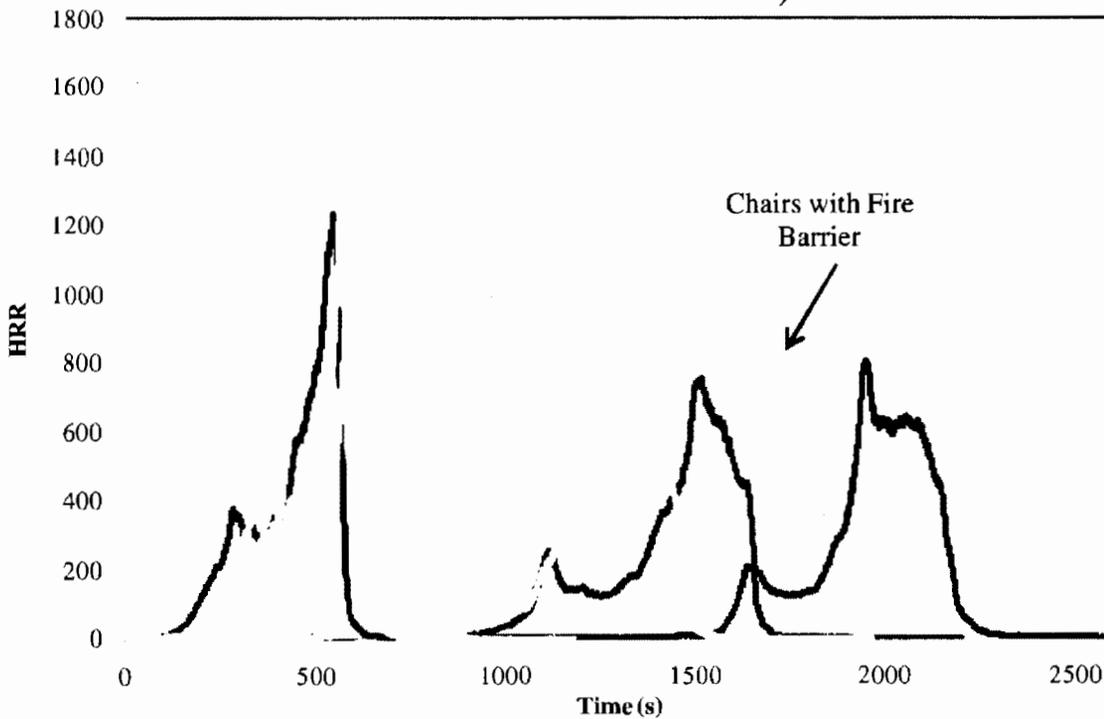
Appendix A. HRR Curves for Tests, by Fabric and Foam Combination



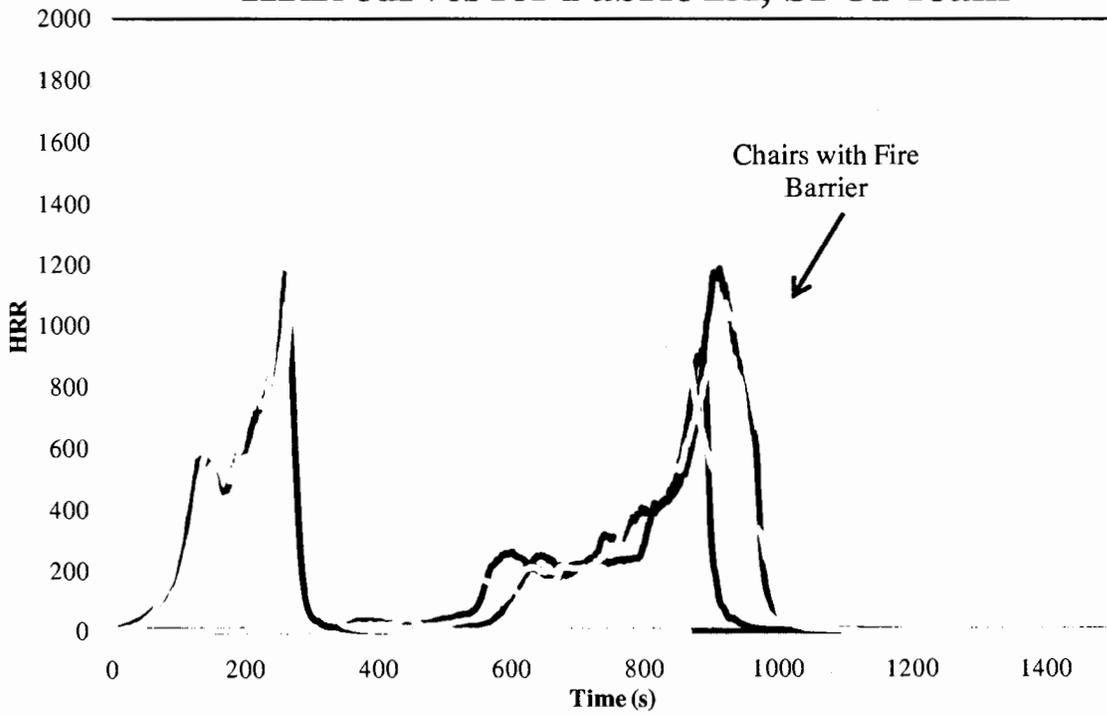
HRR curves for Fabric 1B, SPUF foam



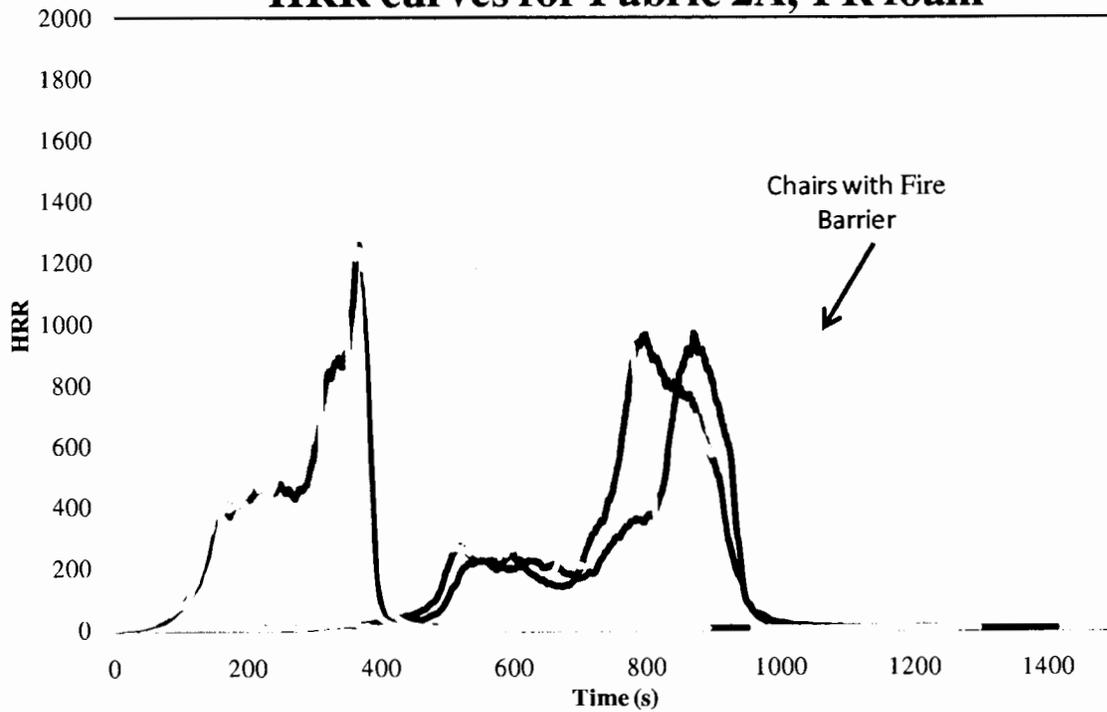
HRR curves for Fabric 1B, FR foam



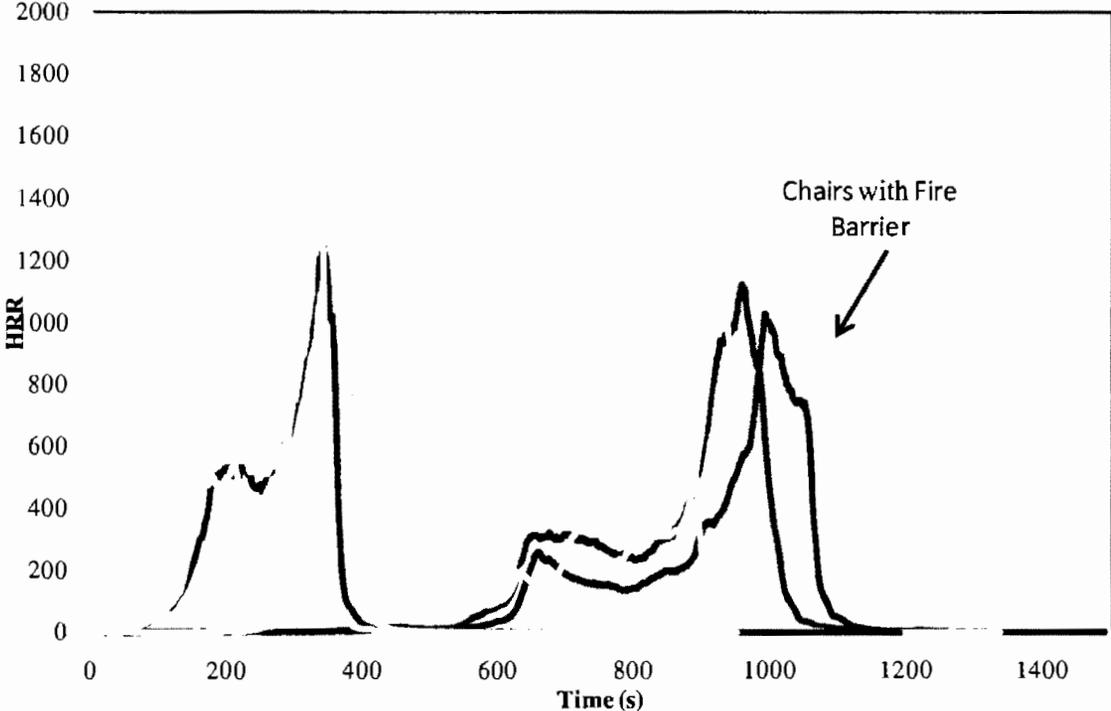
HRR curves for Fabric 2A, SPUF foam



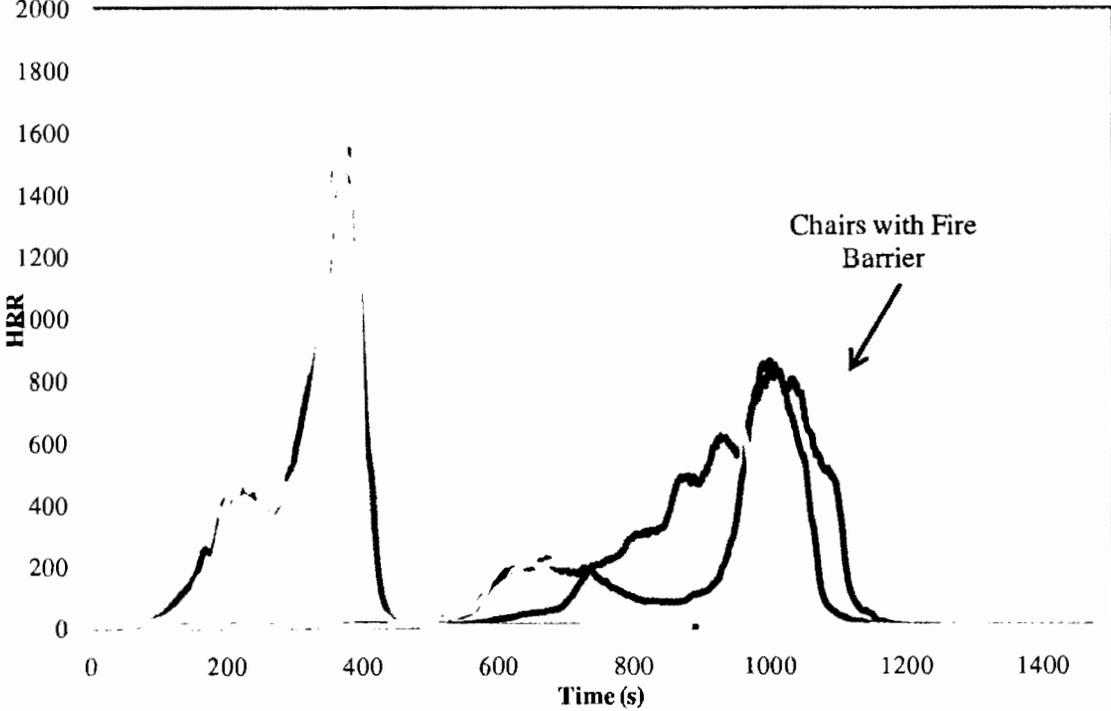
HRR curves for Fabric 2A, FR foam



HRR curves for Fabric 2B, SPUF foam

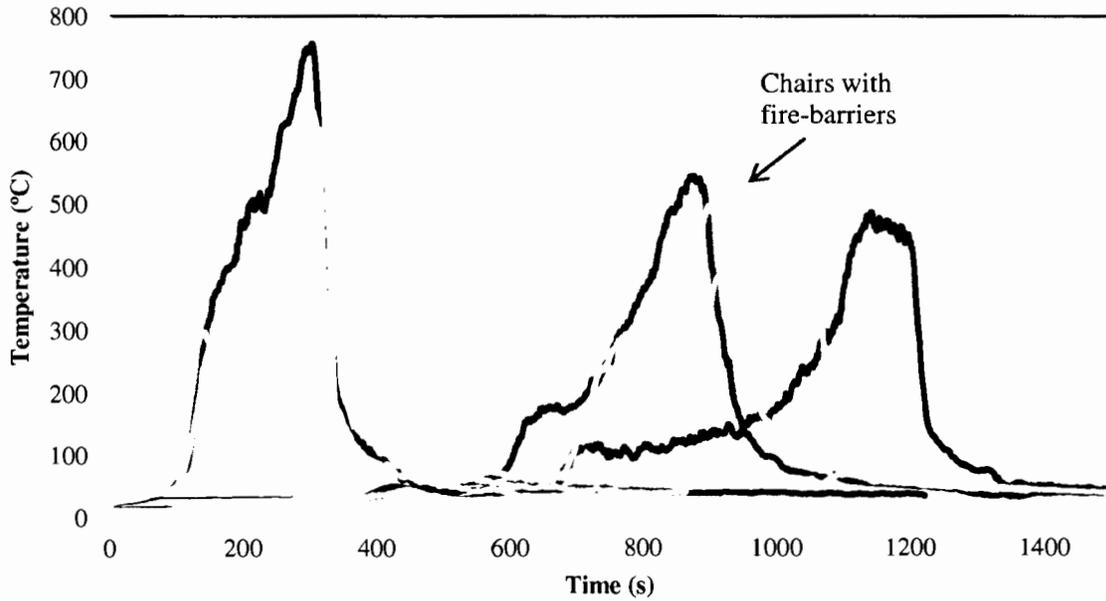


HRR curves for Fabric 2B, FR foam

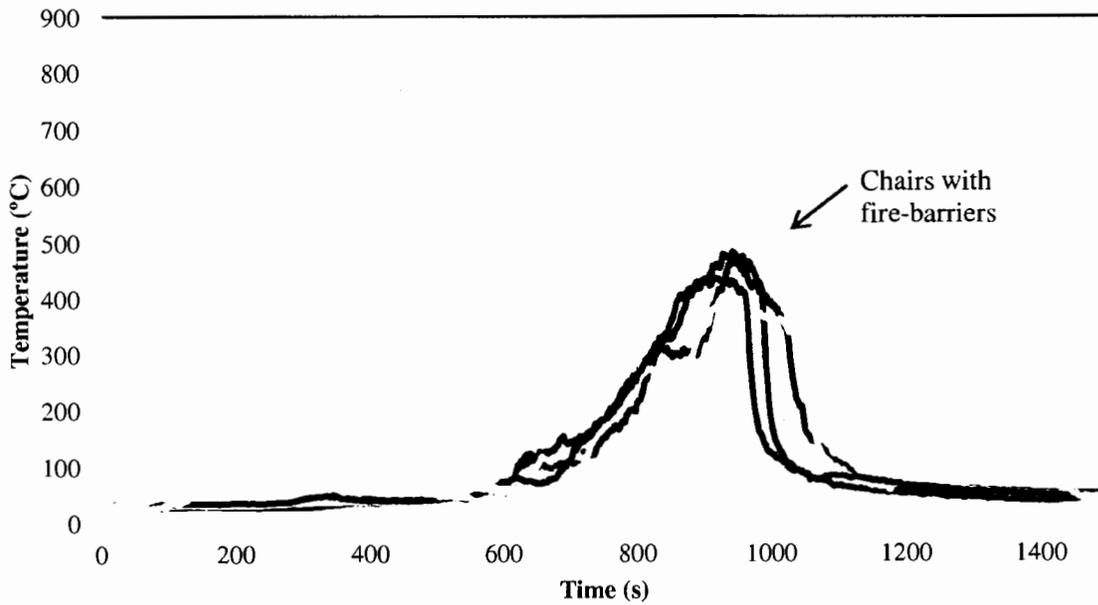


Appendix B. Temperature Curves for Tests by Fabric and Foam Combinations

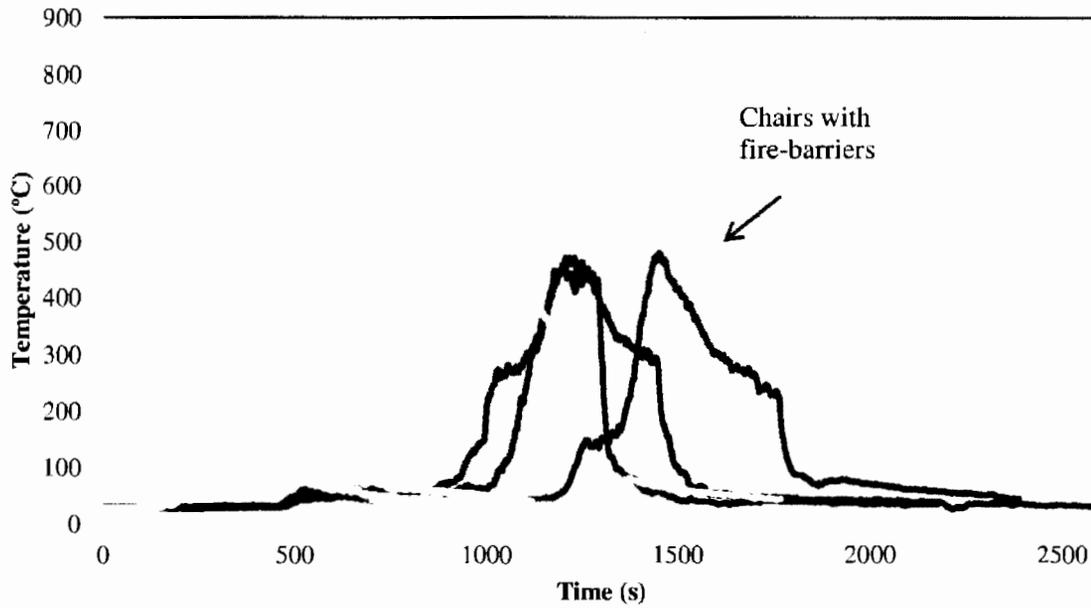
**Temperature Curves for Fabric 1A, SPUF foam,
5' from floor, near door**



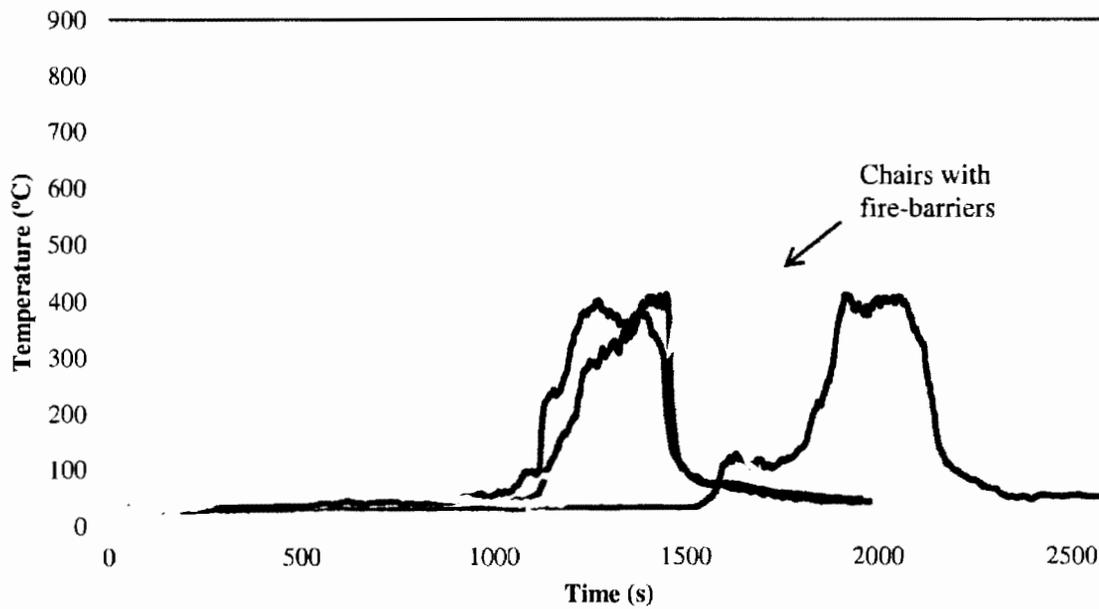
**Temperature Curves for Fabric 1A, FR foam,
5' from floor, near door**



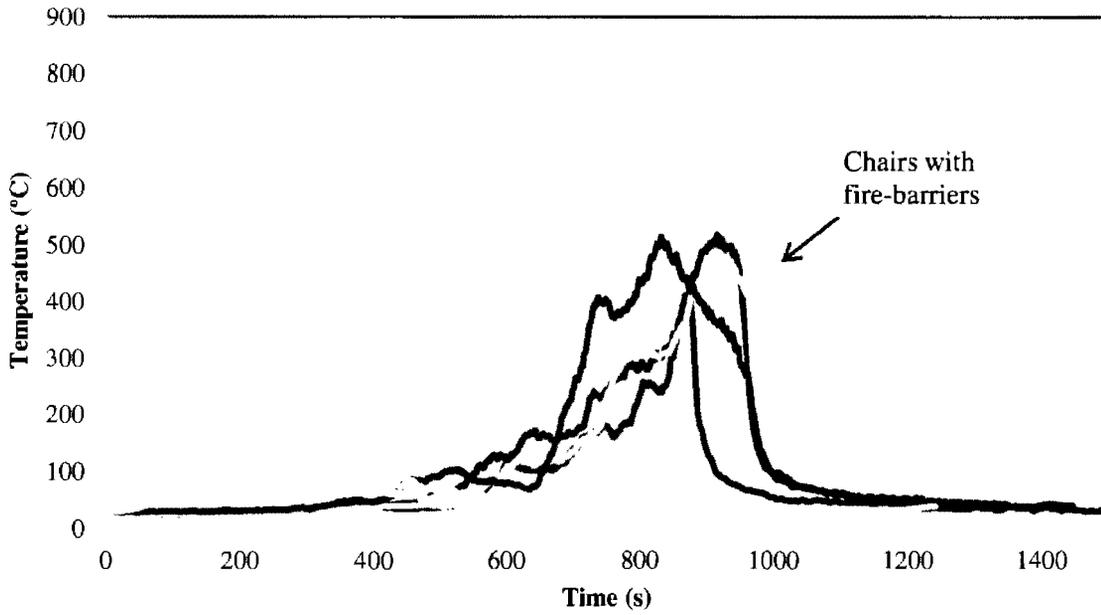
**Temperature Curves for Fabric 1B, SPUF foam,
5' from floor, near door**



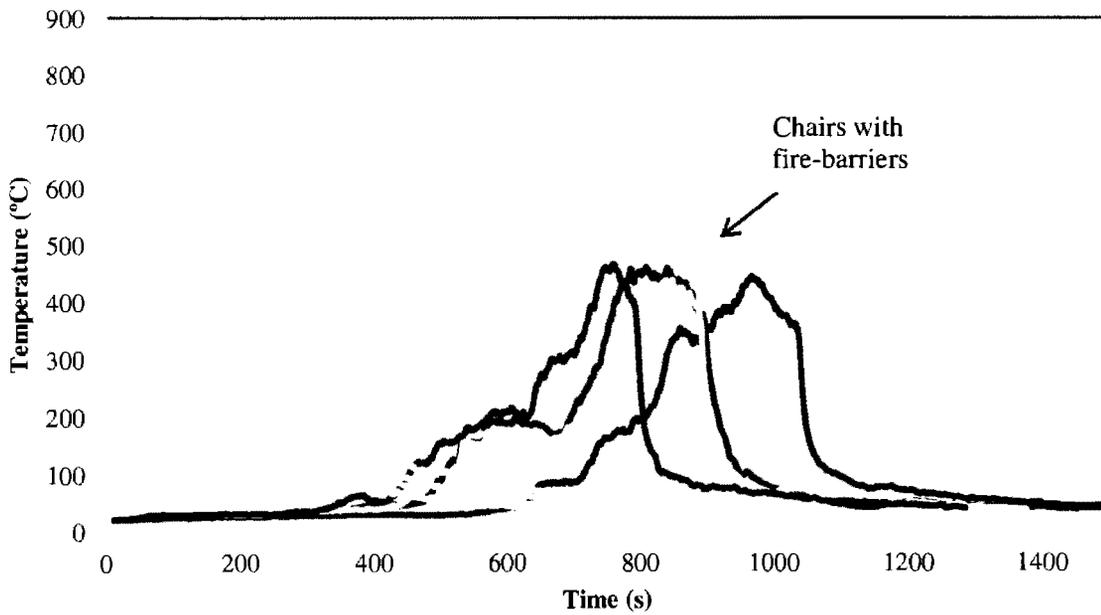
**Temperature Curves for Fabric 1B, FR foam,
5' from floor, near door**



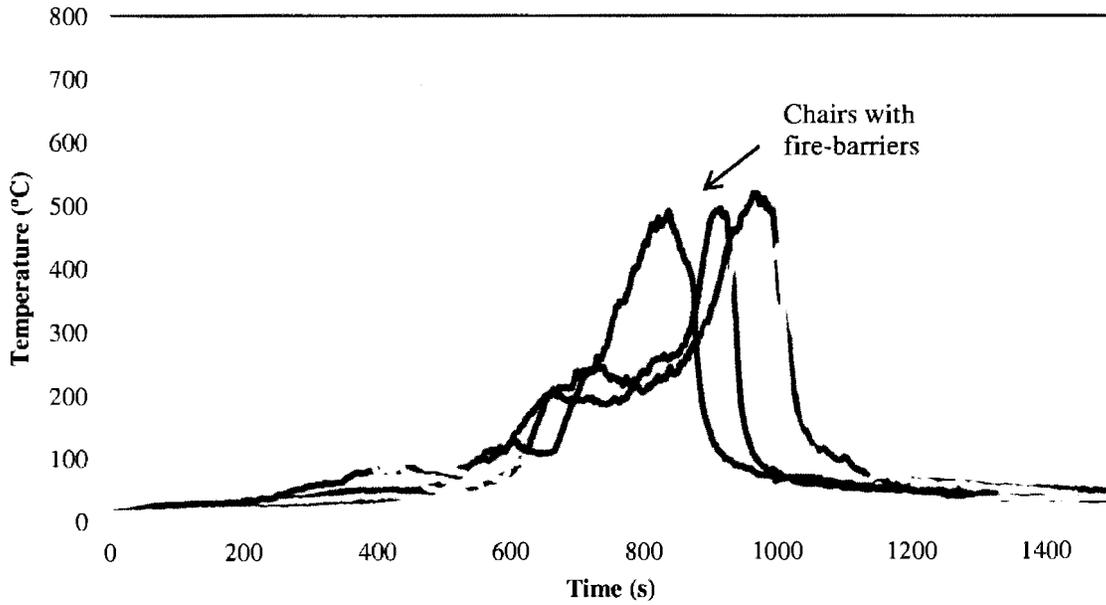
Temperature Curves for Fabric 2A, SPUF foam, 5' from floor, near door



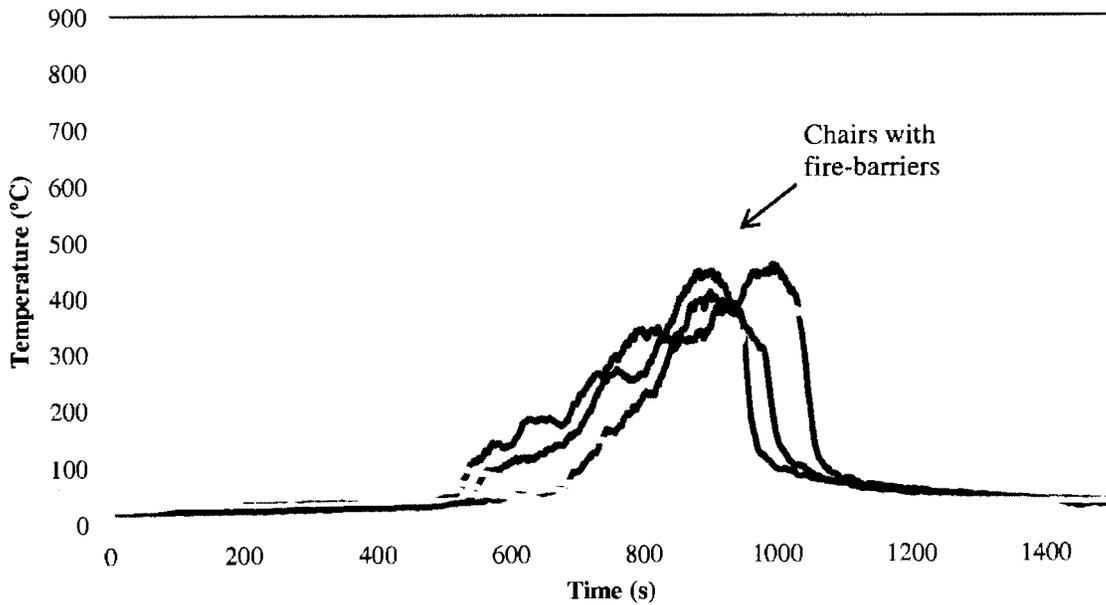
Temperature Curves for Fabric 2A, FR foam, 5' from floor, near door



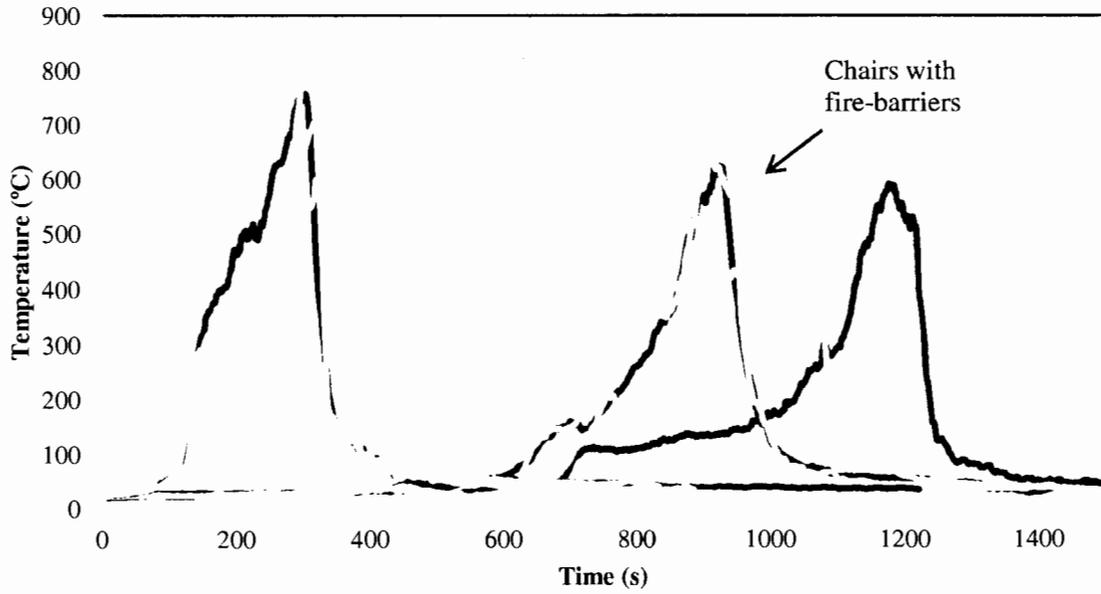
**Temperature Curves for Fabric 2B, SPUF foam,
5' from floor, near door**



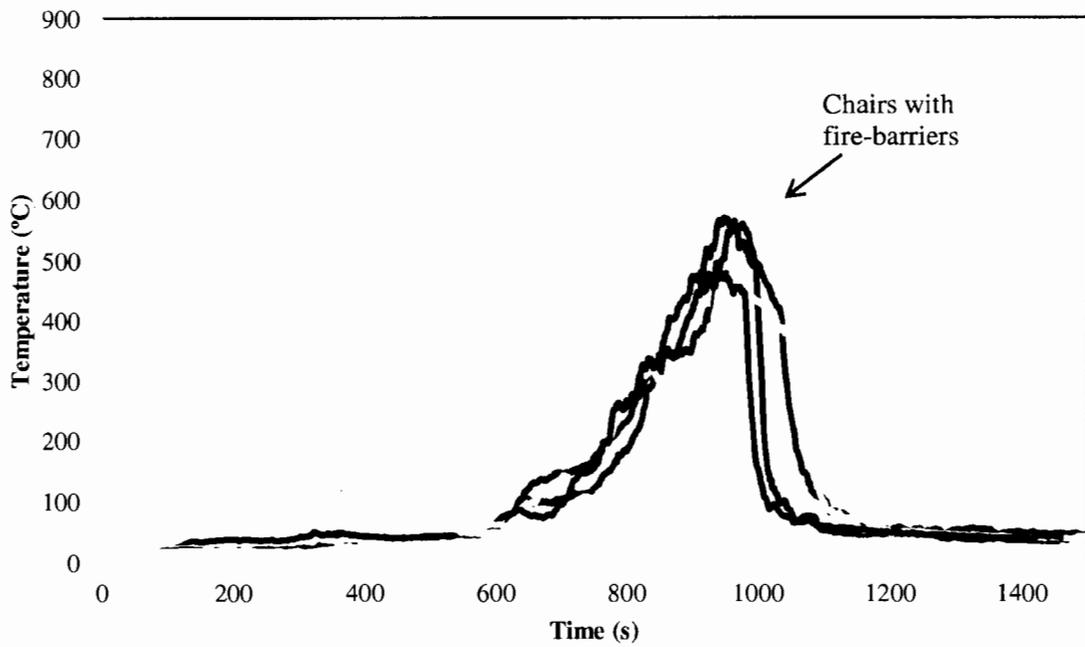
**Temperature Curves for Fabric 2B, FR foam,
5' from floor, near door**



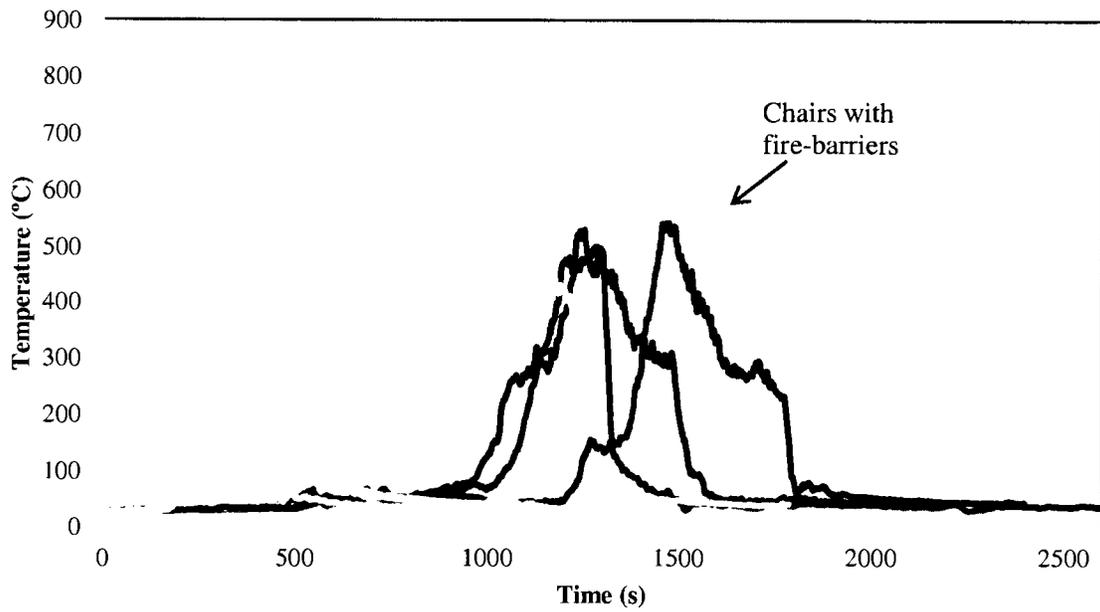
**Temperature Curves for Fabric 1A, SPUF foam,
5' from floor, near chair**



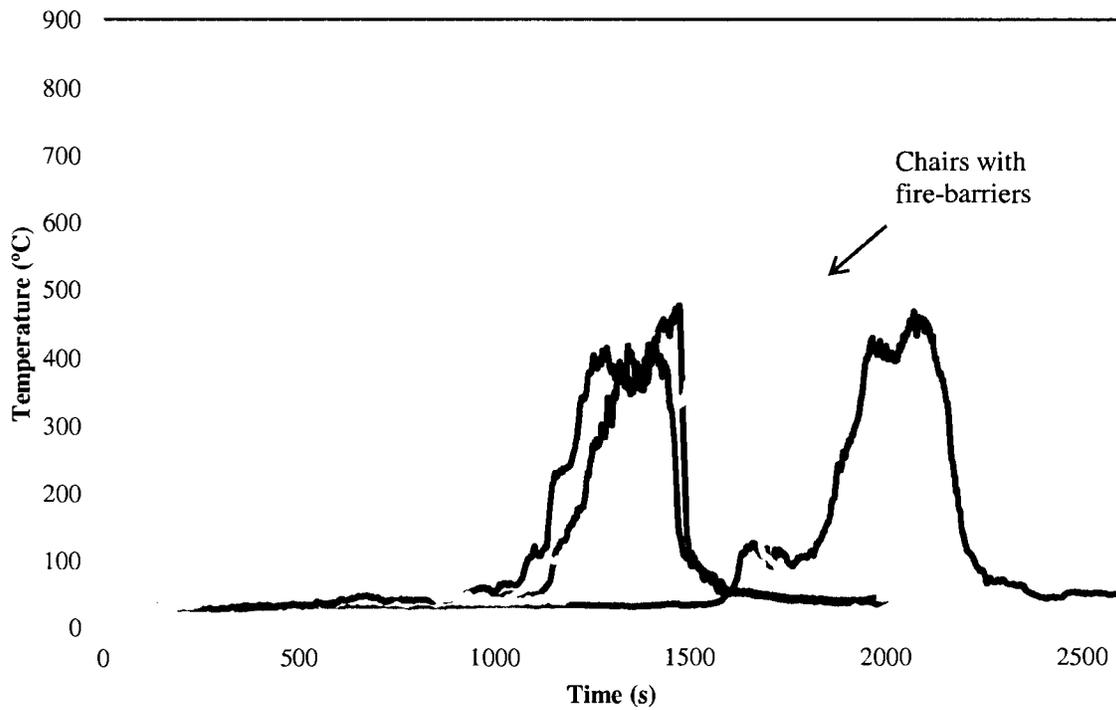
**Temperature Curves for Fabric 1A, FR foam,
5' from floor, near chair**



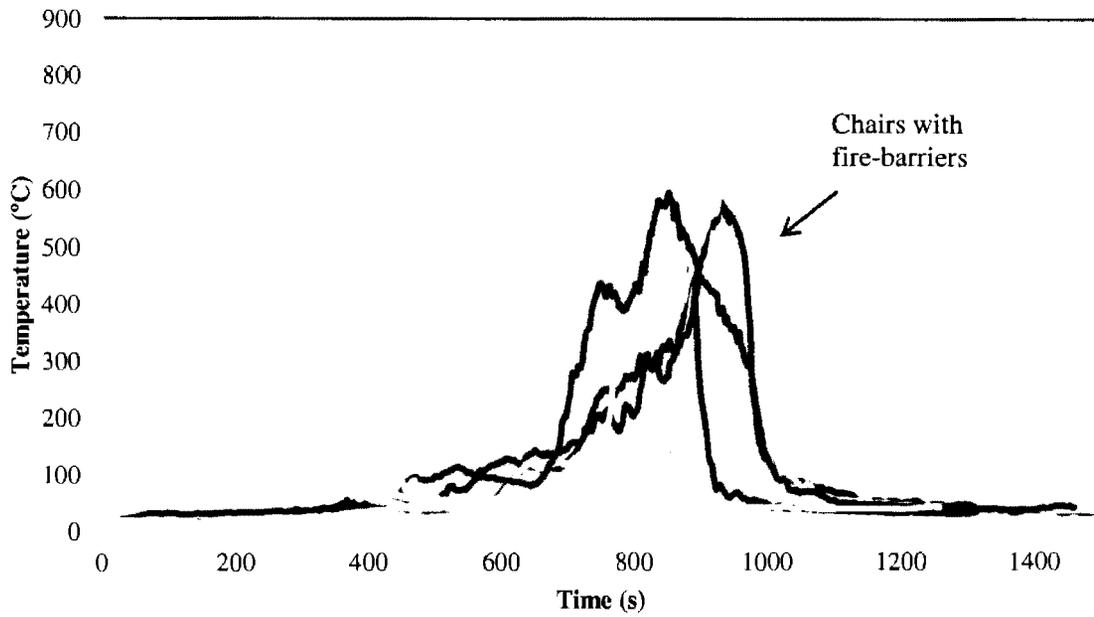
Temperature Curves for Fabric 1B, SPUF foam, 5' from floor, near chair



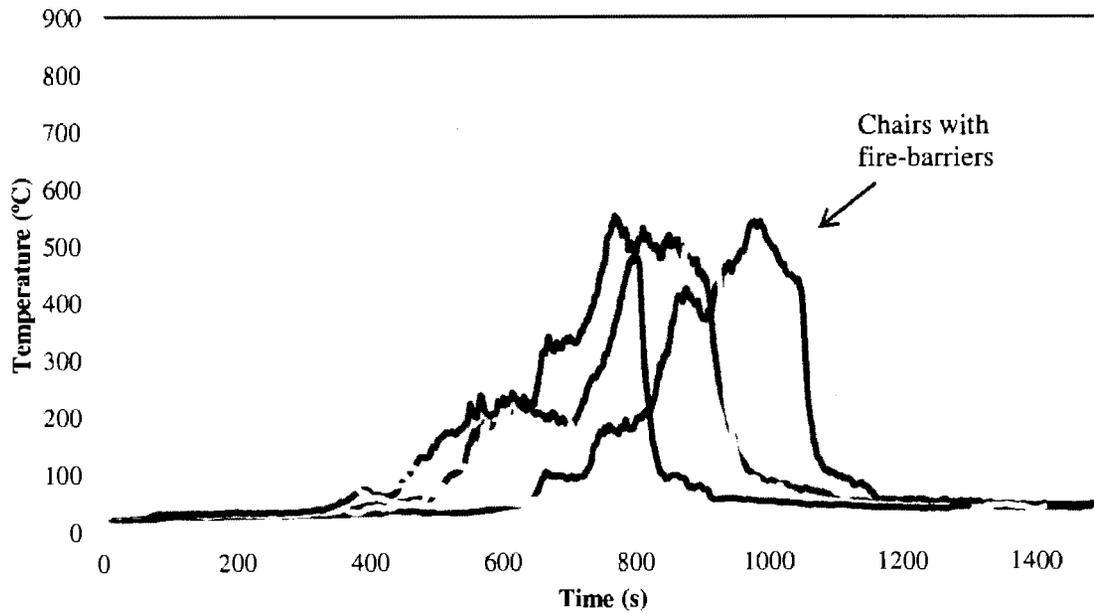
Temperature Curves for Fabric 1B, FR foam, 5' from floor, near chair



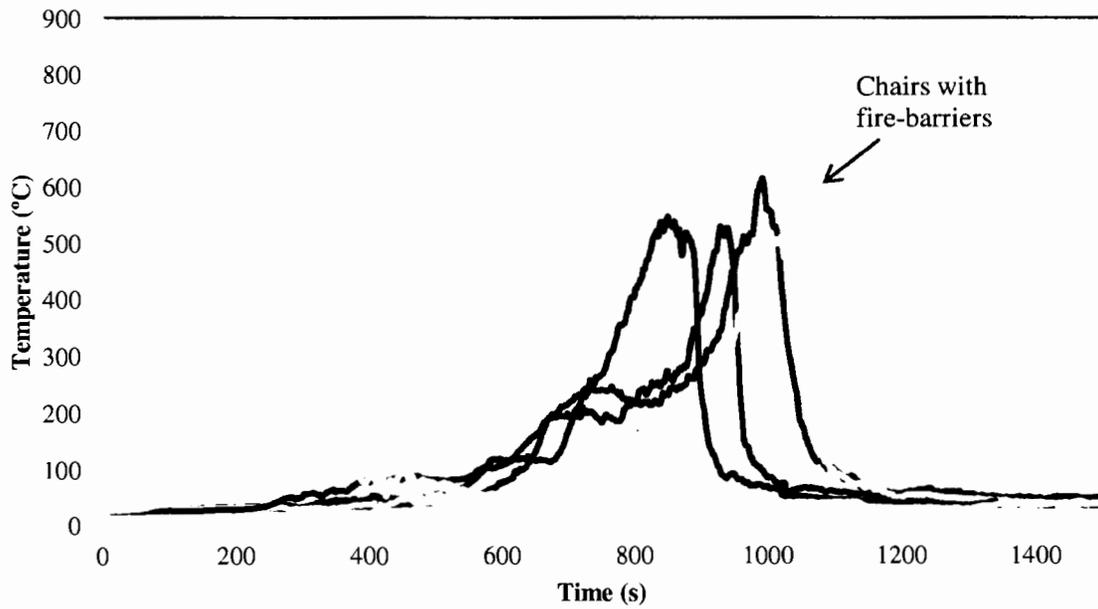
Temperature Curves for Fabric 2A, SPUF foam, 5' from floor, near chair



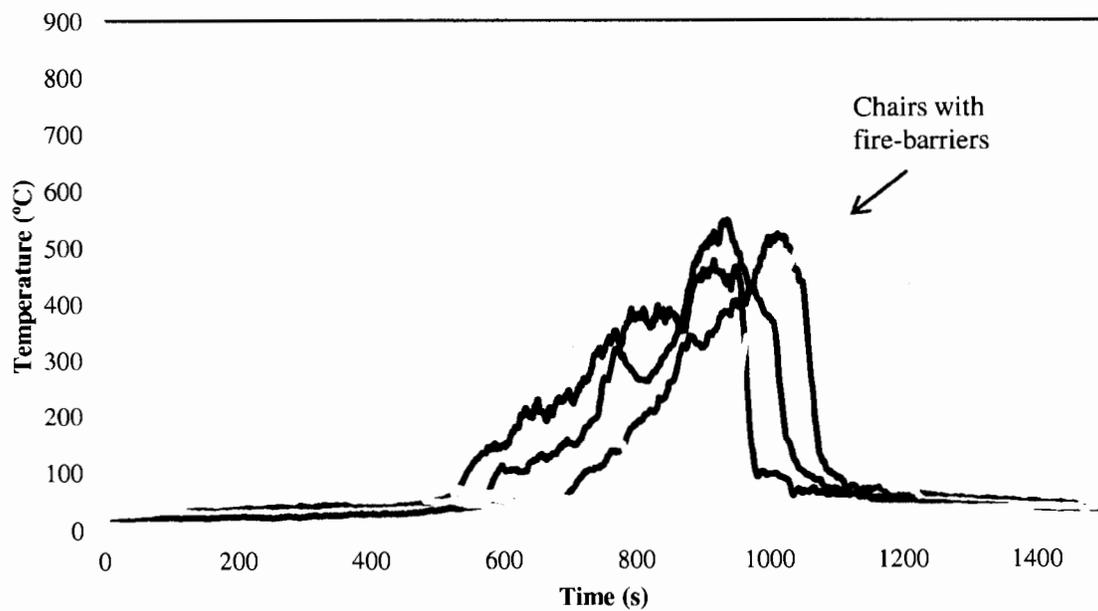
Temperature Curves for Fabric 2A, FR foam, 5' from floor, near chair



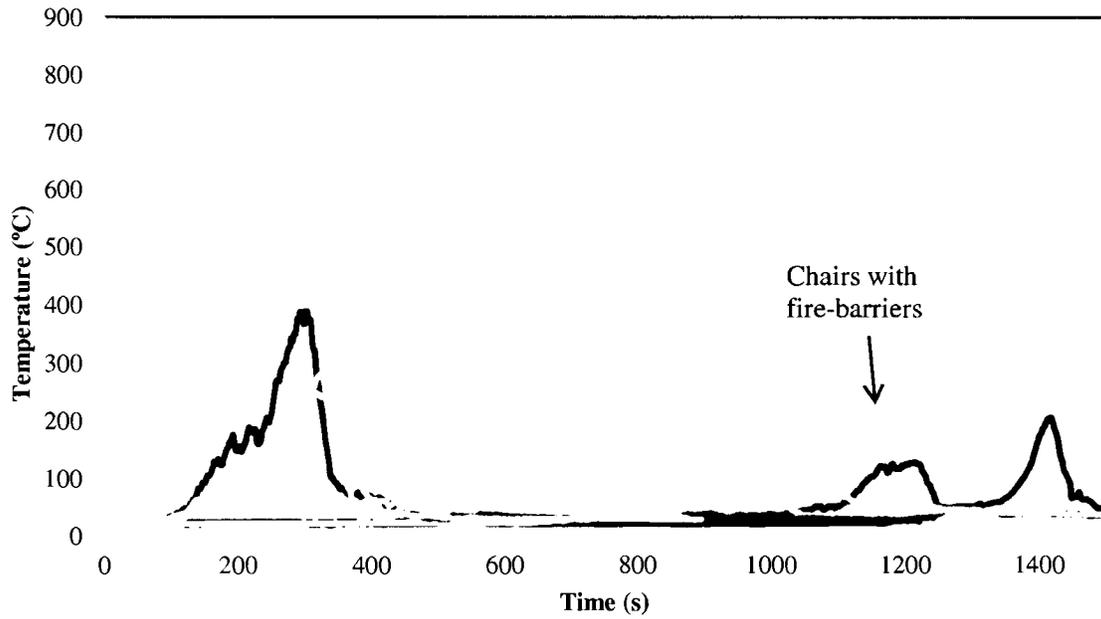
Temperature Curves for Fabric 2B, SPUF foam, 5' from floor, near chair



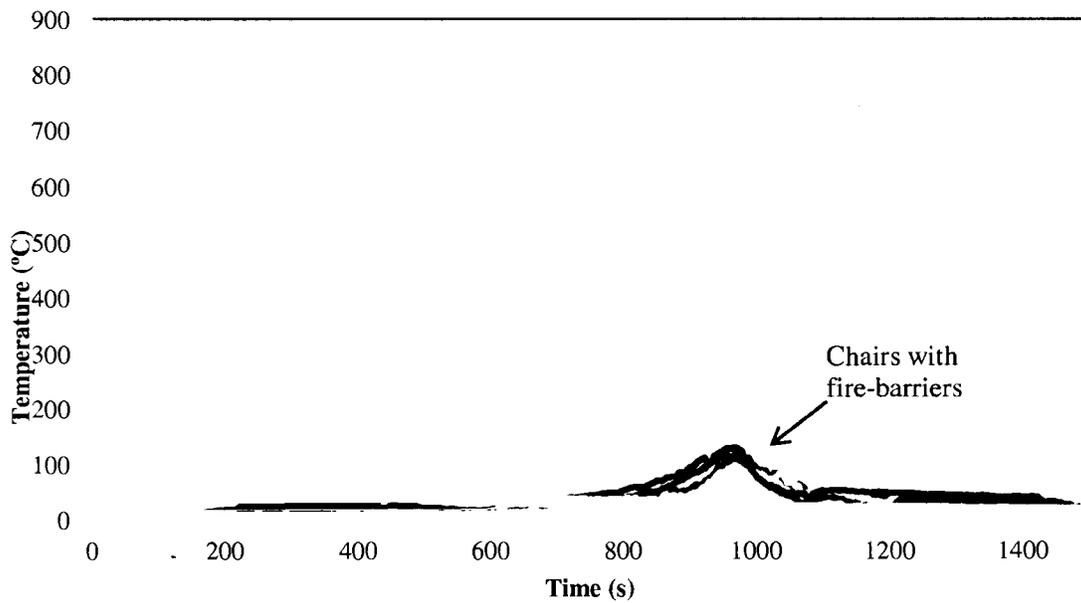
Temperature Curves for Fabric 2B, FR foam, 5' from floor, near chair



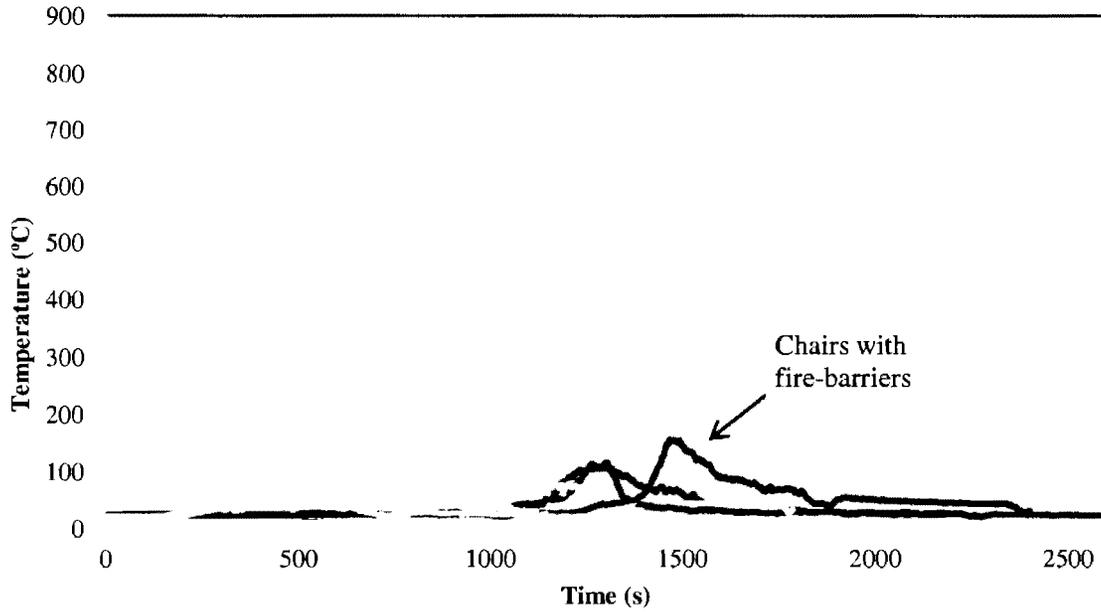
Temperature Curves for Fabric 1A, SPUF foam, 2' from floor, near door



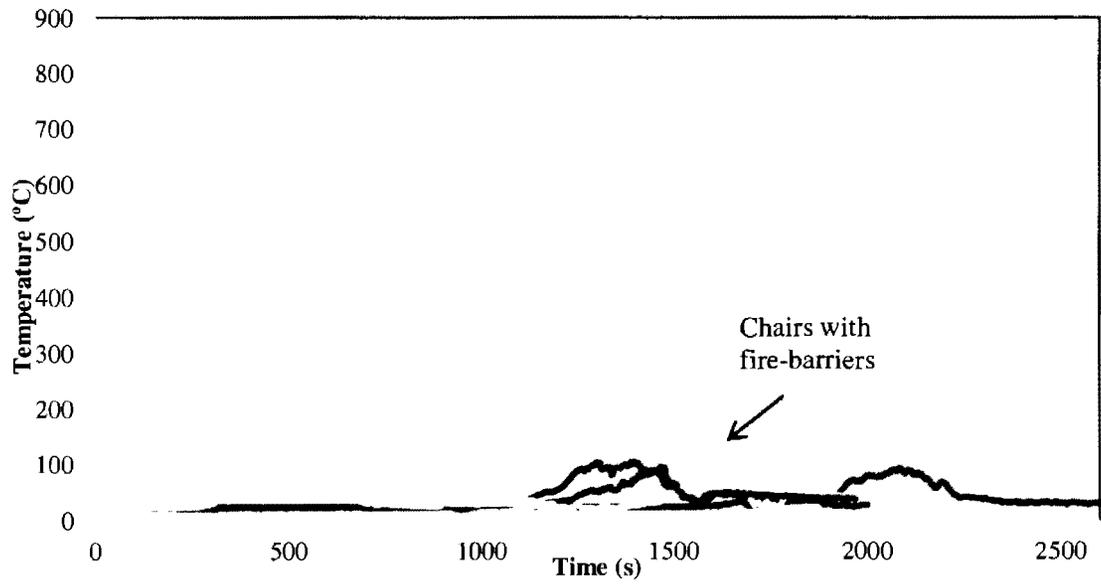
Temperature Curves for Fabric 1A, FR foam, 2' from floor, near door



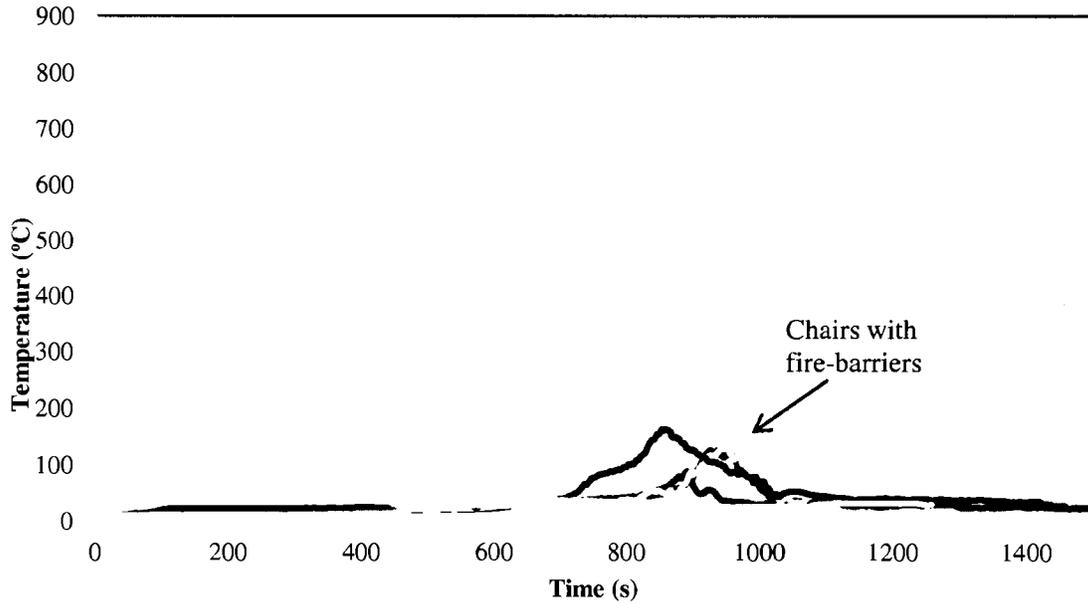
Temperature Curves for Fabric 1B, SPUF foam, 2' from floor, near door



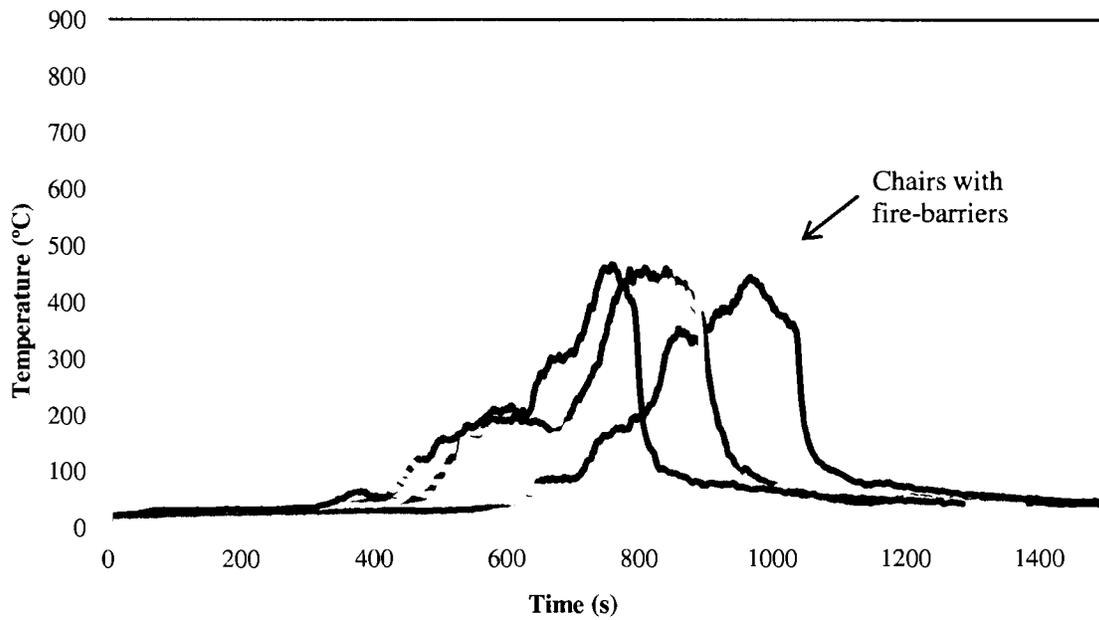
Temperature Curves for Fabric 1B, FR foam, 2' from floor, near door



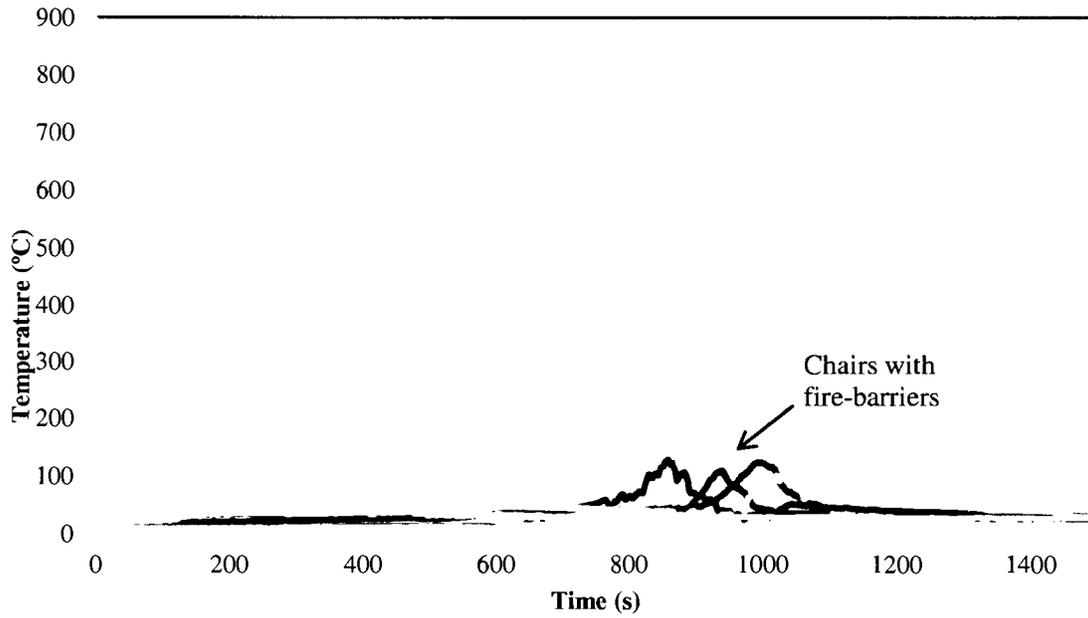
Temperature Curves for Fabric 2A, SPUF foam, 2' from floor, near door



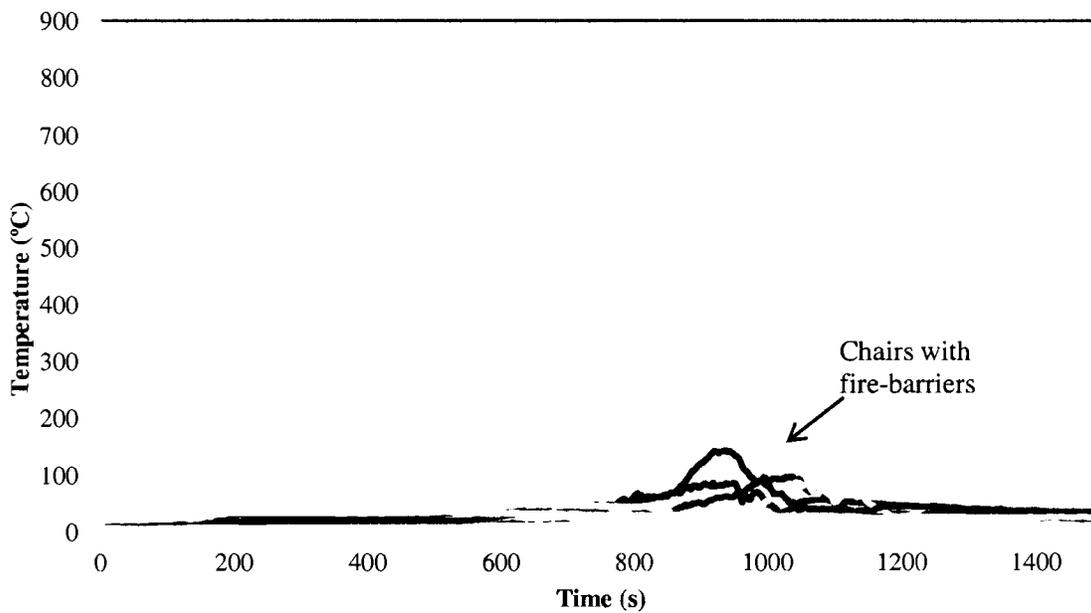
Temperature Curves for Fabric 2A, FR foam, 2' from floor, near door



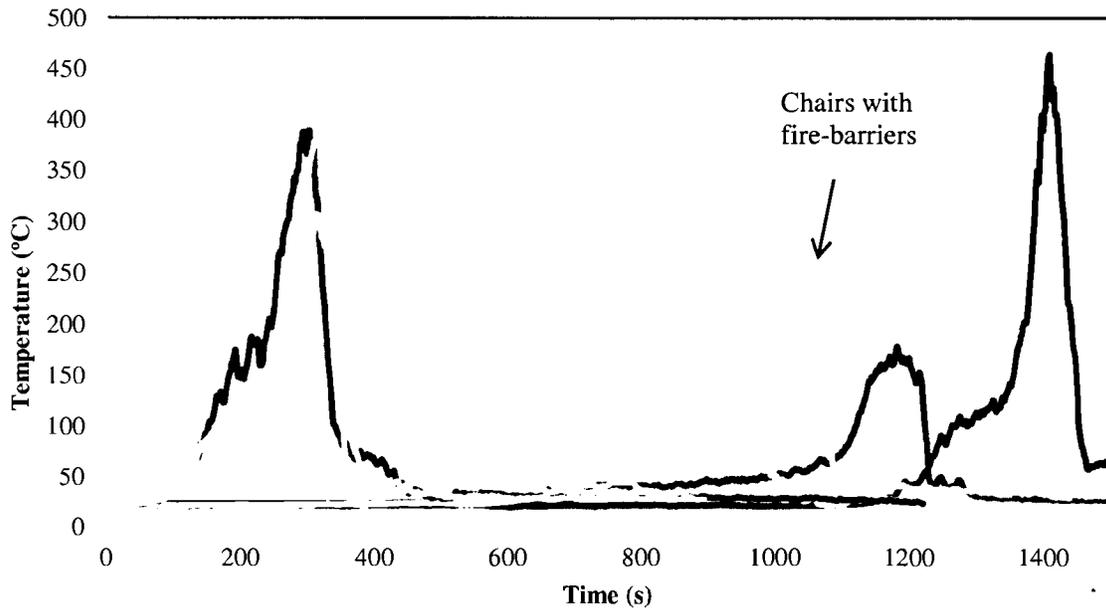
**Temperature Curves for Fabric 2B, SPUF foam,
2' from floor, near door**



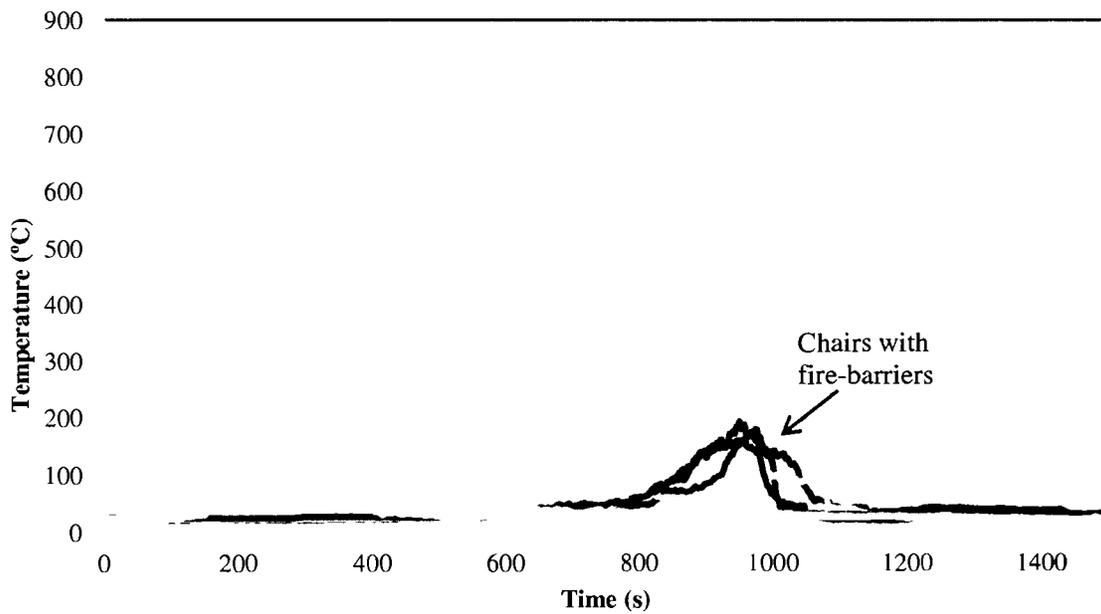
**Temperature Curves for Fabric 2B, FR foam,
2' from floor, near door**



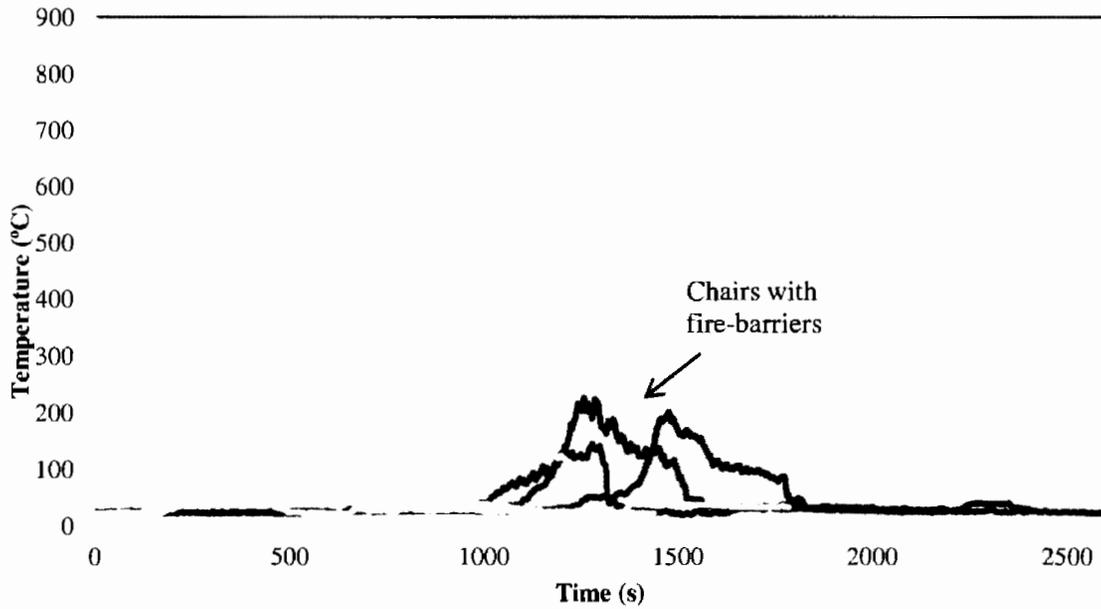
Temperature Curves for Fabric 1A, SPUF foam, 2' from floor, near chair



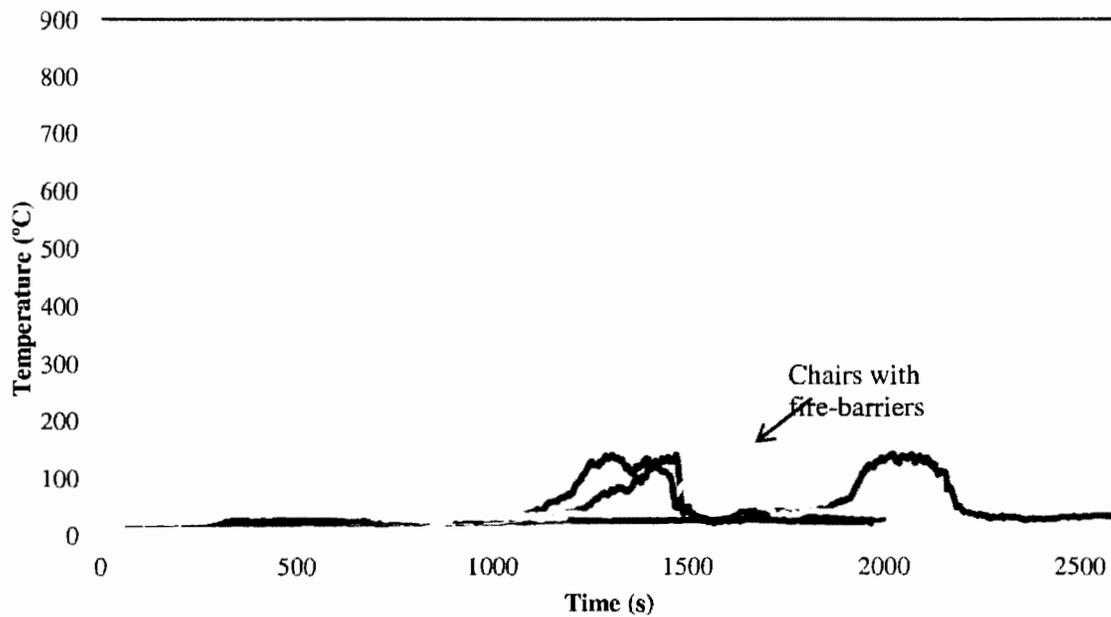
Temperature Curves for Fabric 1A, FR foam, 2' from floor, near chair



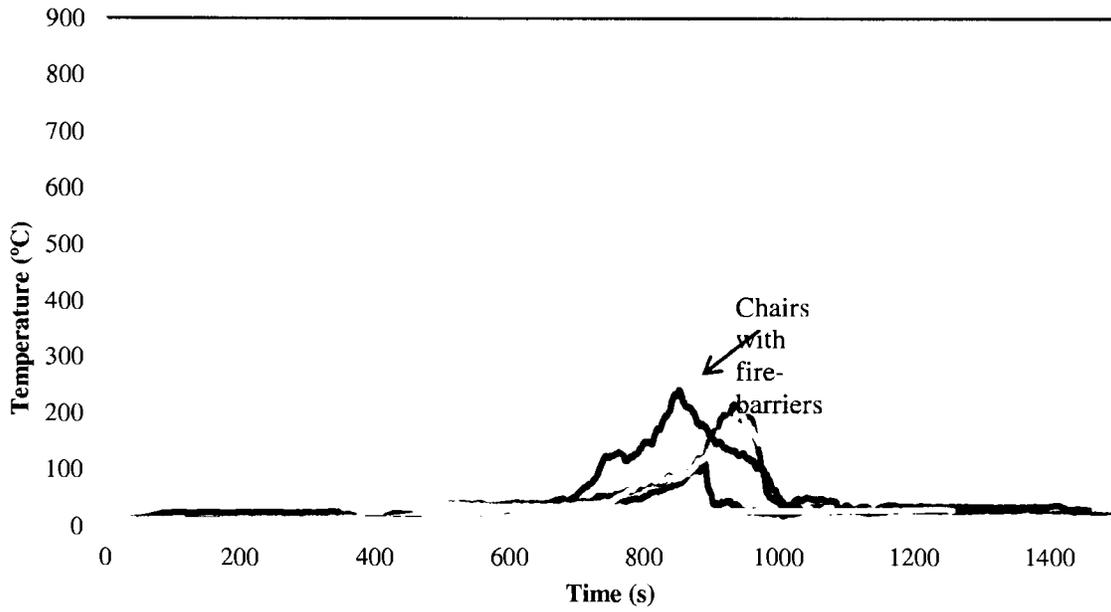
Temperature Curves for Fabric 1B, SPUF foam, 2' from floor, near chair



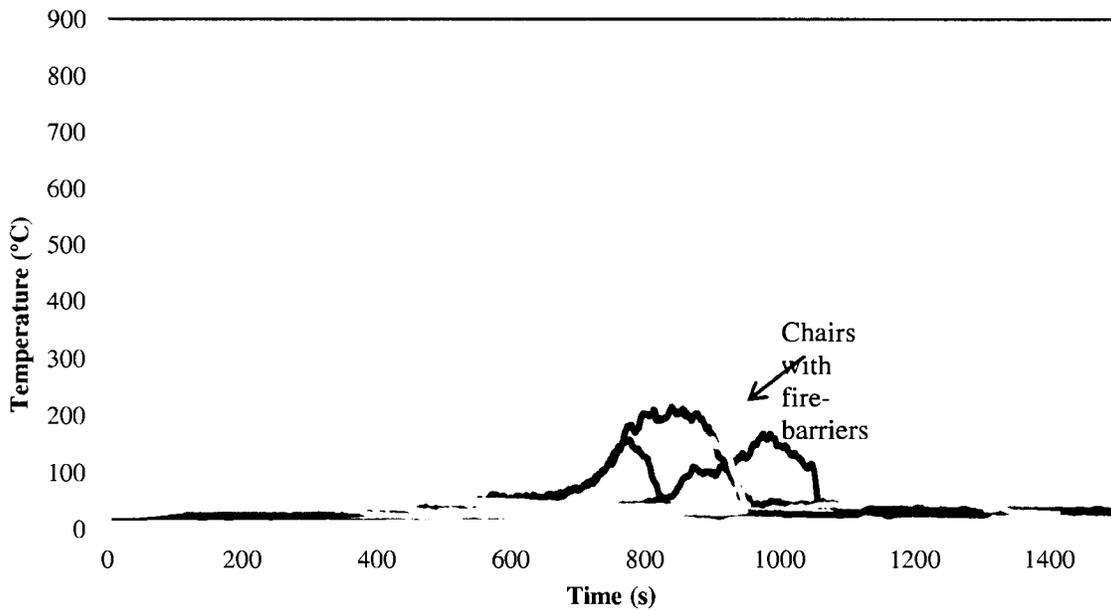
Temperature Curves for Fabric 1B, FR foam, 2' from floor, near chair



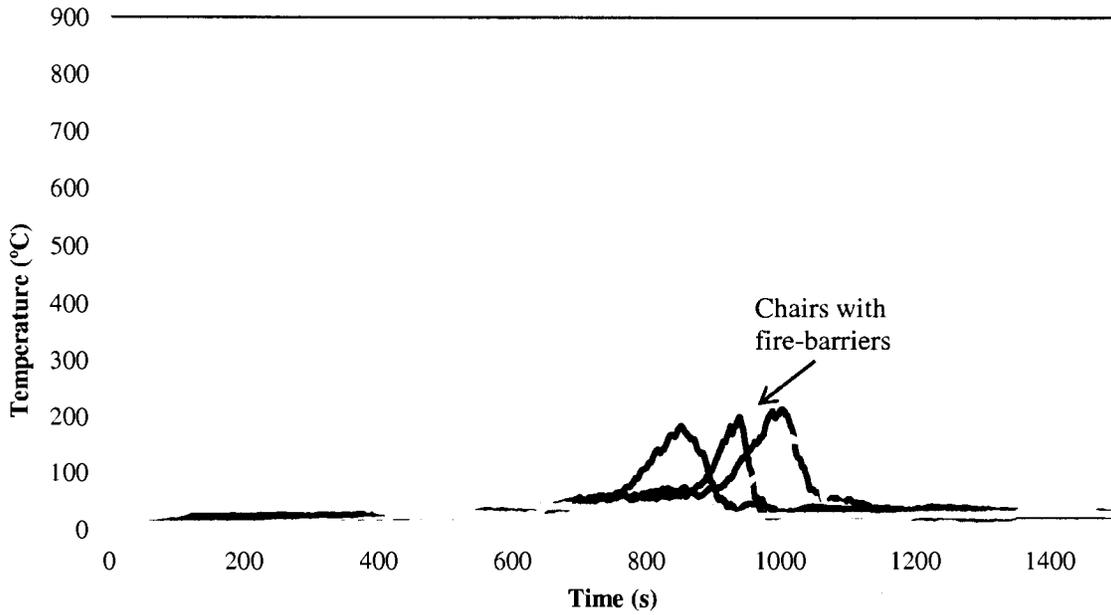
**Temperature Curves for Fabric 2A, SPUF foam,
2' from floor, near chair**



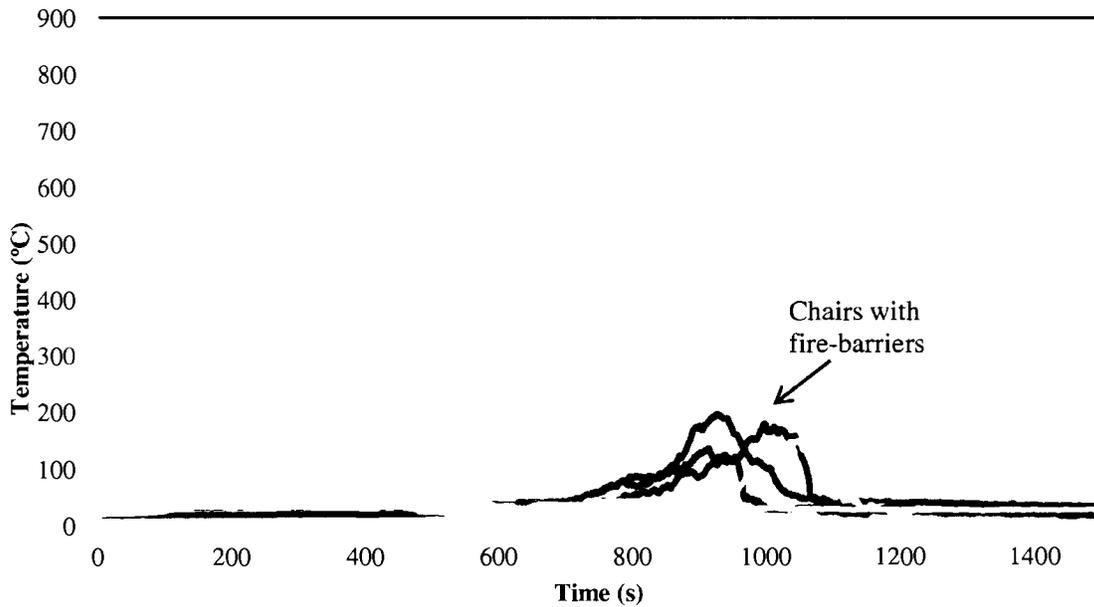
**Temperature Curves for Fabric 2A, FR foam,
2' from floor, near chair**



Temperature Curves for Fabric 2B, SPUF foam, 2' from floor, near chair

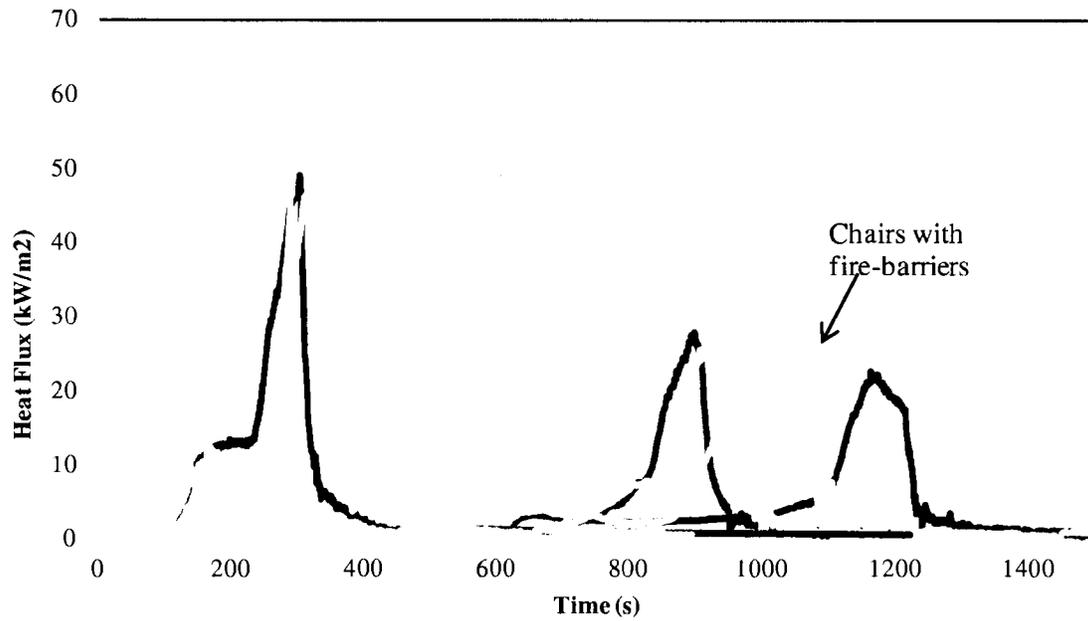


Temperature Curves for Fabric 2B, FR foam, 2' from floor, near chair

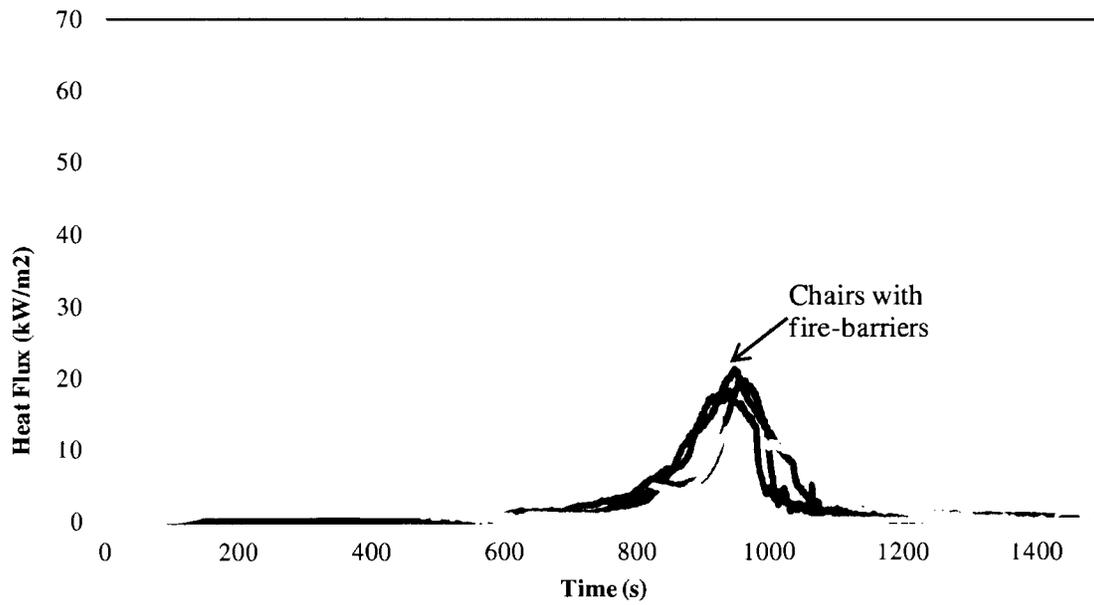


Appendix C. Heat Flux Curves for Tests by Fabric and Foam Combinations

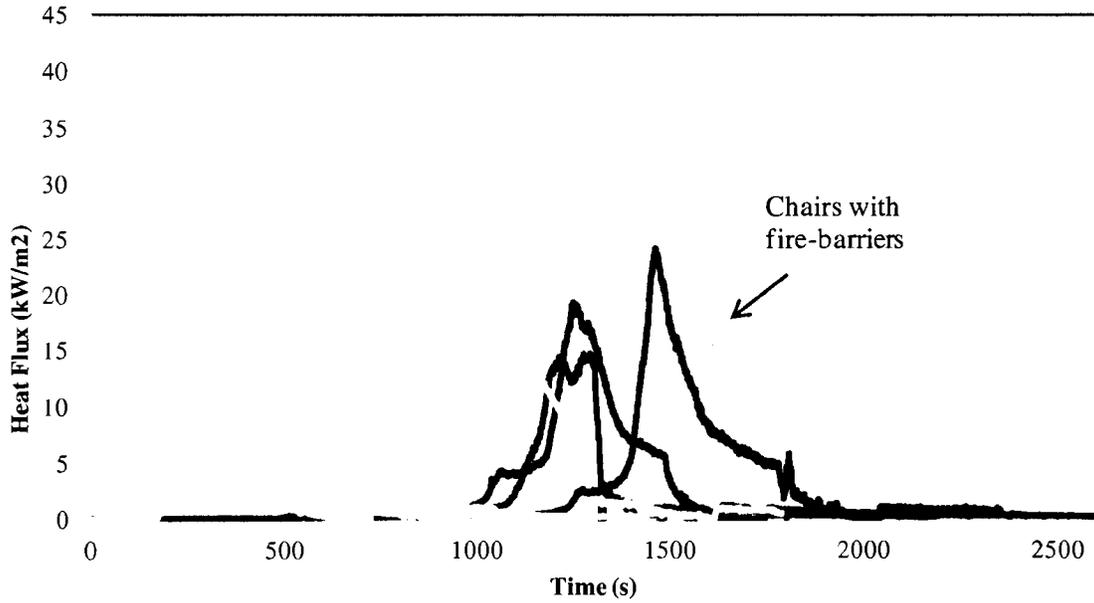
Heat Flux Curves for Fabric 1A, SPUF foam,
at floor, center of room



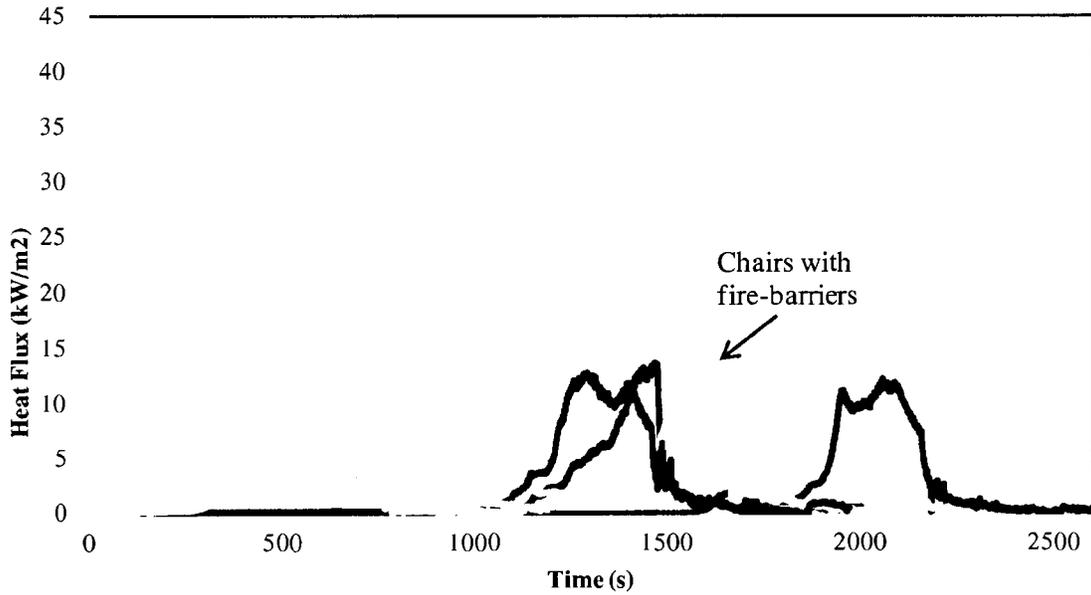
Heat Flux Curves for Fabric 1A, FR foam,
at floor, center of room



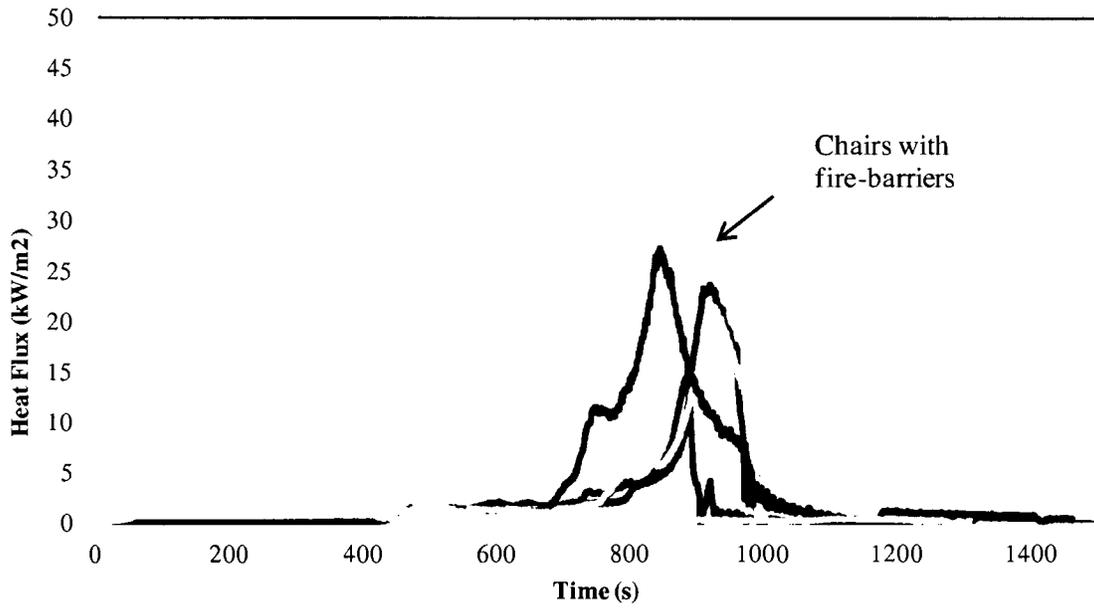
Heat Flux Curves for Fabric 1B, SPUF foam, at floor, center of room



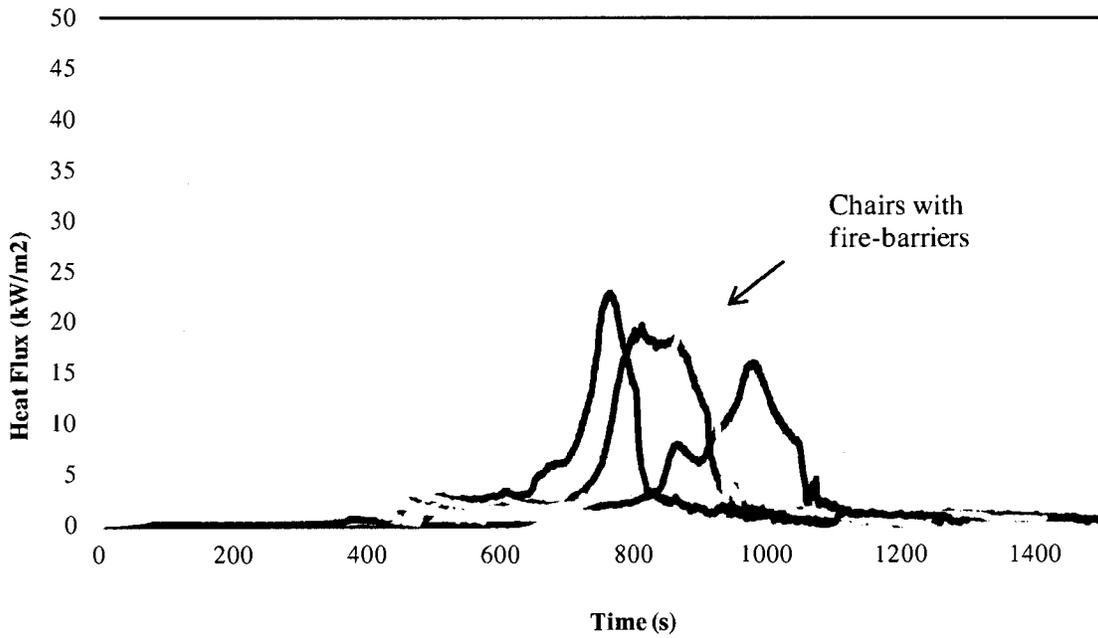
Heat Flux Curves for Fabric 1B, FR foam, at floor, center of room



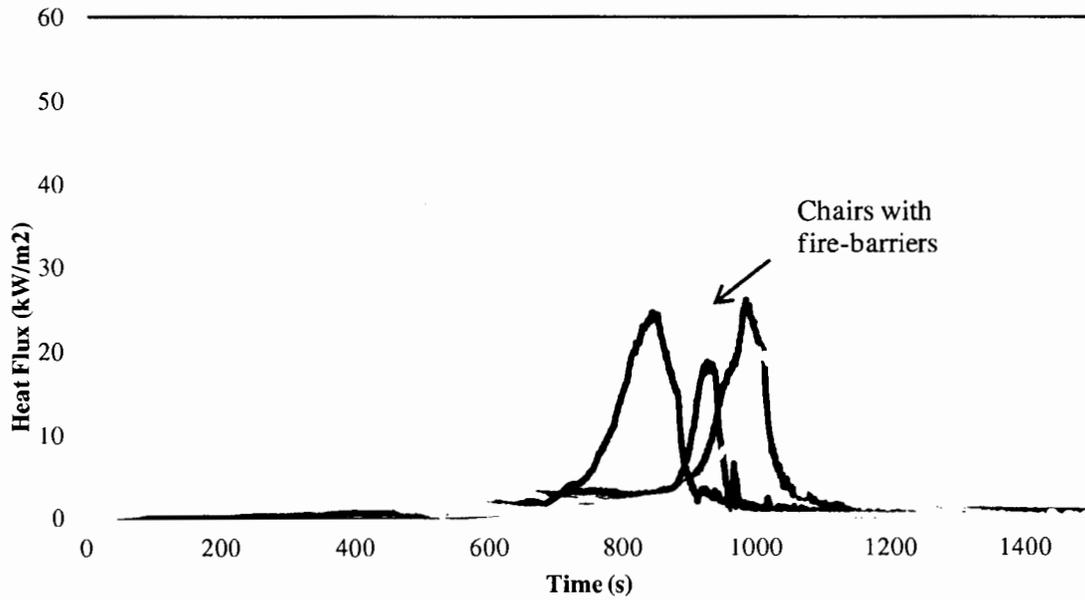
Heat Flux Curves for Fabric 2A, SPUF foam, at floor, center of room



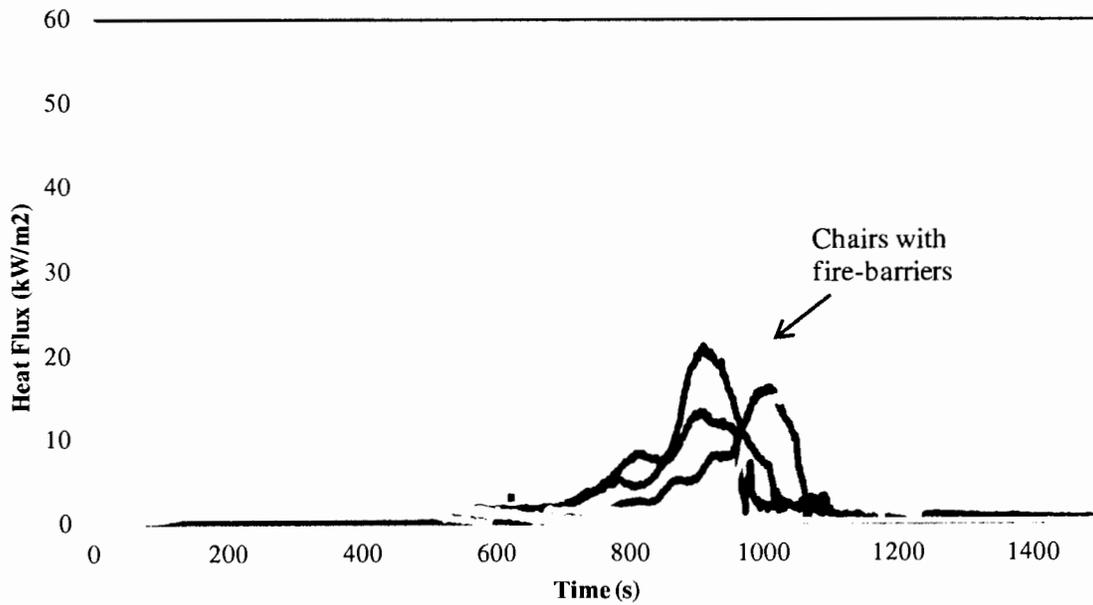
Heat Flux Curves for Fabric 2A, FR foam, at floor, center of room



Heat Flux for Fabric 2B, SPUF foam, at floor, center of room



Heat flux for Fabric 2B, FR foam, at floor, center of room



Appendix D. Upholstered Furniture Full-Scale Project Plan

Type II (Fire Barrier) Open-Flame Testing at NIST

TABLE OF CONTENTS

1 TEST PLAN INTRODUCTION 2

 1.1 Background 2

 1.2 Goal and Objectives 3

2 PRODUCT DESCRIPTION AND SUBCOMPONENTS BEING TESTED 3

 2.1 Full-Scale Upholstered Chair Sample Description 3

 2.2 Text Matrix 5

3 Type II Open-Flame Testing 5

 3.1 Test Facilities and Instrumentation Setup 5

 3.2 Test Procedure 7

 3.3 Data Collection 8

 3.4 Test Setup 8

4 Roles and Responsibilities 8

 4.1 CPSC 9

 4.2 NIST 9

5 CONTACT INFORMATION 10

Appendix D1 – Test Protocol 11

Appendix D2 – Full-Scale Chair Testing Data Sheet 13

Appendix D3 – Testing Sequence 14

1 TEST PLAN INTRODUCTION

1.1 Background

The U.S. Consumer Product Safety Commission (“CPSC”) has proposed flammability standards for residential upholstered furniture under the Flammable Fabrics Act (“FFA”).^{*} The proposal would establish: (1) performance requirements to reduce the likelihood of smoldering-induced ignition and (2) certification and labeling requirements for upholstered furniture. Manufacturers of specific types of upholstered furniture would choose one of two possible methods for compliance: They could use cover materials that are sufficiently smolder resistant to meet a cigarette-ignition performance test (*i.e.*, “Type I” furniture); or they could place fire barriers that meet smoldering- and small open-flame resistance tests between the cover fabric and interior filling materials (*i.e.*, “Type II” furniture). Manufacturers of upholstered furniture would be required to certify compliance with the standard and comply with certain record-keeping requirements, as specified in the proposal.

In developing the proposed flammability standard to address ignitions of specific types of residential upholstered furniture, the Commission considered the available hazard information, and existing standards development research, together with the latest CPSC laboratory data and technical information developed by other organizations. Economic, health, and environmental factors were also considered.

The proposed standard addresses resistance to smoldering ignition and limited fire growth by means of bench-scale performance tests for cover fabrics, and alternatively, for barriers. The performance requirements of the proposed standard are intended to reduce the risk of fire from smoldering ignition. If barriers are chosen as the means of compliance, they must meet both small open-flame and smoldering-resistance requirements. The proposal adapts elements and variations of existing standards, including California Technical Bulletin 117, ASTM E-1353 (tests from the UFAC voluntary industry guidelines) and United Kingdom regulations (based on British Standard BS-5852)[†].

CPSC staff is planning to conduct full-scale upholstered furniture chair testing to assess qualitatively the potential effectiveness/ benefits of the proposal. This will include an evaluation of Type I (smolder resistance of cover fabrics) and Type II- (smolder and small open-flame resistance of fire barriers) compliant upholstered furniture. In addition to collecting data on full-scale furniture fire performance, the response of smoke and carbon monoxide alarms will be

^{*} Federal Register, March 4, 2008. Consumer Product Safety Commission, 16 CFR Part 1634, Standard for the Flammability of Residential Upholstered Furniture; Proposed Rule.

[†] BS-5852, Methods of test for assessment of the ignitability of upholstered seating by smoldering and flaming ignition sources. 1990.

examined in this study. This test plan covers the assessment of Type II open-flame examination of fire barriers that will be conducted at National Institute of Standard and Technology (NIST).

1.2 Goal and Objectives

The goal of this phase of full-scale testing is to develop test data on Type II upholstered furniture to demonstrate the potential effectiveness of the CPSC-proposed upholstered furniture flammability standard.

The objectives of this full-scale testing program are to:

- Obtain data on full-scale fire performance of upholstered furniture;
- Determine the extent to which the proposed bench-scale testing performance requirements can predict full-scale furniture fire performance;
- Incorporate knowledge gained from this test program to revise the proposed rule, if necessary; and
- Examine response characteristics of smoke and carbon monoxide alarms during large-scale testing.

2 PRODUCT DESCRIPTION AND SUBCOMPONENTS BEING TESTED

2.1 Full-Scale Upholstered Chair Sample Description

In FY 2008, CPSC staff issued a contract for the construction of full-scale upholstered furniture to conduct full-scale fire testing. CPSC staff specified information on upholstery and filling materials necessary to establish controls for the test procedures. The contractor purchased directly from specified manufacturers, the materials needed for the construction of the chairs and constructed furniture.

CPSC is providing NIST 64 chairs for Type II open-flame ignition testing. NIST is providing 7 weeks of time in the Large Fire Laboratory to complete testing of as many of the 64 chairs as possible. The chairs are upholstered, single-seat, “club chairs” (see Figures 1 and 2), with a contiguous seat, upholstered back and arms, and the chairs are constructed with a combination of fabric and filling materials.

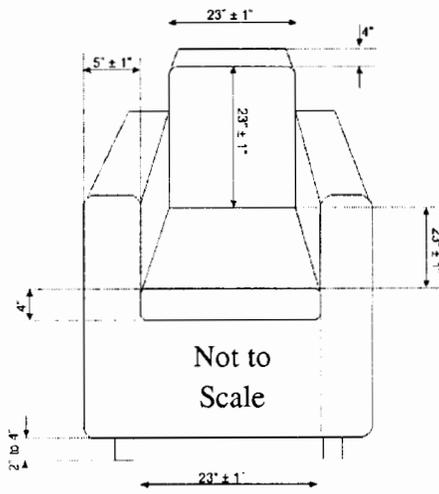


Figure 1. Schematic of Sample



Figure 2. Prototype

2.2 Text Matrix

The following is the chair test matrix, showing the various combinations of upholstery cover fabrics, filling materials (*e.g.*, polyurethane foam, batting), and interior fire-barrier materials.

Combination Number	Foam	Poly Wrap	Barrier ⁺	Fabric	Number of Chairs
1	SPUF	none	B1	1a	4
2	SPUF	P1	none	1a	4
3	FR	none	B1	1a	4
4	FR	P1	none	1a	4
5	SPUF	none	B1	1b	4
6	SPUF	P1	none	1b	4
7	FR	none	B1	1b	4
8	FR	P1	none	1b	4
9	SPUF	none	B1	2a	4
10	SPUF	P1	none	2a	4
11	FR	none	B1	2a	4
12	FR	P1	none	2a	4
13	SPUF	none	B1	2b	4
14	SPUF	P1	none	2b	4
15	FR	none	B1	2b	4
16	FR	P1	none	2b	4
Total					64

⁺ Barrier B1 is a combination of nominal 4 oz. polyester batting over a fire-blocking barrier.

3 TYPE II OPEN-FLAME TESTING

CPSC will provide NIST with the testing details (Test Setup, Test Protocol, and Data Collection). CPSC may change any or all of the testing details at any time before or during testing. NIST will take necessary steps to comply with any and all changes to the test details. If NIST and/or CPSC believe the changes cannot be accommodated within a reasonable timeframe, NIST and CPSC Primary Investigators (PI) will determine the path forward. No immediate written record of changes is required. CPSC staff's report will describe any such changes.

3.1 Test Facilities and Instrumentation Setup

This section contains the necessary information to construct the testing environment; *i.e.*, type and location of instrumentation and room design. During testing, the PIs can change the test setup conditions, such as placement of smoke alarms; however, it is the initial assumption that the information contained in this section will not be a variable in this testing study. The role and

responsibilities for the activities in this section are explained in section 4, “Roles and Responsibilities”:

- Tests are to be conducted in a NIST/ISO 9705-compliant room, instrumented as detailed in this section. If the fire substantially damages the room structure, then the instrumentation and drywall will be removed to allow for the required room reconstruction prior to reinstrumenting for the next test. The room layout is shown in Figure 3.
 - The walls will be two layers of Type C Gypsum board. Only the inner layer will be sealed. The outer layer will have joints offset from the inner layer to minimize loss of combustion products through the walls.
 - The paper will be burned off before testing because the paper can generate a sharp HRR spike.
 - The catch pan will contain (b)(3);CPSC Section 6 may be added to insulate the catch pan better and prevent warping, as needed.
 - The room air temperature must be below 50 °C before clean up. Room “cool down” will be accelerated using fans, but this could also increase the failure rate of the drywall, requiring more frequent rebuilds. The most efficient process will be determined during testing.
- Two thermocouple trees will be used to measure upper layer temperature and depth. The location of the thermocouple trees will be determined at the time of room construction.
- CO and CO₂ sensors will be used to measure CO and CO₂ levels in the upper layer. The sensors will be placed so as to measure at the top of the door opening. The exact location of the sensor will be determined on day 1 of testing.
- A heat flux gauge will be placed in the middle of the room, pointing through the floor directly toward the ceiling.
- Smoke obscuration will be measured as follows: A word will be written in the middle of the back wall about 4 feet above the floor. An observer will call out when the word is no longer visible.
- Heat Release Rate (HRR) will be measured.
- Two to three video cameras will be used to record each test. The exact location of the cameras is TBD.
- Six smoke and X CO alarm locations are TBD. The location and the frequency of using these alarms will be the responsibility of the CPSC.
- The door to the NIST/ISO 9705-compliant room will be open completely during testing.
- The ignition source and fuel are to be provided by the CPSC.
- The chair will be placed in the corner of the room with the front of the chair facing the door.

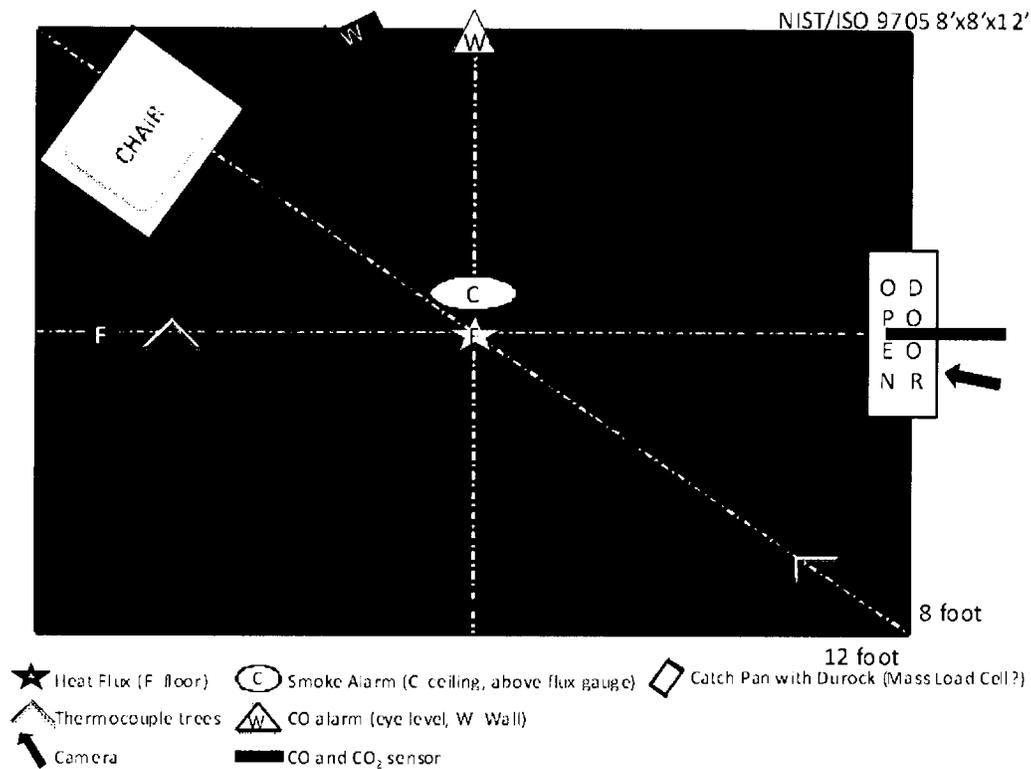


Figure 3. Schematic of Test Room, with Dimensions and Placement of Sample, Devices and Sensors Note: Not to Scale.

3.2 Test Procedure

The details of the testing protocol are in Appendix D1 of this document and include the following factors: NIST activities under the protocol are explained in section 4, “Roles and Responsibilities”:

- Ignition sequence
- Testing sequence (randomization scheme, Appendix D3)
- Duration and termination parameters
- Data collection specifics, such as beginning and ending measurements, and sampling frequency
- If the room is damaged during testing, room reconstruction and reinstrumenting cannot occur until the room cools down to a level that the supervisor determines to be safe to perform these activities. The baseline assumption is that the nonbarrier chairs will release at least/approximately 500–600 kW of heat, which may require the room to be rebuilt after two to three tests; suppression activities will have a big impact on if and when the room will need to be rebuilt. Room reconstruction and reinstrumenting will take approximately half a day. NIST has suggested a testing rate of three chairs/day (barrier) and two chairs/day (non-barrier). However, NIST is not guaranteeing a testing rate or a total number of tests because there are a lot of unknowns (heat flux generated by

a chair). NIST will provide 7 weeks of LFL testing time and will do everything possible to complete as many of the 64 chairs, as long as “everything” falls within NIST’s safety policies.

3.3 Data Collection

The data collected will include:

- Heat release rate vs. time. Within this measurement is data collection for CO, CO₂ and O₂ in the fire effluent.
- CO concentration vs. time. The location of the CO sensor in the room is TBD. It is expected to be placed at approximately eye level inside the test room. CO is also measured in the effluent stream of the hood.
- Time to smoke detector activation. Two brands of three types of hard-wired smoke detectors will be used: photoelectric, ionization, and combination. They will be located on the ceiling directly above the chair specimen with signal data capture.
- CO alarm performance.
- Heat flux meter data.
- Peak heat release rate.
- Time to peak heat release.
- Total energy release, as needed.
- Temperature of the test room vs. time. Thermocouple locations are TBD.
- Smoke obscuration, noted by a visual cue in the room.

3.4 Test Setup

Open-flame ignition testing of upholstered furniture will be conducted in a NIST/ISO 9705 room. This room will be built and instrumented as follows:

- Two thermocouple trees to measure upper layer temperature and depth;
- CO and CO₂ levels in the upper layer (as measured at the top of the door opening);
- Heat flux meter at center of room, pointed up at the ceiling;
- Smoke obscuration indication (*e.g.*, painted mark 4 ft. above the floor);
- Heat release rate;
- At least two video cameras;
- Smoke alarms and CO alarms; and
- The door of the room will be open to help the room size accentuate the build-up of heat and toxic gases.

4 ROLES AND RESPONSIBILITIES

Unless otherwise indicated, the CPSC and NIST will have the following responsibilities. The ownership of these responsibilities is subject to change, depending upon factors, such as equipment and personnel availability. Such deviation from the original assignment of activities

described in this test plan document requires only verbal approval by the PIs of CPSC (Rik Khanna) and NIST (Rick Davis) or other designees. No written or documented approval is required.

Safety

Safety conditions are the first and highest priority during every stage of this study. Every person involved has the right to express their safety concerns. The PIs are responsible for performing necessary safety risk assessments and ensuring all activities are being performed safely.

Matthew Bundy (Building 205 supervisor) will also be responsible in safety discussions for all activities that involve Building 205. Because Dr. Bundy is the expert in Building 205, he will have absolute and final decision-making authority when it comes to safety conditions in Building 205.

4.1 CPSC

The upholstered furniture fire performance testing detailed in this document will be performed in Building 205 of NIST by CPSC personnel. CPSC will also be responsible for the following:

- a. Complying with all NIST and Large Fire Laboratory safety guidelines
- b. Providing and transporting to NIST, 64 upholstered furniture chairs for testing.
- c. Providing a test plan that details a specific test protocol and randomization scheme.
- d. Providing smoke and carbon monoxide (CO) alarms that are prewired to interface directly with NIST's data collection system. The location in the room and which tests will or will not use alarms will be determined by CPSC before testing but can be changed at any point in the test series with only verbal communication to the NIST PI (Rick Davis) and NIST staff.
- e. As long as CPSC staff and the type of activity are in compliance with NIST's safety policies and practices, CPSC will provide personnel to help NIST with activities, such as, but not limited to, test set up, test performance, and cleanup activities,

4.2 NIST

NIST will provide technical expertise in conducting large-scale fire testing to assist CPSC staff. NIST will specifically be responsible for the following:

- Providing all scientists and visitors with appropriate safety training before testing begins.
- Supplying personnel and facilities for all NIST responsible activities.
- Furnishing up to 1 week of short-term storage of the upholstered furniture samples.
- Providing all instrumentation and materials necessary for performing these tests, except for smoke and CO alarms.
- Collecting and reporting all data as indicated in the Data Collection section.
- Set up, clean up, and operation of each fire performance test, as indicated in the Test Protocol section, with assistance from CPSC staff.

- Building and, if necessary, rebuilding with the assistance of CPSC staff, a NIST/ISO 9705 room with the following characteristics:
 - 8 ft x 12 ft x 8 ft (L x W x H). The framing will be wood, and the walls will be type C Gypsum Board. The room will have a standard interior door located at the middle of the 8 ft wall. The door must be operational and will remain open during testing.
- Collecting and reporting video, temperatures, CO, CO₂, heat flux, and heat release rate measurements, as instructed in the Test Setup, Test Protocol, and Data Collection sections.
- Providing and setting up two thermocouple trees, CO and CO₂ sensors, two heat flux gauges, and two video cameras. The set up of the all sensors, devices, and samples can be seen in Figure 3.
 - Submitting a data report to the CPSC by the end of the contract, or at a date to be agreed upon by the Pls. Note: analysis of the data by NIST is not required; analysis will be performed by CPSC staff.

5 CONTACT INFORMATION

Dr. Rick Davis

Material Research Engineer

Materials Flammability Group, NIST

Building and Fire Research Laboratory

100 Bureau Drive MS-8665

Gaithersburg, MD 20878

Office: (301) 975-5901

Mobile: (240) 246-5698

Rick.Davis@NIST.gov

Rik Khanna

U.S. Consumer Product Safety Commission

4330 East West Highway

Bethesda, MD 20814

(301) 504-7546

rkhanna@cpsc.gov

Shivani Mehta

U.S. Consumer Product Safety Commission

4330 East West Highway

Bethesda, MD 20814

(301) 504-6995

smehta@cpsc.gov

APPENDIX D1 – TEST PROTOCOL

Note: Have a means for extinguishing the sample. The exact chemical content of the FR foams is not known, so prepare appropriately.

A. Pretest–

1. Sample to be tested is determined by the Randomization Scheme in Appendix D3 of the Test Plan.
2. Record time that the sample was taken out of conditioning room.
3. Record the initial total mass of the sample.
4. Place sample chair in NIST/ISO room at a 45° angle in corner of the room so that the seat and back cushions face the doorway.
5. Ensure Test ID is visible on placard and within the viewing frame of the video cameras.
6. Record temperature and RH% inside the room.
7. Clear all personnel from the room/under the hood.
8. Turn on data acquisition system (including all sensors). Ensure appropriate readings. Begin background measurements.
 - The data should be taken in 1-second intervals.
9. Start all video cameras.
10. Photograph the sample in place.

B. Lighting the igniter flame–

1. Open the butane tank slowly, and light the end of the burner tube. Adjust the gas flow to the appropriate rate to achieve a 240 mm flame. Allow the flame to stabilize for at least 2 minutes.

C. Performing the test–

1. Apply the flame for 70 ± 1 seconds at the center of seat/back crevice of the sample, using the bent burner tube; then immediately remove ignition source from the sample.
 - This is the test “Start Time.” Note in data acquisition system.
2. Upon leaving room, operator shall leave door open.
3. Once Peak HHR has been observed, the operator will decide how much longer to continue test. Also, there may be multiple peaks in HRR; the PI will determine the length of test (Note: If the instantaneous HRR of a sample under test is high and the fire is observed to be growing, the test may be terminated for safety reasons.
4. Observe the sample combustion behavior for X minutes after a Peak HRR has been reached.
(Note: If the instantaneous HRR of a sample under test is X, and the fire is observed to be growing, the test may be terminated for safety reasons. To be determined by the PIs and LFL safety officer)
5. Record time of Smoke Alarm Activation, as seen in data.
6. Record time of CO Alarm Activation, as seen in data.

7. Record time at which smoke obscuration mark is no longer visible.

D. Post-Test–

1. Stop all measurements and video cameras.
2. Collect “drift measurements.”

APPENDIX D2 – FULL-SCALE CHAIR TESTING DATA SHEET

Date: _____ Temp (°C): _____
 Sample #: _____ RH %: _____
 Fabric (circle one) 1A 1B 2A 2B Sample retrieval time: _____
 Foam: SPUF FR
 Barrier: Yes No
 Initial Mass (kg): _____ End Mass (kg): _____
 Test Start Time: _____ Test End Time: _____
 Time to visual smoke obscuration: _____ Obscuration observed by: _____
 Smoke Alarm activation: _____ CO Alarm Activation: _____

Time	Observation

APPENDIX D3 – TESTING SEQUENCE

Note: Chairs with no barriers have polyester batting between the fabric and foam.

Test #	Fabric	Foam	Barrier	Replicate	Combination #
1	1A	FR	No	1	4
2	1A	SPUF	Yes	1	1
3	1B	FR	No	1	8
4	1B	SPUF	No	1	6
5	1A	SPUF	No	1	2
6	1B	SPUF	Yes	1	5
7	2A	FR	Yes	1	11
8	2B	SPUF	Yes	1	13
9	2B	FR	No	1	16
10	1A	FR	Yes	1	3
11	1B	FR	Yes	1	7
12	2B	SPUF	No	1	14
13	2A	FR	No	1	12
14	2A	SPUF	No	1	10
15	2A	SPUF	Yes	1	9
16	2B	FR	Yes	1	15
17	2B	SPUF	Yes	2	13
18	1A	SPUF	No	2	2
19	1A	FR	No	2	4
20	1B	SPUF	Yes	2	5
21	1A	SPUF	Yes	2	1
22	2A	FR	No	2	12
23	2B	SPUF	No	2	14
24	2B	FR	No	2	16
25	1A	FR	Yes	2	3
26	2A	SPUF	No	2	10
27	2A	SPUF	Yes	2	9
28	1B	FR	Yes	2	7
29	1B	SPUF	No	2	6
30	2B	FR	Yes	2	15
31	2A	FR	Yes	2	11
32	1B	FR	No	2	8

Test #	Fabric	Foam	Barrier	Replicate	Combination #
33	2A	SPUF	Yes	3	9
34	2B	FR	No	3	16
35	1A	SPUF	Yes	3	1
36	1B	FR	No	3	8
37	2B	FR	Yes	3	15
38	1B	SPUF	No	3	6
39	1B	FR	Yes	3	7
40	2A	FR	No	3	12
41	1B	SPUF	Yes	3	5
42	1A	SPUF	No	3	2
43	1A	FR	No	3	4
44	2A	SPUF	No	3	10
45	2A	FR	Yes	3	11
46	2B	SPUF	No	3	14
47	2B	SPUF	Yes	3	13
48	1A	FR	Yes	3	3
49	2B	SPUF	Yes	4	13
50	2A	FR	Yes	4	11
51	1B	FR	No	4	8
52	2B	SPUF	No	4	14
53	1B	SPUF	No	4	6
54	2B	FR	No	4	16
55	1A	FR	Yes	4	3
56	2A	FR	No	4	12
57	1A	SPUF	No	4	2
58	2B	FR	Yes	4	15
59	1A	SPUF	Yes	4	1
60	1B	FR	Yes	4	7
61	1B	SPUF	Yes	4	5
62	1A	FR	No	4	4
63	2A	SPUF	No	4	10
64	2A	SPUF	Yes	4	9



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

August 23, 2012

The Honorable Richard J. Durbin
Chairman
Subcommittee on Financial Services and
General Government
Senate Committee on Appropriations
133 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin:

Attached please find responses to the written questions for the record submitted in connection with the July 17, 2012, hearing entitled: "Are Consumers Adequately Protected from Flammability of Upholstered Furniture? Hearing on the Effectiveness of Furniture Flammability Standards and Flame Retardant Chemicals."

Thank you again for the opportunity to testify before the Subcommittee. Should you have any questions or require additional information, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in cursive script, reading "Inez Tenenbaum".

Inez M. Tenenbaum

Attachment

**RESPONSES OF U.S. CONSUMER PRODUCT SAFETY COMMISSION CHAIRMAN
INEZ TENENBAUM TO QUESTIONS FOR THE RECORD**

**HEARING ON
“ARE CONSUMERS ADEQUATELY PROTECTED FROM
FLAMMABILITY OF UPHOLSTERED FURNITURE?”
FURNITURE FLAMMABILITY STANDARDS AND
FLAME-RETARDANT CHEMICALS
SENATE APPROPRIATIONS SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT**

JULY 17, 2012

Senator Richard J. Durbin, Chairman

CPSC’s Upholstered Furniture Flammability Standard

***Question:* In your testimony, you reference that much of the delay has resulted from the necessity of developing standard reference materials (such as standard cigarettes or standard foam) for testing. Are there remaining standard reference materials that need to be developed before you can move forward with finalizing the proposed rule?**

Answer: The research to determine the specifications for Standard Reference Material (SRM) foam was completed in July 2012. CPSC staff is working with the National Institute of Standards and Technology (NIST) and manufacturers to acquire SRM foam for testing as soon as possible. The staff also may conduct some additional work to select the best standard cover fabric for testing in accordance with the proposed rule.

***Question:* Under the rulemaking authorities that you currently have, what steps still remain in order to complete the standard, and what is your best estimate of when the standard might be completed?**

Answer: The remaining steps in the rulemaking include:

1. testing to determine the necessary revisions to finalize the proposed rule;
2. testing the materials subject to the proposed rule to determine that compliance can be achieved;
3. evaluating furniture constructed with compliant materials to estimate the reduction of deaths and injuries that could result from the proposed rule; and
4. drafting the text of the final rule and developing the final regulatory analysis.

The staff will also continue to work cooperatively with the State of California’s Bureau of Electronic & Appliance Repair, Home Furnishings & Thermal Insulation (BEARHFTI) as that agency proceeds with its work to revise Technical Bulletin 117 (TB 117). TB 117 currently contains performance standards that effectively require the use of flame retardants (FR) in

upholstered furniture. Future changes in TB 117 could have an impact on the rulemaking proceeding. With those caveats, CPSC staff estimates, subject to Commission direction, completion of the final rule in 2015.

California Technical Bulletin 117

***Question:* What role does California Technical Bulletin 117 play with regard to your efforts to finalize a standard for upholstered furniture flammability?**

Answer: There is a high degree of compliance with California's TB 117, not only in California, but also across the nation. The existing TB 117 is essentially a *de facto* national standard. CPSC staff continues to work cooperatively with BEARHFTI on possible revisions to TB 117, and elements of the Commission's proposed rule are incorporated into California's latest draft revised regulation, known as TB 117-2012. As the Commission moves forward with its own rulemaking, CPSC staff will continue to monitor TB 117-2012 developments and will consider the potential effects of a revised California regulation on the level of consumer safety.

***Question:* Does the fact that the California Governor recently ordered that TB 117 be revised impact your efforts?**

Answer: The revision of TB 117 will not impede the Commission's efforts to address the fire risk associated with ignitions of upholstered furniture. Throughout the upholstered furniture rulemaking process, CPSC staff has always envisioned a rule that does not require the use of FRs to meet performance standards. Revising or removing the open-flame requirement of TB 117 would eliminate the practical need for manufacturers to use FRs in upholstered furniture sold in California and across the United States. Accordingly, Commission staff is carefully monitoring the progress of the California TB 117 revision efforts.

***Question:* What will be the effect if TB 117 is completed prior to your standard?**

Answer: As required under the Flammable Fabrics Act (FFA), the Commission preliminarily determined that the proposed rule was needed to address an unreasonable risk of fire injury or death to the public when it issued a proposed rule in 2008. The proposed rule included an assessment of reasonable alternatives to the proposal, including reliance upon the existing California regulations. If a revised TB 117-2012 were completed prior to our rule, the Commission would need to evaluate the revision to determine whether a federal rule is still needed to address the fire risk.

***Question:* If California fails in their efforts to update TB 117, can CPSC pre-empt TB 117 with your proposed rule?**

Answer: In general, section 16 of the FFA provides that whenever a flammability standard or other regulation for a product is in effect under the FFA, no state may establish or continue in effect a flammability standard or other regulation for that product, if the standard or regulation is designed to protect against the same risk of occurrence of fire as the FFA standard or regulation,

unless the state standard or regulation is identical to the FFA standard or regulation. Because the CPSC rule and TB 117 are both designed to address the same unreasonable risk of occurrence of fire presented by flammable upholstered furniture, any federal rule by CPSC would have preemptive effect. I should note, however, that the decision as to whether our rule has preemptive effect ultimately will be determined by the courts.

Response to AHFA Recommendations

***Question:* The American Home Furnishings Alliance recommends that CPSC immediately adopt ASTM 1353 as a federal mandatory standard while continuing work on the CPSC proposed standard?**

Answer: The Upholstered Furniture Action Council (UFAC) voluntary guidelines are based on tests prescribed in the ASTM E1353 test method. The vast majority of upholstered furniture sold in the United States conforms to the voluntary guidelines. While some elements of the CPSC's proposed flammability performance tests are similar to the ASTM 1353 standard, CPSC staff reviewed the ASTM/UFAC approach and concluded that it was inadequate because conforming furniture can still ignite and burn from smoldering cigarettes. The CPSC proposal incorporated significant improvements to the ASTM/UFAC method and is more stringent. Mandating the ASTM E1353 method, as embodied in the current UFAC guidelines, would impose modest costs but also provide only negligible safety benefits.

***Question:* How does ASTM 1353 differ from what CPSC is proposing?**

Answer: There are two principal, substantive differences between the ASTM tests and the smoldering ignition tests in the Commission's proposed rule. The first involves relatively small differences in the test methods themselves. The second involves larger differences in the acceptance criteria that determine the stringency of the performance tests.

With regard to the test methods, the ASTM method measures char length from the lit cigarette placed on an upholstery mockup. The mockup is encased in a box that artificially restricts airflow to an unrealistically low rate. The cover fabric is classified as either "Class 1" or "Class 2" based on the char length resulting from the test. If the char is within the 2inch specified length, the cover fabric is Class 1 under the UFAC guidelines and may be used without restriction; if the char exceeds the 2 inch specified length, the fabric is Class 2 under the UFAC guidelines. For Class 2 fabrics, the use of a smolder-resistant barrier (typically polyester batting) beneath the cover fabric is prescribed to provide additional smolder resistance for the finished article of furniture. The UFAC/ASTM approach represents the status quo in the industry; virtually all fabrics are classified as Class 1, although in tests conducted by CPSC staff, some Class 1 fabrics were so smolder prone that they produced dangerous smoldering or transitioned to flaming combustion even when a polyester batting layer that would have been required for Class 2 fabrics was present.

The main difference is in the acceptance criteria. The CPSC's proposed rule classifies furniture as "Type I" or "Type II" based on acceptance criteria of the proposed test. The CPSC's

proposed Type I smoldering test for upholstery cover fabrics uses the basic UFAC/ASTM mockup test configuration but controls airflow without a box, limits maximum allowable smoldering time to 45 minutes, and limits mass loss of the (non-FR) polyurethane foam substrate beneath the fabric to 10 percent. This test is a much better indicator of the likelihood of continued combustion and fire growth, and it identifies more effectively smolder-prone cover fabrics.

While most cover fabrics are still expected to pass the smoldering resistance test and be used in complying, Type I furniture, fabrics that fail the smolder-resistance test can only be used in Type II furniture. Type II furniture is that which is constructed with a fire-blocking barrier beneath the cover fabric. Compliant Type II barriers must pass a stricter smolder-resistance test; they must also pass a flame-resistance test that simulates the potential transition from smoldering to flaming combustion.

Question: What is your response to AHFA’s recommendation that your proposed standard rely on the use of compliant components (individual pieces that are used to construct the final furniture) instead of on the use of composite testing (testing of the completed furniture)?

Answer: The Commission’s proposed rule relies on the use of complying component materials, rather than on composite assemblies, consistent with AHFA’s recommendation. The principal advantage of this approach is economic efficiency—suppliers of the various components can test and certify their materials, and furniture manufacturers can choose from among many complying materials, without having to duplicate compliance tests for each of thousands of potential combinations. Balanced against the desire for low cost, however, is the need to ensure that complying components will perform as intended when assembled into the wide range of constructions and geometries in finished articles of upholstered furniture. CPSC staff will continue to be mindful of these issues as they move forward with the rulemaking.

Flame-Retardant Chemicals

Question: EPA has jurisdiction over evaluating the toxicity of flame retardant chemicals under the Toxic Substance Control Act but, in 1977, the CPSC attempted to use their authority under the Federal Hazardous Substances Act to ban the use of a flame retardant – “tris,” a harmful carcinogen – from use in children’s clothing. Though the ban was overturned on procedural grounds, could the CPSC use this authority to take similar steps to ban the use of certain toxic flame retardant chemicals in upholstered furniture?

Answer: While the EPA has authority to regulate FR chemical risks under the Toxic Substances Control Act, the Commission has authority under the Federal Hazardous Substances Act (FHSA) to regulate a “hazardous substance,” as defined in the FHSA, that is intended or packaged in a form that is suitable for use in the household. In other words, the CPSC does not regulate chemicals, but it can regulate a product, such as upholstered furniture, if that product contains a hazardous substance and the Commission is able to make the requisite findings under the FHSA. See 15 U.S.C. § 1261(f) and (q)(1)(B); § 1262(f) through (i).

CPSC staff has conducted risk assessments for fabric, foam, and barrier FRs. Staff identified one foam FR, known as TDCP or “chlorinated tris,” as a potential carcinogen. To regulate upholstered furniture containing this or other FRs under the FHSA, the Commission would have to find that upholstered furniture containing the chemical is a “hazardous substance” under the FHSA and that cautionary labeling would not adequately protect public health and safety. A “hazardous substance,” as defined in the FHSA, includes a substance that is toxic and “may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use.” *See* 15 U.S.C. § 1261(f)(1)(A). The FHSA also requires, among other things, a final regulatory analysis of the costs and benefits of the regulation, a description of alternative approaches to regulation, as well as an analysis of the costs and benefits of those alternatives, and why they were not chosen as part of the final rule.

To date, CPSC staff has worked cooperatively with EPA staff outside of the FHSA rulemaking context to identify and address potential risks associated with a category of flame-retardant chemical compounds known as polybrominated diphenyl ethers (PBDEs) that had been used in upholstered furniture to meet TB 117. The EPA proposed a Significant New Use Rule (SNUR) for two PBDEs (penta- and octa-BDE) in 2004 and another SNUR (deca-BDE) in 2012. Penta- and octa-BDEs are now out of production, and deca-BDE production is expected to cease by December 31, 2013. Going forward, CPSC staff and EPA staff will continue to work cooperatively on issues related to FRs.

From: [Day, Christopher](#)
To: [Ferguson, Nathanael \(Nathanael.Ferguson@mail.house.gov\)](#); [Lipman, Joshua \(Joshua.Lipman@mail.house.gov\)](#)
Cc: [Keefe Singer, Jenilee](#); [Ousey, William](#)
Subject: Drywall Meeting: Follow - Up
Date: Thursday, October 04, 2012 6:19:49 PM
Attachments: [121004 CFR Part 1031.pdf](#)
[121004 FY12 Midyear Voluntary Standards Report.pdf](#)

Nathanael; Josh:

Thanks again for setting up the meeting this Tuesday with NAHB, House Energy and Commerce, and Senate Commerce staff. Jenilee and I thought the discussion was productive, and put all of the remaining concerns regarding the legislation on the table.

Per your request, I am providing additional information on the Commission's requirements for involvement in, and recognition of, voluntary standards development organizations (SDOs). Overall, the Commission's involvement with SDOs is governed by Part 1301 of the Commission's rules (codified at 16 CFR 1301; copy attached). While an open, consensus-based process is embodied in that entire Part of our regulations, at least 3 provisions expressly highlight the requirements that Commission employees not participate in a closed process:

- Section 1031.5(i) states that the Commission must consider "the openness to all interested parties, and the establishment of procedures which will provide for meaningful participation in the development of such standards by representatives of producers, suppliers, distributors, retailers, consumers, small businesses, public interests and other individuals having knowledge or expertise in the areas under consideration, and procedures for affording other due process considerations" in "considering Commission involvement in the development of voluntary safety standards for consumer products."
- Section 1031.13(c) states that except in extraordinary circumstances, "Commission personnel shall not become involved in meetings concerning the development of voluntary standards that are not open to the public for attendance and observation."
- Section 1031.13(d) states "generally, Commission employees may become involved in the development of voluntary standards only if they are made available for comment by all interested parties prior to their use or adoption."

There's also some legislative history that might be helpful. When Congress amended the Consumer Product safety Act in 1981 by adding the provision in section 9(f)(3)(D) that the Commission has to make findings about the adequacy and level of compliance with any relevant voluntary standard before moving to promulgate a mandatory standard, the Conference report stated:

"The voluntary standards adopted and implemented at the time of the finding are the relevant ones for purposes of this determination. The voluntary consumer product safety standard must be 'adopted' in the sense that it has been finally approved in accordance with reasonable procedures, such as those utilized by groups that develop national consensus standards, for the adoption of voluntary consumer product safety standards." House Conference Rpt 208, July 29, 1981 at p. 875.

Finally, in addition to the regulation and legislative background, I am also attaching a copy of the Commission's latest report on voluntary standards activities (FY 2012 Mid-Year Report; issued September 25, 2012). As you can see on page 1 of the report, Commission staff participated in the development of over 60 voluntary standards activities between October 1, 2011, and March 31, 2012. Furthermore, the descriptions of each standard activity outlined in the report detail the involvement of Commission staff – and outside parties – in each activity.

I hope this information is helpful. Please feel free to share it with other meeting attendees. To the extent there are any additional questions, we are more than happy to do a conference call or come back for a subsequent meeting.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

November 7, 2012

The Honorable Joseph Lieberman
Chairman
Committee on Homeland Security and Government Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security and Government Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Lieberman and Ranking Member Collins:

We are writing to express our serious concern with S. 3468, the “Independent Agency Regulatory Analysis Act of 2012,” which we understand is being considered for possible mark-up by the Committee on Homeland Security and Governmental Affairs on November 15, 2012.

The U.S. Consumer Product Safety Commission (CPSC)—like other independent regulatory agencies—was set up to exercise policy and rulemaking functions independent of the control of any specific Administration. Under the Consumer Product Safety Act (CPSA), as amended, Commissioners are appointed to the Commission for staggered seven-year terms. This was done by Congress precisely to ensure a diversity of viewpoints and foster an environment where critical product safety decisions are based on science and the professional recommendations of Commission staff—not purely political dictates.

Unfortunately, the current draft of S. 3468 would undermine this independence. It would authorize the President to require independent agencies to submit their rulemakings to the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs for prior review. This would constitute a fundamental change in the role of all independent regulatory agencies.

For the CPSC specifically, it would add to an already comprehensive set of regulatory review mandates that we are required to follow under the laws that we currently enforce. This bill would empower OMB to require the agency to repeat time-consuming analyses, which

The Honorable Joseph Lieberman
The Honorable Susan Collins
November 7, 2012
Page 2

would delay the development of life-saving and injury reducing measures, such as recently passed infant and toddler product safety standards, that constitute the heart of the agency's mission. It would also undo reforms in the Consumer Product Safety Improvement Act of 2008 (CPSIA) that gave the Commission additional authority to respond quickly to new and emerging product safety hazards.

We urge you to reconsider the potentially negative impacts S. 3468 would have on the CPSC and other independent regulators before proceeding with it legislatively. Should you or your staff wish to discuss the concerns in further details, please feel free to contact us or Christopher Day, Director of Legislative Affairs, at (301) 504-7660, or by e-mail at cday@cpsc.gov.

Very truly yours,



Inez M. Tenenbaum
Chairman



Robert S. Adler
Vice Chairman



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

November 9, 2012

The Honorable Mary Bono Mack
Chairman
House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and
Trade
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bono Mack:

Attached please find responses to the written questions for the record submitted by you and certain other Members of the Subcommittee in connection with the August 2, 2012, hearing entitled "Oversight of the Consumer Product Safety Commission." An electronic version of these responses will also be provided to Mr. Brian Kirby Howard, Legislative Clerk for the Subcommittee.

Thank you again for the opportunity to testify before the Subcommittee. Should you have any questions or require additional information, please do not hesitate to contact me or Christopher Day, Director of Congressional Relations, at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in black ink, appearing to read "Inez Tenenbaum".

Inez M. Tenenbaum

Attachment

The Honorable Mary Bono Mack

REDUCING REGULATORY BURDENS AND COSTS

- 1. H.R. 2715 granted you the authority to exempt products, or classes of products, from the tracking label requirements. Has the Commission granted any exemptions? Has the Commission conducted any analysis on what products or classes are likely candidates to exempt from the requirement? If not, why not?**

Section 6 of H.R. 2715 (now P.L. 112-28) stated that “the Commission may, by regulation, exclude a specific product or class of products from the requirements in subparagraph (A) [tracking label requirement] if the Commission determines that it is not practicable for such product or class of products to bear the marks required by such subparagraph.” To date, the Commission has not issued any regulations under this new authority. Instead, the Commission issued a Statement of Policy (SOP) concerning tracking labels on July 20, 2009. (A copy of the SOP is available at <http://www.cpsc.gov/about/cpsia/sect103policy.pdf>.) In that Statement, the Commission noted that no specific labeling system was required. (“At this point, the Commission is not imposing any such uniform requirements, but expects that manufacturers will use their best judgment to develop markings that best suit their business and product.”) The Statement also recognized six circumstances where it might not be practicable for manufacturers to include tracking labels on a product, including products sold in bulk vending machines.

The Commission also noted its desire to reduce burdens posed by the tracking label requirement, particularly by avoiding duplicative requirements. To that end, the Statement provided: “The Commission believes that required information already permanently marked either to brand the product or otherwise to comply with other Commission or federal regulations, such as those promulgated under the Textile, Wool and Fur Acts or country of origin labeling rules, could be considered part of the ‘distinguishing marks’ called for by Section 103(a). Any such marking would have to be permanent as required by Section 103(a).” Given the flexibility provided in the Statement of Policy, the lack of stakeholder requests for exemptions, and the need to take action on safety priorities, the Commission has not yet conducted an analysis of candidates that could be exempted from the tracking label requirement.

- 2. Using the authority H.R. 2715 provided, the Commission voted to approve a petition and grant a functional purpose exemption from lead content limits for certain metal components of children’s ride-on tractors. Would the reasoning of this exemption extend to other products? Is the Commission going to reconsider previously submitted petitions or take the initiative to exempt other materials provided the exemptions will result in no measurable impact on public health or safety? If not, please explain.**

Under the new authority provided, the Commission granted a functional purpose exemption for certain metal components of children’s ride-on tractors. 77 FR 20614 (April 5, 2012). In addition, the Commission granted the same exemption to similar children’s products such as other children’s ride-on products that contain similar aluminum alloy component parts. Any

future petition would likely be factually unique, thus making it difficult to predict the likely disposition of future petitions. In the ride-on-tractor petition, however, I was pleased that this petitioner identified and requested only a minor increase in the permissible lead content limits for a few specific components of the children's ride-on tractors produced by his company.

The Commission has not considered previously submitted petitions because the new authority requires certain findings that were not required prior to H.R. 2715. However, the Commission will consider any petition resubmitted in accordance with the requirements for parties wishing to resubmit any previously submitted petitions set forth in section 101(b)(1)(F) of the CPSIA.

The Commission, subject to resource allocations in future operating plans, has also directed CPSC staff to undertake certain work to reduce third party testing costs consistent with assuring the compliance of children's products. Among the materials to be reviewed for possible determinations regarding lead content limits include adhesives in manufactured woods and synthetic food additives.

- 3. We passed H.R. 2715 in part due to the huge financial burden manufacturers have had to face in regards to testing costs since the passage of CPSIA. Does the CPSC know how many jobs were lost or how many companies are not able to invest in new jobs (except testing companies) due to this new financial hardship? Has the Commission undertaken any analysis of the effect of increased costs on innovation and product development?**

The Commission has implemented the third party testing provisions as mandated by Congress in CPSIA and the H.R. 2715 amendments. The Regulatory Flexibility Act (RFA) statement associated with the third party testing rule contains staff economic impact projections. After discharging our statutory duty pursuant to section 14(i)(3)(B) of the CPSA (as amended by P.L. 112-28) to review public comments associated with the reduction of third party testing costs consistent with assuring compliance, the Commission voted to direct staff to further investigate, pending resource allocations in future Commission operating plans, a number of options that staff indicated potentially may reduce third party testing consistent with assuring compliance.

See <http://www.cpsc.gov/library/foia/ballot/ballot13/3rdparty.pdf>.

- 4. H.R. 2715 required the Commission to seek comments on ways to reduce third party testing costs and to issue new or revised testing regulations within one year - which was August 12. The Commission noticed a request for comment last November. Where is the Commission with respect to revising or issuing new testing regulations?**

On August 29, 2012, CPSC staff submitted to the Commission a briefing package, "Consideration of Opportunities to Reduce Third Party Testing Costs Consistent with Assuring the Compliance of Children's Products." On October 10, 2012, the Commission voted to direct staff to further investigate, pending resource allocations in future Commission operating plans, a number of options that staff indicated potentially may reduce third party

testing consistent with assuring compliance. See <http://www.cpsc.gov/library/foia/ballot/ballot13/3rdparty.pdf>.

- 5. Has the CPSC considered allowing compliance with the European Toy Safety directive (EN-71) to be regarded as an acceptable demonstration of compliance with the US Toy Standard (ASTM F963)? If not, why not?**

As part of the vote mentioned in response to your previous question, the Commission directed the staff, pending resource allocations in future Commission operating plans, to draft a Request for Information (RFI) for publication in the *Federal Register* to determine which, if any, tests in international standards are equivalent to tests in comparable CPSC-administered children' product safety rules. See <http://www.cpsc.gov/library/foia/ballot/ballot13/3rdparty.pdf>. The provisions of EN-71 would very likely be included within the scope of any undertaken RFI on this subject and would be considered accordingly.

- 6. CPSC's periodic testing rule will take effect in February 2013. This rule will exponentially increase the testing, record keeping and other burdens imposed by the CPSIA. We are aware that there has been a proposal to offer--free-of-charge for small businesses--privately developed software that could help enable compliance with this extremely complex new regulation. This would be very similar to the IRS "Free File" program, which makes available, free-of-charge, tax filing software for millions of moderate-income Americans every year.**

- a. How does the Commission view such a program? Would such a program require Commission approval?**

While nothing prohibits private companies that wish to offer such a service from doing so, the Commission cannot endorse a company's privately developed software. Because 15 software companies participate in the IRS "Free File" program, the government is not in the position of favoring a particular company in that instance.

- b. Testing for phthalates is expensive, averaging between \$300 and \$500 per toy or product component. Last year the Commission, in an apparent attempt to reduce this burden, excluded from testing "materials known not to contain phthalates." Has the Commission developed a list of such materials? If not, why not?**

On August 17, 2009, the Commission published a notice of availability regarding a Statement of Policy (SOP) for testing component parts for phthalates (74 FR 41400). The SOP includes lists of materials that "do not normally contain phthalates and, therefore, might not require testing" for phthalates. The Statement of Policy is available at <http://www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf>.

On October 3, 2012, the Commission directed the staff, pending resource allocations in future operating plans, to explore certain opportunities to reduce third party testing costs consistent with assuring compliance. One of the nine activities approved by the

Commission is to research the feasibility of a list of materials determined not to contain prohibited phthalates. Another activity is to investigate the use of Fourier transform infrared spectroscopy to determine compliance to the phthalates content limit. The staff briefing package describing these activities is available at <http://www.cpsc.gov/library/foia/foia12/brief/reduce3pt.pdf>.

7. **Also with respect to phthalates, H.R. 2715 requires the Commission within one year after enactment to address inaccessibility, either by adopting the same guidance as applies to lead inaccessibility or by promulgating a rule providing new guidance for phthalates. What is the status of the Commission complying with H.R. 2715?**

On July 31, 2012, the Commission published “Proposed Guidance on Inaccessible Component Parts of Children’s Toys and Child Care Articles Containing Phthalates.” 77 FR 45297. The comment period on the proposed guidance closed October 1, 2012. CPSC staff is currently in the process of reviewing the comments and developing a staff briefing package with proposed final guidance for the Commission’s consideration.

8. **We have been told that there was a staff effort to develop guidance on what products constitute a “toy.” What is the status of that effort?**

The Commission published staff draft guidance on which children’s products constitute “toys” on Feb. 12, 2009. See <http://www.cpsc.gov/about/cpsia/draftphthalatesguidance.pdf>. The Commission has considered the possibility of publishing additional guidance but there are no plans for staff to send a new briefing package to the Commission at this time.

9. **The proliferation of conflicting product safety standards at the State level has become a significant issue for manufacturers and retailers. How does the CPSC plan to address this rapidly growing patchwork problem?**

Several of the Commission’s statutes contain explicit provisions concerning the federal preemption of state standards (*see, e.g.* section 26 of the Consumer Product Safety Act, section 18 of the Federal Hazardous Substances Act, section 16 of the Flammable Fabrics Act, and section 7 of the Poison Prevention Packaging Act). The CPSIA also added some provisions concerning preemption (for example, section 106(h) of the CPSIA regarding state toy standards). Whether any particular state product safety standard would be preempted by a particular CPSC standard would be a question for the courts in an individual case. A court would likely look to these statutory provisions in resolving such a question.

10. **The CPSIA requires that the CPSC issue accreditation requirements for test labs at least 90 days before a standard goes into effect. The publication of accreditation requirements triggers a 90-day clock at the end of which a manufacturer will be required to certify products to the standard based on third party testing. I understand that an updated version of the toy safety standard (ASTM F963-11) has gone into effect but the CPSC has yet to publish corresponding accreditation requirements.**

- a. Is the Commission of the opinion that the deadline for issuing accreditation criteria does not apply if a standard is revised?**

Staff has interpreted that the 90-day deadline stated in section 14(a)(3)(B)(6) of the CPSA does apply when the Commission issues accreditation criteria for revised standards, such as the now-mandatory standard ASTM F963-11. As of August 14, 2011, the Commission is required to follow the rulemaking procedures of the Administrative Procedure Act (5 U.S.C. § 553) to issue notices of requirements for accreditation of third party conformity assessment bodies. Accordingly, on May 24, 2012, the Commission published “Proposed Requirements Pertaining to Third Party Conformity Assessment Bodies.” 77 FR 31086. That *Federal Register* notice included a proposed revision to the notice of requirements for the ASTM F963-11 revised standard. CPSC staff intends to forward to the Commission a draft final rule for “Requirements Pertaining to Third Party Conformity Assessment Bodies” before the end of this year.

- b. If the Commission does intend to issue new accreditation criteria, will it also continue to recognize results from labs that were accredited under the prior version of the standard?**

For those tests that are equivalent (unchanged), or are functionally equivalent in the older and newer versions of the standard, test results from testing laboratories accredited to the older version of the standard will be accepted for children’s product certification purposes. For new tests that were not in the older version of the standard or for tests that were substantially changed, accreditation to the newer version of the standard will be required for test results to be accepted for children’s product certification.

- 11. I understand that some manufacturers maintain that CPSC lacks jurisdiction over infant car seats, even if they can also be used outside of a vehicle, because they are “motor vehicle equipment” subject to the exclusive jurisdiction of the Department of Transportation. Does the Commission have a memorandum of understanding with DoT about this? Do you believe that it would be helpful for us to clarify the Commission’s jurisdiction over child seats?**

We do not have a memorandum of understanding with the Department of Transportation, but CPSC staff has been working with ASTM and representatives from the National Highway Traffic Safety Administration (NHTSA) to revise the hand held carrier standard. CPSC staff also intends to send the Commission a package proposing to make it a mandatory rule under section 104 of the CPSIA.

The hand held carrier standard focuses on injuries that occur when the carrier is used outside the vehicle as a carrier, infant seat, or attached to a stroller. However, because the product is dual-use, CPSC is careful not to recommend design or labeling changes that may impact the carrier’s function as a car seat, or conflict with NHTSA’s regulations. Car seats are, however, covered by the product registration card rule in section 104 of the CPSIA.

At the time the product registration card rule was proposed, we received comments from car seat manufacturers requesting that we harmonize our requirements with NHTSA in light of its program for car seat registration. As a result, we made some changes to the rule and discussed those changes in the preamble to the final rule. 74 FR 68668, 68671 (December 29, 2009). However, clarification of the Commission's jurisdiction of infant car seats used outside a motor vehicle would be helpful.

- 12. One factor driving up the cost of third party testing is that different retailers often demand that testing be done by their own lab or one that they have special trust in. An individual test may cost \$250, for example, but the manufacturer may need to have the same \$250 test done by six different labs to satisfy all the different retailers. That adds up to a whopping \$1500. Is this an area where the CPSC can help reduce costs?**

No. The scenario described above is an independent business relationship that a manufacturer has established with the retailer.

REGULATORY REVIEW

- 1. Has the CPSC taken into consideration Executive Orders 13563 and 13579 in the rules it has enacted since these Executive Orders were issued? If not, why not?**

Executive Order 13579, "Regulation and Independent Regulatory Agencies" (E.O. 13579), focuses specifically on independent agencies. Section 1 of the Executive Order sets out a general policy for "wise regulatory decisions," noting that "[t]o the extent permitted by law, such decisions should be made only after consideration of their costs and benefits." It states that independent regulatory agencies should promote the goals, and to the extent permitted by law, comply with the provisions of Executive Order 13563, "Improving Regulation and Regulatory Review" (E.O. 13563). Except for rules that Congress has explicitly directed the Commission to issue under the CPSIA, the rules that the Commission has proposed or finalized since the President issued the Executive Orders follow the principles and policies set forth in E.O. 13579 and 13563. For rules required by the CPSIA, the Commission makes its decisions based on the considerations directed in that law.

- 2. The Commission has now issued a number of mandatory standards for durable nursery products such as cribs. Those standards are exempt from some of the rulemaking requirements that usually apply to consumer product safety standards. Do you think that these durable nursery standards nevertheless impose the least burdensome requirements that adequately reduce the risk of injury?**

Because rules issued under section 104 of the CPSIA were specifically exempted by Congress from the procedures and findings required for rules issued under section 9 of the CPSA (codified at 15 U.S.C. §§ 2051–2089) and are statutorily required to provide the highest level of safety that is feasible, Commission staff has not done an analysis to determine whether these rules impose the least burdensome requirements that adequately reduce the risk of injury. I note, however, that most of the rules the Commission has issued

under this provision to date are substantially the same as the relevant voluntary standards for those products that are developed by the industry.

- 3. Does CPSC have any authority to regulate bath salts when used for non-therapeutic purposes? Does it make any difference if there is proof that the manufacturer or seller is aware of the misuse? How can CPSC coordinate efforts with the Drug Enforcement Administration or the Food and Drug Administration to address the sale and consumption of synthetic chemicals found in household products, such as bath salts, K2 and spice?**

The product you ask about goes by the street name “bath salts” because they are sold in powder form and may look like bath salts. However, they are in fact designer drugs that have effects similar to amphetamine and cocaine. Chemically, they are entirely different from actual bath salts. We do not consider these to be a household product under the regulatory authority of CPSC, but rather are drugs under the authority of the Drug Enforcement Administration. DEA provides a fact sheet concerning bath salts on its website (http://www.justice.gov/dea/druginfo/drug_data_sheets/Bath_Salts.pdf).

- 4. In a recent Op-Ed you stated the CPSC would turn to tip-over issues in the coming months. Every year there are a few incidents involving kitchen ranges tipping when installers do not install the provided anti-tip brackets, the use of which is prescribed in most building codes. Tipover events can result in grievous harm, particularly to children or to the elderly. A number of these incidents occur in low income housing, including HUD-supported housing. Have you reached out to HUD on this issue? Would you consider establishing a joint initiative with HUD to require its employees and contractors to install anti-tip brackets in HUD-supported housing and to set up programs to check existing ranges for compliance?**

In Fall of 2011, CPSC worked with the U.S. Department of Housing and Urban Development’s (HUD) Healthy Homes Program to communicate CPSC information on tipover safety through HUD’s newsletters. In 2013, CPSC will work to develop and implement an initiative with HUD, and possibly with retailers, aimed at installing anti-tipover devices on ranges in public housing.

- 5. How often has the staff used the threat of a Commission press release under the public interest health and safety provision to encourage firms to agree to conduct a recall?**

On three occasions, the Commission staff has determined the public health and safety required the release of safety information to the public and sought Commission approval for a release of such safety information to the public.

- a. Has the CPSC instituted any procedural changes or given staff any guidance to guard against abuse of this tool of persuasion? If yes, please submit for the record copies of any such guidance or procedure documents. If no, please explain why the CPSC has not crafted such official staff guidance or procedure documents.**

The reasons for issuing a press release where the Commission has found that the public health and safety requires a lesser period of notice than set forth in section 6(b)(1) of the CPSA, and the circumstances where it may be appropriate to make such finding, are detailed in Commission regulations at 16 CFR 1101.23.

- b. When the CPSC decides to meet to consider issuing a press release under its public interest health and safety authority, does the Commission notify the relevant product manufacturer? If not, why not?**

If the Commission considers issuing a press release and making a public health and safety finding in that release, it does so pursuant to the requirements of section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2055(b), which requires CPSC to provide notice to the manufacturer.

- c. Before issuing a press release under its public interest health and safety authority, does the Commission give the relevant manufacturers an opportunity to be heard or submit evidence? Does the Commission automatically receive all materials provided to the staff?**

If Commission staff recommends use of this authority, the Commission votes to issue a press release that makes a public health and safety finding, shortening the time period for disclosure. As part of the decision to make such a finding and shorten the section 6(b)(1) time periods, the Commission will receive the relevant information and background materials from staff.

- d. What factors does the Commission use to determine when a hearing under section 15 is appropriate versus use of a press release?**

Use of a press release to warn the public about a hazard does not inhibit the Commission staff's ability to also seek further notice and a remedy through an administrative proceeding under section 15 of the CPSA. In cases that present a significant risk of injury to the public, it may be beneficial to first provide a warning to the public about the hazard before the Commission staff is ready to commence with an administrative proceeding.

- 6. The Commission's resources have roughly doubled since 2008 under the CPSIA. Despite the growth of the Commission and its budget, we repeatedly hear there are not enough resources to accomplish everything the Commission would like to accomplish.**

- a. How does the Commission prioritize investigations and enforcement matters? Do you prioritize those hazards that present the greatest risk to the greatest percentage of the population?**

Yes, the Commission prioritizes those hazards that present the greatest risk to the greatest percentage of the population. The Office of Compliance and Field Operations and the Office of Import Surveillance are responsible for enforcing mandatory rules and

requirements as well as the surveillance of consumer products on the market and at ports of entry to ensure that hazardous products do not enter the distribution chain. Enforcement of existing and newly mandated rules and targeted surveillance activities allow for a multidisciplinary approach to enforcement. Identifying those products that present a risk (in an effort to be more preventive than reactive) through review of incident reports, trade complaints and other information sources requires close and constant interaction with technical and epidemiological staff.

- b. How does the Commission identify those hazards? Is the CPSC using data-driven, fact-based analysis, or is the Commission following something more like the precautionary principle?**

CPSC collects data from a variety of data sources to aid in the identification of hazards associated with the use of consumer products. This data is used to identify hazards and develop appropriate mitigation strategies. The Commission applies the criteria in 16 CFR 1009.8(c) to establish Commission priorities.

- 7. Over the last 10 years, the number of traffic fatalities and injuries has declined significantly. In fact, the most recent data from the National Highway Traffic Safety Administration (NHTSA) shows traffic fatality rates at a 60-year low. Part of this may be attributable to the sluggish economy, but there have been significant advancements in safety, too. How do the injury and fatality statistics for CPSC compare? Are deaths and injuries relating to consumer products declining significantly also?**

A significant decline in reported consumer product-related deaths and estimated injuries in the past ten years does not appear evident in available data. The age-adjusted consumer product-related rates of deaths and injuries have increased in the most recent decade for which data are available. However, the CPSC's work to ensure the safety of consumer products—such as toys, cribs, power tools, cigarette lighters, and household chemicals—has contributed to a decline in rate of deaths and injuries associated with consumer products over the past 40 years.

- 8. In working with voluntary standard organizations, the CPSC staff often provides incident data, including its own in-depth investigations of incidents, to help inform the process.**

- a. How meaningful are these anecdotal data?**

Anecdotal incident data provide a meaningful minimum number of known incidents. What is unknown is the degree to which this might understate the actual number of incidents that occurred nationally.

The value in the anecdotal data comes from the detailed descriptions of the hazard scenarios that they can provide. In particular, through in-depth investigations, staff can obtain answers to important questions that normally are not included in media reports, death certificates, or the CPSC's National Electronic Injury Surveillance System

(NEISS) cases that are coded from medical records. Collection of anecdotal incident data also accelerates staff's awareness of fatal incidents as the lag for reporting via death certificates differs by state. It should also be noted that not all data used by CPSC is anecdotal. NEISS, for example, is a national probability survey that supports national estimates of consumer product-related injuries seen in U.S. hospital emergency facilities.

b. If the data are not statistically representative of a problem, why do the standards need to address the problem?

If even the minimum number of known incidents is suggestive of an unreasonable risk to public safety, then it is our duty to address these risks. The greater concern might actually be how many incidents are occurring that are not reported.

c. Does it mean that the standards are protecting against problems that are rare, making the products more expensive than they need to be?

No. Our evidence based standards take into consideration the severity of injury and the addressability of the hazard that are suggestive of an ongoing risk to public safety. The general limitation of our anecdotal incident data is the degree to which it understates the actual occurrence of serious incidents.

d. Do you think a standard should protect against every risk that has ever happened, no matter how rare? If not, how do you determine when the standard should guard against a risk and when it is unnecessary to do so?

As a matter of public record, you will not find a statement from CPSC staff or the Commission stating that standards should protect against every risk that has ever happened no matter how rare. Standards development involves a multidisciplinary team that conducts not only a review of reported incidents but often includes testing and research on the products, input from health and behavioral scientists, and economic assessments of the potential costs to manufacturers and importers of proposed standards. The general concern lies with the likelihood of *future* occurrence and the potential severity of these incidents. The Commission must determine which risk areas of public safety to address in a given year, with our limited resources, and prioritize accordingly.

9. According to an October 2011 CPSC memo available on the Commission's website, both total injuries and injury rates to children from toys have increased during the period from 2006-2010, which covers the period since the CPSIA was enacted providing the CPSC new authorities and additional resources. While more injuries may not be indicative of defective or unsafe products, can you explain why the injury rate is increasing?

The October 2011 Toy-Related Deaths and Injuries Calendar Year 2010 report (<http://www.cpsc.gov/library/toymemo10.pdf>) showed an increase in the estimated number

of toy-related emergency department treated injuries for all ages and for children younger than 15 years of age and younger than five years of age. However, neither the five year trend since 2006 nor the year over year comparison between 2009 and 2010 indicates that the increases are statistically significant. While the estimated injuries appear to increase, Commission staff cannot rule out that the apparent differences observed in the estimates are attributable to random variation. Therefore, because Commission staff cannot establish that a true change has occurred, any attempts to pinpoint causal factors would be speculative.

- 10. The largest manufacturer of portable gas cans recently declared bankruptcy, due mostly to questionable liability suits. As a result, there may be a shortage of new gas cans manufactured in the U.S., but people will still need to fuel their lawn mowers and deliver gas to vehicles on the side of the road. It is a distinct possibility that people will return to using milk jugs or other inappropriate containers that can lead to very serious harm. Is there anything the CPSC can do to head off this grave problem? Do you require any additional authority to act?**

I do not believe there is any need for action from the CPSC with regard to this company's filing for bankruptcy. According to the company's website, it filed for reorganization under Chapter 11 of the Bankruptcy Code this past summer, has been continuing as an ongoing concern while in Chapter 11, and, as the company's Q&A on its website states: "It is business as usual." See <http://www.blitzusa.com/chapter11/Customer%20Q&A%20FINAL%20110811.pdf>.

More recently, news reports indicate that another company has bought the manufacturing plant and plans to resume manufacturing gas cans there. See http://www.tulsaworld.com/business/article.aspx?subjectid=461&articleid=20120915_461_E1_MIAMIO656046.

- 11. Last September, the Commission voted to reverse its April 2010 interpretive rule on the term "unblockable drain" as used in the Pool and Spa Safety Act. The CPSC apparently determined that certain drain covers were insufficient to comply with the law, requiring any public pool owner/operator – including state and local governments - to install an additional backup drain system at considerable additional expense.**

- a. How many times has the CPSC called for a vote to switch a previous Commission vote?**

While I am not able to provide an exact count, occasionally the Commission changes a previous vote. For example, the Commission has sometimes voted to initiate rulemaking and later decided to terminate the rulemaking. In 1988, the Commission published an advance notice of proposed rulemaking (ANPR) to enlarge the dimensions of the small parts cylinder used to evaluate whether toys or other articles intended for children under three years of age contain small parts. 53 FR 20865. In 1990, the Commission voted to terminate the rulemaking. 55 FR 26076. In 1985, the Commission published an ANPR concerning all-terrain vehicles (ATVs). 50 FR 23139. In 1991, the Commission voted to terminate that rulemaking. 56 FR 47166. In 1994, the

Commission published an ANPR to amend the baby walker standard. 59 FR 39306. In 2002, the Commission terminated that rulemaking. 67 FR 31165.

- b. Did the Commission seek legal advice as to whether there should be notice and comment prior to reconsidering the interpretation? If yes, please provide a copy of such advice for the record.**

Any memorandum containing legal advice to the Commission is confidential and protected from disclosure by the deliberative process attorney client privileges. The Commission has not waived its privileges to disclose the contents of any legal memorandum, and we would respectfully suggest that providing any such memo in response to a request where it will be included on the public record would waive the privilege.

- c. After reconsideration, the CPSC established May 28, 2012 as the new compliance deadline. Does that remain the official compliance deadline? How many pools are currently compliant with the CPSC's revised determination?**

The compliance date for facilities that relied on the Commission's interpretive rule for unblockable drains and installed large, compliant, unblockable drain covers over smaller outlets (sumps) was extended and noticed in the *Federal Register* by the Commission on May 24, 2012. The new compliance date is May 23, 2013.

Staff is still reviewing files to identify previously compliant facilities that used unblockable drain covers in the manner defined by the interpretive rule. Staff has conducted almost 6,200 inspections and has found approximately 100 facilities that would no longer be considered compliant based on the revocation of the interpretive rule.

- d. Please provide for the record an estimate of how much pool owners and operators spent on unblockable drain covers to comply with the original interpretation. Please also provide for the record an estimate how much more will those same pool owners and operators have spent or need to spend on modifications to comply after CPSC's about face.**

CPSC staff does not have the necessary data available to provide such an estimate.

- 12. There were a number of media reports in July reporting the CPSC had filed a lawsuit against the makers of "Buckyballs." At the hearing, you testified that the case would be heard by an administrative law judge. Vice Chairman Blackburn inquired from where the administrative law judge would be selected. In response, you replied from "Washington, D.C., probably, or it might be in Maryland."**

- a. From which agency will the administrative law judge be borrowed? Does the CPSC specify from which agency they would like to borrow an administrative law judge? Does the CPSC specify any particular criteria such as background or**

expertise when it requests an administrative law judge? If yes, please detail your request (agency or particular criteria) for the record.

The Commission staff did not specify from which agency it wanted to borrow an administrative law judge. The Commission staff was notified by the Office of Personnel Management that the administrative law judge would be loaned from the U.S. Coast Guard. The Acting Chief of Administrative Law Judges for the Coast Guard selected the judge(s) to be loaned to the Commission in this matter.

- b. In recent years, the lawyers of the Compliance staff have been transferred en masse to the Office of the General Counsel. The one exception was the head of the Office of Compliance, who must by law, be an attorney. Recently, however, the head of Compliance was also transferred to the Office of General Counsel. What steps is the Commission taking to ensure appropriate segregation of the attorneys prosecuting the case from those that must advise the Commission?**

The position of Director, Office of Compliance and Field Operations was not transferred to the Office of General Counsel but instead continues to report to the Deputy Executive Director, Safety Operations. It should also be noted that the former Director, Office of Compliance and Field Operations requested reassignment to the Office of General Counsel thus vacating the position of Director, Office of Compliance and Field Operations.

The former head of Compliance and Field Operations is an attorney in the Regulatory Affairs Division of the Office of the General Counsel and is not advising the Commission on the Buckyballs litigation. The Office of General Counsel maintains a separation of functions in which attorneys prosecuting the action will not be advising the Commission. *See* 16 C.F.R. 1025.68.

- c. Why was the complaint in the Buckyballs matter signed by the Executive Director of the agency? Doesn't that associate him with the prosecution of the case such that he will have to be separated from the Commission too?**

The Acting Director of Compliance and Field Operations is recused as a matter of law from participating in this matter. Because there is no person occupying the position of Assistant Executive Director for Compliance and Field Operations and the Acting Director is recused by law, a majority of the Commission agreed to have the Executive Director sign the complaint. The Executive Director does not render a decision in an adjudicative proceeding and does not advise officials who render such decisions, as explained in Commission regulations at 16 C.F.R. 1025.68.

The Honorable Charles F. Bass

- 1. I'm aware that there is a proposed ruling to allow use of X-Ray Fluorescence (XRF) to certify products as lead free. It's my understanding that there are multiple XRF**

techniques, including handheld XRF and so-called HD XRF. It appears from the proposed rule that both techniques would be acceptable, but can you confirm to the committee that the rule will enable use of both the widely-accepted handheld XRF techniques which are deployed across the supply chain, as well as the emerging HD XRF methods?

The “Proposed Rule: Requirements Pertaining to Third Party Conformity Assessment Bodies” includes provisions to widen the use of both “HD XRF” (a common shorthand for Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams, as described in ASTM F2853-10e1) as well as “handheld” XRF (more generically known as Energy Dispersive X-Ray Fluorescence Spectrometry, as described in ASTM F2617-08) for third party testing for certification. These provisions would enable the use of either type of XRF, with limitations as described in the proposed rule, for measuring lead in homogeneous metals, glass, crystals and other materials. This proposed rule would not widen the use of “handheld” XRF to include determinations of lead in painted surfaces of consumer products because at present no XRF method is available other than HD XRF (ASTM F2853-10e1) for determining compliance to 16 CFR part 1303 for painted surfaces on children’s products with respect to the limit of 0.009 percent lead by weight.

- 2. Knowing that one of the priorities of the CPSC is to increase public awareness around the dangers of carbon monoxide poisoning, would you please share with the Committee what activities the Commission is currently undertaking?**

Prevention of carbon monoxide poisoning deaths and injuries caused by consumer products is a key priority for the CPSC. To comprehensively address this hazard, the Commission has taken a two-pronged approach that focuses on both product innovation and consumer outreach and education.

On the product innovation side, CPSC staff has focused a great deal of effort on reducing carbon monoxide poisoning deaths from portable gasoline generators. In just the three year period from 2006 to 2008, there were an estimated 233 non-fire carbon monoxide poisoning deaths to consumers associated with the use of portable gasoline-powered generators in the United States. In September of this year, CPSC staff released a report detailing the development and demonstration of a prototype portable generator that can dramatically reduce carbon monoxide (CO) emissions from certain common portable gasoline-powered generators. When the prototype was tested in the common fatal scenario of a generator operating in the attached garage of a single family home, health effects modeling performed on the results showed that the prototype increased the hypothetical garage occupant’s escape time interval to 96 minutes compared to only eight minutes provided by the original, unmodified unit. A copy of this report may be found on the CPSC website.
(<http://www.cpsc.gov/LIBRARY/FOIA/FOIA12/os/portgen.pdf>)

CPSC also engages in robust education and outreach using a variety of outlets. The Commission communicates the dangers of carbon monoxide poisoning through the use of earned media, conducting television, radio and print interviews most often as rapid response in conjunction with major, power-disrupting storms such as hurricanes and snow storms,

when greater use of generators exposes more people to the hazard. We also use social media outreach, e-publication downloads from the dedicated CO Information Center page on CPSC.gov and the distribution of messages to grassroots partners through our Neighborhood Safety Network. Twice a year CPSC issues reminders to install fresh batteries in CO and smoke alarms in conjunction with daylight savings time.

In addition, CPSC has used its OnSafety blog, YouTube, Twitter and its FireSafety.gov website to promote new developments in technology including making CO alarms more effective and, this year, new developments in reducing CO emissions in generators. These efforts have resulted in an estimated audience impression of more than 100 million people during FY2012. This year, Congressional District offices in areas generally impacted by hurricane season were provided CO informational safety packets to share with their constituents. This information is also posted to the CPSC's website. Field staff has also provided Congressional offices with informational materials in the wake of severe weather events causing power outages. As the winter season approaches, CPSC will continue to promote CO awareness by warning consumers of dangers associated with home heating equipment. During FY2013, CPSC will also begin staging a second CO Poster contest for school children that became the most popular contest on Challenge.gov when first held.

The Honorable Greg Harper

- 1. Chairman Tenenbaum, I was pleased to read your op-ed in The Hill last week where you indicated that you are taking a more collaborative approach with the window covering industry regarding cord safety. I am further pleased that you have spent the time visiting manufacturing facilities to better understand the difficulties in eliminating cords for all products. Can you tell me, without revealing any proprietary information, about these visits and what you learned? How are you proposing to move forward from here?**

Commission staff has recently participated in several meetings with the Window Covering Manufacturers Association (WCMA) and individual members. In addition, I traveled this past summer to personally meet with the leadership of several manufacturers and to tour their production facilities. During these meetings, we discussed the types of window covering products currently on the market, as well as individual manufacturer efforts to redesign window coverings to eliminate or substantially reduce the strangulation hazard posed by some corded window coverings.

Overall, my discussions during these visits were positive and indicate a willingness to work together towards consensus solutions. It is my hope that we can use these discussions as a springboard to work cooperatively to meaningfully improve consumer awareness of the strangulation risk corded window covering products can pose to young children, as well as resolve outstanding concerns regarding the current WCMA window covering safety standard to address the stragulations risk from corded window coverings.

2. **Chairman Tenenbaum, I am a big supporter of promoting government and industry cooperation. I think it is important for both to understand the need for safety and how best to achieve the safest product possible. You also discussed in your op-ed your efforts to better educate the consumer. With this in mind can you tell me about your plans for the rest of this year and next with the Window Covering Safety Council and your efforts to educate new parents about potential hazards to children associated with window coverings?**

CPSC has again partnered with the Window Covering Safety Council to jointly launch safety messaging during Window Covering Safety Month in October 2012. This year's collaborative efforts included my participation in the Council's public service announcement and a statement for its media release. CPSC has also tweeted safety messages, direct responses to consumers' questions, and links to reference materials during the October 9, 2012, #Cord Safety Twitter party hosted by the Window Covering Safety Council. In addition, a newly launched window covering safety information center on CPSC's website promotes repair kits offered by the Window Covering Safety Council along with other information.

- a. **Can you tell us more about the CPSC's collaborative programs with the Council?**

Please see previous answer.

- b. **Aren't promoting education and raising awareness some of the best tools the Consumer Product Safety Commission has in its arsenal?**

Promoting education and raising awareness is part of our comprehensive effort, along with enhancing voluntary standards, encouraging technological safety innovations, and ongoing compliance initiatives designed to ensure the highest level of protection for children. Identifying and addressing the most pressing consumer product safety priorities, working with stakeholders to build safety into products, timely and accurate detection of risks, and quick response to remove hazards, all work with our goal of raising awareness to reduce product-related deaths and injuries.

The Honorable Brett Guthrie

1. **As you know, the power tools industry developed a revised set of voluntary safety standards in November of 2007 for table saws. Products using those new standards were introduced to the marketplace thereafter and were required to meet those standards beginning in early 2010. That voluntary standard was enhanced in October of 2011 with improved performance standards under a broader set of cutting conditions.**
 - a. **Is it accurate that the CPSC had not collected any data from the current products that are compliant with the current voluntary standards, and that the CPSC based**

its advanced notice of proposed rulemaking for a mandatory rule on data from older, noncompliant saws?

The Commission published an advance notice of proposed rulemaking (ANPR) concerning table saw blade injuries on October 11, 2011. 76 FR 62678. The voluntary standard was revised in October 2011. Thus, incident data reflecting the new voluntary standard is not yet available for the staff to review. Any subsequent steps in the rulemaking that the Commission decides to pursue (notice of proposed rulemaking and final rule) would include a review of data available at those stages.

b. Is CPSC now collecting more up-to-date information on accidents incurred under the 2007 voluntary standard for table saws?

CPSC staff continuously receives reports related to consumer products through various means, including news clippings, death certificates, and consumer submitted reports. Table saw-related incident reports are reviewed by CPSC staff to leverage any information available. These reports are anecdotal and may or may not be related to a table saw that is compliant under the 2007 voluntary standard. CPSC staff also collects emergency department-treated injury data via the National Electronic Injury Surveillance System (NEISS).

Though this system does collect information about table saws, it is not possible to differentiate pre- and post-2007 voluntary standard-compliant saws within the data. A special study would be required to gather this level of detail—similar to the special study that was performed on stationary saws in 2007-2008. Another study of this nature is not planned for table saws. However, CPSC staff has awarded contracts for the collection of data concerning if and how owners of new table saws are using the modular blade guard system that is part of the current voluntary standard.

c. If so, will this data be weighed equally when considering a proposed mandatory safety standard for table saws?

The data that CPSC staff will be collecting is from a convenience sample of new table saw users who will be recruited to participate in the study. This study will not be in the same form as the previous table saw injury study, and it cannot be used in the same manner. CPSC staff's goal in collecting this data is to better understand if and how consumers are using the modular blade guard system that is part of the current voluntary standard. This information will be used along with additional information collected to guide CPSC's staff recommendations during the rulemaking process. In addition to the information gathered from this study, CPSC staff will consider any and all other relevant incident data that is available when it considers a possible proposed standard for table saws.

2. Doesn't the CPSC need to gather data on the compliant saws using the current voluntary standard before you can move forward with a mandatory standard? As I understand it, the CPSC is statutorily directed to rely on voluntary standards over a

mandatory standard as long as “compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.” (15 U.S.C. § 2056(b))

The CPSC must consider the adequacy of, and level of compliance with, applicable voluntary standards before it can issue a final mandatory consumer product safety standard for a product. CPSC staff has awarded contracts for the collection of data concerning if and how owners of new table saws are using the modular blade guard system that is part of the current voluntary standard. This will aid staff in determining whether the current voluntary standard would eliminate or adequately reduce the risk of injury addressed. The study will be completed prior to the issuance of any final mandatory rule.

- a. **How would the CPSC be able to judge the risk of injury under, and substantial compliance with, the new voluntary standards if you have not collected and analyzed data on the table saws using those standards?**

The ANPR is the beginning of the rulemaking process. As the rulemaking progresses, the CPSC will collect and analyze the data that become available, including compliance with any applicable voluntary standards. Prior to the issuance of any final mandatory rule, CPSC staff will complete an analysis of the effectiveness of current voluntary standards.

3. **Following up on the CPSC advanced notice of proposed rulemaking for table saws, one of the main options CPSC asks for comments on for a mandatory rule is a patented technology, owned and controlled by one company, based on blade contact flesh detection technology. I understand it was this company’s CEO who originally petitioned the CPSC to consider rulemaking in this area.**

- a. **Is CPSC aware that the Federal Trade Commission recently testified before Congress raising concerns about a patent holder using adopted standards to demand higher royalties or licensing fees as result of a standard? The FTC testimony noted that “[i]ncorporating patented technologies into standards has the potential to distort competition by enabling [standard essential patent] owners to use the leverage they acquire as a result of the standard setting process to negotiate high royalty rates and other favorable terms after a standard is adopted that they could not have credibly demanded beforehand.” (<http://www.ftc.gov/os/testimony/120711standardpatents.pdf>)**

The ANPR presented three regulatory alternatives to address table saw blade contact injuries: (1) a voluntary standard, (2) a mandatory rule with performance requirements, and (3) a labeling rule specifying warnings and instructions. The Commission has not determined which, if any, option to pursue. We note that section 7 of the CPSA requires the Commission to express any mandatory consumer product safety standard in terms of performance requirements, rather than mandating any particular design.

- b. Are you concerned that a single patent holder, such as the single patent holder in possession of flesh detection technology for table saws, could demand higher royalties or refuse to license on reasonable and non-discriminatory terms if their patented technology is incorporated into a mandatory standard? Does the CPSC share the FTC's concern about incorporating patented technologies into standards?**

Please see the previous answer.

The Honorable Pete Olson

- 1. I understand that the Commission has spent \$566,360.00 on a contractor by the name of SEA Ltd. to conduct testing of ROVs and that SEA issued a report about its initial work in April 2011. Despite multiple requests from the Recreational Off-Highway Vehicle Association and its member companies to meet with SEA and to learn more about its work and despite the fact that industry has initiated several meetings with CPSC to share information and discuss the issues, CPSC waited 15 months to hold a meeting between SEA and industry, and that meeting finally occurred just a few weeks ago. Is withholding information and access to CPSC consultants funded at taxpayer expense your idea of government transparency? How do you expect industry to be responsive to CPSC's positions when you withhold critical information from it?**

The CPSC has maintained openness throughout this process and has not withheld information collected by SEA Ltd. In April 2011, CPSC staff published a 494 page report with SEA's test methodology and test results on nine recreational off-highway vehicles (ROVs) of different makes and models. The vehicles were tested between May 3, 2010, and October 12, 2010. The six months between the completion of testing and publication of the data involved analysis of the data, drafting a final report, and agency clearance to publish documents. In August 2011, CPSC staff published additional results for a tenth vehicle that was tested in May 2011. Furthermore, in July 2012, CPSC staff hosted a public meeting to allow SEA to present its data and to answer questions from ROHVA.

The CPSC staff has worked with ROHVA and continues to work with ROHVA as evidenced by the multiple public meetings and comment letters submitted by CPSC staff during the voluntary standard canvass process.

- 2. I understand that, while industry was waiting for 15 months to get more information about SEA's work, ROHVA proactively conducted extensive testing on its own to evaluate the testing approach described in the SEA report. During the long overdue meeting, I understand that SEA revealed details regarding its testing methodology that had not been previously disclosed, which may require ROHVA to conduct more testing to effectively evaluate the SEA testing approach. Extensive time and resources were wasted as a result of CPSC's failure to disclose information about its contractor's work. I understand that SEA also has conducted other testing for CPSC that still has not been disclosed to ROHVA. Will you commit to providing timely and complete disclosure of**

all information regarding the work of CPSC contractors with respect to ROVs and to change course and work collaboratively with industry to promote safety?

As noted above, in April 2011, CPSC staff published a 494 page report with SEA's test methodology and test results on nine recreational off-highway vehicles (ROVs) of different makes and models. The vehicles were tested between May 3, 2010, and October 12, 2010. The six months between the completion of testing and publication of the data involved analysis of the data, drafting a final report, and agency clearance to publish documents. In August 2011, CPSC staff published additional results for a tenth vehicle that was tested in May 2011. In July 2012, CPSC staff hosted a public meeting to allow SEA to present its data and to answer questions from ROHVA.

CPSC staff has not received any reports with test methodology or test results from ROHVA on any of the testing it has performed. In public meetings with the CPSC, ROHVA has only presented slides with selective data. In addition, CPSC staff believes that the limited data that ROHVA has provided is based on an incorrect formula to calculate a key value. For reasons unknown, ROHVA did not use the correct formula used by the National Highway Traffic Safety Administration (NHTSA), by SEA, and by ROHVA's own voluntary standard (ANSI/ROHVA 1-2011).

I note again that CPSC staff has worked with ROHVA and continues to work with ROHVA as evidenced by the multiple public meetings and comment letters submitted by CPSC staff during the voluntary standard canvass process.

- 3. I assume you would agree that a pass-fail test must be reproducible from one lab to another and that the government cannot mandate that all testing be conducted by a single entity at a single facility. Has CPSC or its contractors conducted any testing to determine whether its pass-fail test methodology and results are reproducible at facilities other than the one SEA used?**

CPSC staff agrees that a pass-fail test must include a protocol that is repeatable and can be performed by any qualified test facility. The ANPR for ROVs began a rulemaking process that could result in a mandatory consumer product safety standard for ROVs. As part of the ongoing rulemaking effort on ROVs, CPSC staff has performed standard vehicle dynamics tests that have been developed by NHTSA to gather information on the dynamic characteristics of these vehicles. If and when requirements are finalized, they will include performance requirements that can be tested with a protocol that is repeatable and can be tested by any qualified test facility.

- 4. Has the CPSC attempted to establish a correlation between vehicle characteristics that will be dictated by its proposed tests and standards and the incidents that you say you are trying to prevent? What were the results of the correlation analyses? Do you intend to move forward with a mandatory standard in the absence of evidence of such a correlation?**

The CPSC published an advance notice of proposed rulemaking (ANPR) concerning recreational off-highway vehicles (ROVs) on October 28, 2009. 74 FR 55495. The ANPR

began a rulemaking process, one result of which could be a mandatory standard for ROVs. CPSC staff is assessing public comments received in response to the ANPR and is evaluating other relevant data and information to develop a staff briefing package for the Commission. The Commission will consider the staff's briefing package when determining whether to issue a notice of proposed rulemaking (NPR).

CPSC staff has completed a multidisciplinary review of more than 400 reported ROV-related incidents where victim, vehicle, and incident characteristics were analyzed. The results indicate significant hazard patterns that include vehicle rollovers, and victims ejected and hit by the vehicle resulting in death or injury. This analysis will be part of the staff's briefing package for a possible NPR. If the Commission decides to issue an NPR, the public would have another opportunity to comment, staff would prepare a briefing package with all relevant data and information concerning a possible final rule, and at that point the Commission would decide whether to publish a final rule.

- 5. I understand that in the early 1990s CPSC conducted a multi-disciplinary study of ATV incidents to determine the causes of crashes, but that CPSC has not conducted such a study of ROV incidents. Since CPSC has not conducted such a study, ROHVA again proactively conducted its own multi-disciplinary study of ROV incidents. In November 2011, ROHVA presented its analysis to CPSC staff that concluded the testing standards in dispute would have had absolutely no impact on the occurrence of at least 90% of serious incidents. Does CPSC have any evidence that contradicts ROHVA's finding?**

CPSC staff has completed a multidisciplinary review of more than 400 reported ROV-related incidents where victim, vehicle, and incident characteristics were analyzed. The results indicate significant hazard patterns that include vehicle rollovers, and victims ejected and hit by the vehicle resulting in death or injury. Using the results of this analysis, CPSC staff is working to create standards that would reduce these identified hazard patterns.

- 6. Has CPSC done any analyses comparing the relative safety of ROVs that existed when CPSC issued its ANPR in 2009, ROVs that conform to the current voluntary standard, and ROVs that would conform to CPSC staff's proposed mandatory standard?**

On October 28, 2009, the CPSC published an advance notice of proposed rulemaking (ANPR) concerning recreational off-highway vehicles (ROVs). 74 FR 55495. The ANPR began a rulemaking process that could result in a mandatory consumer product safety standard for ROVs. CPSC staff has not completed the rulemaking effort on ROVs and has no current proposed mandatory standard.

The ROVs that existed when CPSC issued its ANPR in 2009 meet almost all the requirements in the current voluntary standard.

- 7. I understand that federal law reserves mandatory standards for those products where industry fails to develop voluntary standards to prevent unreasonable risks of injury. If that is the case, why would CPSC move forward with a mandatory ROV standard when industry has been proactive in developing standards and has tried repeatedly to work with your agency? If CPSC believes that the current voluntary standard does not**

adequately address unreasonable risk of injury related to ROV use, what exactly is inadequate about the voluntary standard? What data does CPSC have to support its claim that those aspects of the voluntary standard are inadequate?

As stated above, the CPSC published an ANPR in 2009 that discussed a voluntary standard, as well as a mandatory standard, as regulatory options. Before the Commission could issue a final mandatory rule in the proceeding it would need to determine that either (1) the voluntary standard is not likely to result in the elimination or adequate reduction in the risk of injury, or (2) it is unlikely there will be substantial compliance with the voluntary standard. At this point, the Commission has only issued an ANPR and has not made any determinations about the adequacy of the voluntary standard.

CPSC staff has worked with ROHVA and continues to work with ROHVA as evidenced by the multiple public meetings and comment letters submitted by CPSC staff during the voluntary standard canvass process. CPSC staff's comment letter to ROHVA dated March 10, 2011, summarizes CPSC staff's concerns with the voluntary standard in the areas of lateral stability, vehicle handling, and occupant protection. (A copy of the letter is available at <http://www.cpsc.gov/volstd/atv/commcanvass03102111.pdf>.)

The Honorable Mike Pompeo

1. *Database/ Facebook / 6(b)*

What is the status of the lawsuit brought against the CPSC last year by anonymous companies over the agency's botched interpretation of the database language in the Consumer Product Safety Improvement Act of 2008? Would you please notify the subcommittee and my office as soon as there are further developments in that case?

CPSC was sued by a single anonymous company, Company Doe, as reflected in the publicly available docket for the case (Case No. 11-2958, D. Md.). A redacted version of the decision in the case, dated July 31, 2012, was posted on PACER on October 22, 2012. The portions of the case not on the public docket are under seal and CPSC cannot comment further.

On September 28, 2012, the government filed a notice of appeal at the district court as shown on the publicly available docket for the U.S. Court of Appeals for the Fourth Circuit, docket number 12-2210. The agency cannot comment beyond what is available on the public docket because the case is under seal.

Has the court decided whether the agency misinterpreted the statute, as the companies claimed—and as I believe?

A redacted version of the decision in the case, dated July 31, 2012, was posted on PACER on October 22, 2012. The case is under seal and the Commission cannot comment on the decision beyond what is in the redacted version of the decision.

In your written testimony you stated: “I think SaferProducts.gov has gained wide approval and acceptance.” How can you say that in the face of a lawsuit by industry? How many regulations issued by CPSC in the last 5 years have led to lawsuits? Doesn’t the presence of a lawsuit tend to argue against the idea that the database has gained wide approval and acceptance?

The lawsuit involves one single anonymous company and a singular report, not a lawsuit by industry. With more than 11,000 reports of harm or potential harm publicly posted to date, the SaferProducts.gov consumer database continues to serve as a vital safety tool for use by parents, doctors, emergency responders, and consumers across the country to alert the public to potentially hazardous products. None of the underlying regulations the Commission has issued in the last five years, including the database rule, has been challenged in court. No party has sought judicial review of any regulation issued during that time period.

In your oral testimony, you indicated that if the federal court rules against the CPSC in the pending database lawsuit, the agency will not pledge to immediately take down the database that was constructed in violation of the statute. Why not? Please explain what remedy you believe would be appropriate, what remedy the plaintiffs are seeking, and what remedy the agency’s professional staff recommends in the event that the agency loses the lawsuit.

Section 6A of the CPSA requires the Commission to maintain the publicly available database, and by law the Commission may not take it down. The recent decision concerning one incident reported to the SaferProducts.gov consumer database does nothing to change the agency’s statutory mandate and enduring commitment to provide the public with a timely and searchable database containing reports of harm relating to the use of consumer products. Consistent with the remedy set forth by the decision, the Commission did not post the individual report.

Is the agency still considering starting a Facebook page that would violate the requirements Congress has put in place for any kind of public database?

I believe that the CPSC has the authority to provide the public with product safety information through the use of Facebook—a free resource with almost one billion followers that almost all other federal agencies already use. Furthermore, I believe that using Facebook will allow CPSC to reach new audiences with critical information that will save lives and prevent injuries. However, I plan to further study this subject prior to deciding whether to authorize the CPSC’s Office of Communications to use Facebook as an additional means to distribute critical consumer product safety information.

I am told that the agency is refusing to accept appeals over material inaccuracies. If true, why?

Section 6A(c)(4) of the CPSA, 15 U.S.C. § 2055a(c)(4), sets forth Commission procedures for determining claims of material inaccuracy for reports of harm or comments that are

submitted to CPSC. No provisions of the CPSA or Commission regulations provide for appeals of Commission determinations regarding claims of material inaccuracy.

I am told that the agency does not remove duplicate references on the database to the same underlying incident. If that is true, why not?

We do not publish two reports that are exactly the same. When we do publish two different reports that are about the same incident we link them. Linked reports are displayed in the database as “associated reports” and count as a single report in search results.

2. *Phthalates/ testing lab irregularity*

We have heard from manufacturers that they frequently experience instances where products pass lead or phthalates tests at one laboratory and fail at another laboratory.

Apart from the testing costs themselves, costs of these failures to the manufacturer include, among others: 1) costs of removal from store shelves, 2) costs of destroying failed products, 3) costs of reformulating products, and 4) costs of notifying CPSC because the products are non-compliant.

CPSC has been asked repeatedly to issue a clear statement on statistical uncertainty with regard to testing results. Some industry groups have said that addressing statistical uncertainty bands for laboratory test results to deal with the known problem of inter-laboratory variability may be the single most important action CPSC could take to help reduce costs associated with CPSIA testing and certification requirements. When and how does the Commission plan to address this concern? Why has the agency thus far refused to establish statistical variability parameters?

Perhaps some industry groups are unaware that there are many international guidelines in use that deal with the issue of measurement uncertainty. These include documents such as the ISO Guide to the Expression of Uncertainty in Measurement; the EURACHEM/CITAC Guide: Use of uncertainty information in compliance assessment; ASME B89.7.3.1-2001, Guidelines for Decision Rules: Considering measurement uncertainty in determining conformance to specification; and ILAC-G8:03/2009, Guidelines on the reporting of compliance with specification.

Current ILAC guidelines, which are consistent with the other international guidelines, and ISO/IEC 17025 clearly address the matter of statistical uncertainty and how testing labs should give appropriate consideration to measurement uncertainty when assessing compliance with specification. These requirements ensure the specification limit mandated by Congress, for both lead and phthalates, is not breached by the measurement result plus the expanded uncertainty.

CPSC methods require testing Certified Reference Materials (CRMs) that closely match the material of the tested product, along with samples, to verify the test method. CPSC methods require the results for the CRMs yield relative standard deviations well within

±20 percent. CPSC staff experience is that this is easily achieved for these well characterized materials.

In some cases, firms may be referring to measurement uncertainty where material variability is actually the driving factor for differences seen between laboratories as different samples are tested and different results are obtained.

3. *Third Party Testing Relief*

When this Congress passed H.R. 2715 last year, it gave the CPSC authority to take steps to reduce the costs of complying with the CPSIA—and particularly the costs of third party testing. Did the agency’s professional staff recommend issuing the third party testing rule despite H.R. 2715? Or did the staff recommend making adjustments to the rule and/or seeking additional public comment before issuing the rule in the wake of H.R. 2715? If the agency’s professional staff recommended that the third party testing rule be revised to take advantage of the authority given in H.R. 2715, what recommendations for further relief did the staff offer that the Commission declined to accept?

The agency’s professional staff did not recommend issuing the rule at that time. However, at the time the recommendation was made to repropose the rule, staff did not have recommendations for further relief developed.

In H.R. 2715 Congress gave you the authority to address the exorbitant cost of third party testing. Based on our directive and your existing authority, do you have sufficient authority to solve the third party testing cost problem? Why has more relief not been granted even though Congress acted to enable it? Do you believe the agency is prevented from granting further relief? If so, what legal changes are needed to enable further relief from third party testing costs? Where exactly are you barred from providing relief?

Based on the language of H.R. 2715, the staff developed a set of recommended potential opportunities for Commission consideration regarding reducing third party testing costs consistent with assuring compliance. Fifteen of the sixteen recommended opportunities did not require additional authority to be granted to the Commission.

The Request for Comments was published in the *Federal Register* on November 8, 2011. See <http://www.cpsc.gov/businfo/frnotices/fr12/3ptreduce.pdf>. After the comment period ended, the professional staff considered the comments and conducted its own examination of the testing and labeling (16 CFR part 1107) and component part testing (16 CFR part 1109) rules. Within one year of the passage of H.R. 2715, the project team completed its work and presented to the Commission a set of recommended opportunities for third party testing burden reduction consistent with assuring compliance. As noted, the Commission recently voted, pending resource allocations in future operating plans, to direct the staff to pursue nine of the actions it had identified. The staff will proceed with that direction pursuant to Commission direction in subsequent operating plans.

I believe the Commission lacks the authority to implement one of the staff recommended opportunities regarding the use of process certification techniques for children's product certification purposes. Section 14 of the CPSA requires third party testing for children's product certification, material change, and periodic testing. All of the tests in the applicable children's product testing rules require third party conformity assessment body testing. The statute does not allow the Commission to alter the basic requirement of third party testing.

What specific changes did the agency make to its third party testing rule specifically by taking advantage of the authority given in H.R. 2715? In other words, what new relief did the agency provide in the rule that it was not going to provide anyway before that statute passed?

No specific changes have to date been made to the testing and labeling rule (16 CFR part 1107) in response to H.R. 2715 (other than moving forward with addressing the statutory change from random samples to representative samples) because the rule was at the final rule stage, and further changes would not have been subject to notice and comment. The Commission published a Request for Comment, as directed by section 14(i)(3) of the CPSA (and amended by H.R. 2715), regarding reducing third party testing burdens consistent with assuring compliance. The Commission also issued a notice of proposed rulemaking regarding the testing of representative samples.

4. *Phthalates / Chronic Hazard Advisory Panel*

The Chronic Hazard Advisory Panel appointed by the CPSC Commissioners is late in submitting its report on phthalates. I am hearing from manufacturers that use phthalates that the CHAP process has not been transparent. Chairman Tenenbaum, you promised transparency at the CPSC. Will you pledge to release the results of the peer review done on the CHAP study as well as the charge given to peer reviewers by the CPSC?

The report of the CHAP is a highly complex scientific document. As such, it has taken the CHAP members longer to complete because of the breadth of the data that needed to be analyzed and the nature of the analysis itself (a cumulative risk assessment involving a variety of different phthalates and exposures). In addition, one of the CHAP members became seriously ill during the first several months of 2012. CPSC staff would disagree with the assertion that the CHAP process has not been transparent. In fact, in the two and a half years since the CHAP was convened, virtually every meeting, phone call, piece of correspondence, and all data submitted has been made available to the public on the CPSC website (<http://www.cpsc.gov/about/cpsia/chapmain.html>). The CHAP invited prominent research scientists to present their latest results and heard public testimony and written comments from interested parties. The CHAP members even agreed to an industry request to submit and discuss additional scientific studies at one of its public meetings, which took additional time.

The CHAP members also encouraged stakeholders to make their actual data (versus summaries of data) publicly available so that the CHAP might consider that data along with all other available public information. Some stakeholders chose not to release the more detailed data, because of concerns about proprietary business information. The CHAP evaluated any and all relevant data made available to it, including information provided by the industry that was made public.

Staff will continue to strongly support and encourage the open and transparent process CPSC has employed since the inception of the CHAP as the CHAP concludes its work.

Will peer reviewers be given all of the supporting information and not just the risk assessment itself to conduct their peer review?

The very nature of a scientific peer review requires that all relevant data, supporting information, and the full public record be made available to peer reviewers so that they can be as informed as possible in understanding the scientific approaches taken and conclusions reached.

Will CPSC consider the CHAP report a Highly Influential Scientific Assessment (HISA) and treat it accordingly?

CPSC understands the scientific importance of the CHAP report and will comply with the requirements regarding the report and the ensuing rulemaking set forth in section 108 of the CPSIA.

For example, to the extent that the CHAP's analysis relies on cumulative risk assessment, will the agency ensure that the framework of the cumulative risk assessment is itself peer reviewed?

Assessing the cumulative risk assessment approach taken by the CHAP would be one of the elements of a scientific peer review.

Will the CPSC refrain from issuing an interim rule when it issues the CHAP report, instead allowing full opportunity for public comment on any proposed rule that follows the CHAP report?

Section 108(b)(3) of the Consumer Product Safety Improvement Act (CPSIA) provides that, not later than 180 days after the Commission receives the CHAP's report, "the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP]." After the CHAP issues its report, the Commission plans to pursue rulemaking in accordance with these requirements.

5. *Obama Executive Order*

President Obama issued an Executive Order instructing all federal agencies, including independent agencies like the CPSC, to find ways to reduce the costs of regulations

already on the books. It is my understanding that the CPSC intends to fulfill that requirement in the upcoming year by taking a look at existing regulations on mid-sized rugs and on animal testing.

Is that true? When is the last time the CPSC even performed animal testing? Please ask the professional staff to estimate the percentage of the total cost of complying with all CPSC regulations that is represented by complying with these two regulations. Do you believe that these two regulations are among those whose revision promises to meet the goal of the executive order to reduce the onerous costs of the regulations put out by your agency, or does it make a mockery of the executive order to pick these two relatively minor regulations?

On July 11, 2011, President Obama issued Executive Order 13579, Regulation and Independent Regulatory Agencies (E.O. 13579).” The Executive Order stated that “independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” E.O. 13579 further stated that independent regulatory agencies should develop and release a public plan for the periodic review of existing significant regulations. CPSC staff drafted a plan for retrospective review of existing rules. (The Commission was not able to agree on a plan, voting 2-2 on the staff’s draft plan.)

The staff’s draft plan set forth criteria for choosing rules to review and, as directed by OMB memorandum M-11-28, included an initial list of candidate rules for review over the next two years. The initial selection of rules was based on the staff’s assessment of resources available and the limited period of time remaining in the fiscal year. The draft plan provided for review in FY 2012 of the toy caps rule, animal testing rules, and an assessment of burdens related to third party testing. The draft plan proposed and sought public comment on the potential for review of the following rules in FY 2013: (1) continued assessment of how to reduce burdens related to third party testing; (2) alternatives to third party testing that would be available for small batch manufacturers; (3) clarifying size definitions under the carpet and rug flammability standards; and (4) eliminating requirements related to the Federal Caustic Poison Act.

The CPSC has not performed animal testing since September 2008. CPSC staff considered this to be an example of “outmoded, ineffective” regulations that should be modified and updated as contemplated by E.O. 13579. With regard to the carpet and rug flammability standards, under current regulations there is a gap in coverage that has created confusion for manufacturers, particularly now that third party testing is required for some carpets and rugs. CPSC staff cannot estimate the total cost of complying with all CPSC regulations that is represented by complying with these two regulations. I note, however, that E.O. 13579 is not focused solely on reducing costs of existing regulations, but also asks agencies to “modify, streamline, expand, or repeal” those rules that “may be outmoded, ineffective,[or] insufficient.” I also note that the CPSC staff’s draft plan called for review of burdens related to third party testing, requirements that several public commenters felt impose significant costs that should be reduced.

6. *ROVs (Recreational Off-highway Vehicles)*

Why does the CPSC seem intent on pressing forward for a mandatory standard on ROVs rather than working with industry the way NHTSA does with the automobile companies to devise meaningful safety tests with repeatable results?

On October 28, 2009, the CPSC published an advance notice of proposed rulemaking (ANPR) concerning recreational off-highway vehicles (ROVs). 74 FR 55495. The ANPR began a rulemaking process that could result in a mandatory consumer product safety standard for ROVs. Throughout this process, CPSC staff has repeatedly met with industry representatives to facilitate an exchange of information and improvements to the voluntary standard as evidenced by multiple public meetings and comment letters submitted by CPSC staff during the voluntary standard canvass process. As the CPSC continues with the rulemaking process, one of the considerations will be the adequacy of the voluntary standard. Under section 9(f)(3)(D) of the CPSA, before the Commission can issue a final mandatory consumer product safety rule it must make certain findings about the adequacy of the relevant voluntary standard and the likely level of compliance with the voluntary standard.

7. *Buckyballs*

The CPSC routinely relies on the sufficiency of warning labels to keep children away from other adult products like, say, gasoline cans. Why then does the agency believe that warning labels are not an adequate solution to deal with the safety risk posed by a desk toy marketed to adults like Buckyballs? Has the agency taken steps to ban Buckyballs and similar products as a banned hazardous substance, akin to lawn darts? If not, why not?

On September 4, 2012, the CPSC published a notice of proposed rulemaking (NPR) proposing a safety standard for magnet sets. 77 FR 53781. The preamble to the NPR (and the staff's briefing package upon which the NPR is based) explains why the Commission believes the standard it proposes is necessary to address the risks posed by sets of small, powerful magnets and why warning labels are not likely to adequately reduce the risk of injury. Specifically, the preamble notes that these magnets pose a unique hazard that many children, adults, and health care providers may not recognize. The injuries resulting from swallowing these magnets can be far more severe than swallowing other small items. When magnets are ingested they become attracted to each other, trapping intestinal tissue, and resulting in perforation of the intestine or bowel. Furthermore, while the magnet sets are marketed to adults, they have a strong appeal to children and are widely available to children.

While warning labels are appropriate in certain circumstances, the CPSC does not believe that they would be adequate to reduce the risk of injury with this product. The preamble to the proposed rule discusses the limitations of warnings for this product (*see* 77 FR at 53788-89). For example, magnet sets are likely to become separated from their packaging, and the magnets could not be individually labeled. Thus, users and parents may not see the warnings. Another limitation is the difficulty conveying in a label the unique and more severe hazard

that ingesting powerful magnets present compared to swallowing other small nonmagnetic objects. Furthermore, among the users of this product are adolescents who may swallow the magnets while imitating body piercings. Parents may not understand the risk posed to adolescents and may allow them to have the product in spite of warnings, and adolescents may not heed the warnings.

The magnet set NPR was issued under sections 7 and 9 of the Consumer Product Safety Act. (We note that the ban of lawn darts was mandated by Congress. P.L. 100-61, 102 Stat 3183, November 5, 1988.) The proposed rule would set size and strength requirements and would prohibit magnet sets that do not meet those requirements. Under the proposal, if a magnet set contains a magnet that fits within the CPSC's small parts cylinder, magnets from that set would be required to have a flux index of 50 or less, or they would be prohibited.

8. Budget

How many agency employees attended the ICPHSO meeting in Orlando, Florida in February, 2011? What was the total cost of their travel and attendance at the conference?

Twenty-six agency employees attended the ICPHSO Training and Symposium Conference in Orlando, Florida in February, 2011. The total cost of their travel and attendance was \$35,641.20.

Staff attendance at ICPHSO was a critical element in our global education and outreach efforts involving many of our stakeholders. The staff attending this conference participated in and led multiple interactive workshops and plenary sessions reaching over 700 stakeholders in one training session. These stakeholders included manufacturers, importers, distributors, retailers, consumer advocates, testing laboratories, trade associations, and domestic and international regulators (attendees represented over thirty countries).

How much money has the agency budgeted (and how much has it already spent) for redesigning its logo and ordering items featuring the new logo?

The final cost for the CPSC logo was \$7,829.44. There are no additional expenditures planned. No new items have been ordered specifically to replace items with the existing seal. The new logo is currently being used on the agency's website, in staff presentations, on social media platforms, and other public facing platforms. As new publications, videos and agency products are being ordered or replaced, use of the agency logo will be included in the design and production.

How much money has the agency budgeted (and how much has it already spent) for consulting services for the agency's new strategic plan?

The contract support costs for the Strategic Plan required by the Government Performance and Results Act was \$977,155. The contract costs for the Operational Review was \$919,079. The total contract costs were \$1,896,235. The last invoice was paid in November 2010. There is no money budgeted for a strategic plan in FY 2013.

How much money has the agency budgeted (and how much has it already spent) on an editor to ensure that documents reflect your preferred writing style? How does the agency justify this expense given that anything published in the Federal Register will be edited according to the style of that publication anyway?

The agency has one career employee that, as part of his/her job responsibilities, reviews documents, reports and other written materials that are disseminated to the public and Congress. However, this employee is, first and foremost, a seasoned attorney who serves in the Office of the General Counsel. This employee's legal duties include reviewing contracts and contract solicitations for legal sufficiency; participating in the development of procedural rules for various aspects of Commission activities; providing legal review and advice on budget, appropriations, directives, and other general law issues; coordinating with other federal agencies having concurrent jurisdiction with the Commission (based upon direction from the Commission and key staff personnel), including negotiating and drafting memoranda of understanding with other federal agencies; and providing legal guidance on responses to petitions and advising on legal aspects of decision making on these petitions. In addition to these legal duties this employee serves as CPSC's legal editor and its Plain Writing Officer, per the Plain Writing Act of 2010. This position is a GS-14.

The Honorable Adam Kinzinger

1. I understand that CPSC is in the process of finalizing a Standard for the Flammability of Residential Upholstered Furniture that would allow furniture manufacturers two options for fulfilling the national requirements. One option would be through compliance with a smoldering-ignition test, known as "Type I." The second "Type II" approach would require the use of an interior barrier to meet both a smoldering and an open-flame test.

a. What data supports allowing the Type I smolder-only option, given that open-flame risk for upholstered furniture is still a concern in American homes based on National Fire Protection Association data?

As stated in the 2008 Notice of Proposed Rulemaking (NPR), addressable residential upholstered furniture fires resulting from smoking material (primarily cigarettes) were responsible for 90 percent of deaths and 65 percent of injuries in the 2004-2006 period. The focus of the 2008 NPR was to address the primary ignition scenario based on the national fire data.

2. Dr. Matt Blais of Southwest Research Institute recently issued a paper demonstrating that flame retardants in foam not only help to prevent a fire from starting, but also limit the overall heat release from an upholstered furniture fire. This is significant because reducing the overall heat release from a burning piece of furniture may delay the time to "flashover" in a room.

In view of this research, do you agree that limiting the use of flame retardants in furniture would forfeit this added critical function that flame retardants provide?

Recent open flame ignited large scale tests conducted by CPSC included FR foams that met the California Technical Bulletin 117 (TB-117) requirements. The flame retardant (FR) foams tested by CPSC have not shown much improvement in flammability performance when tested in bench and large scale. It is important to note, however, that these large scale test results did not intend to represent all TB-117 or FR treated foams and the results are relevant to these specific materials. Furthermore, it was not within the scope of this test program to investigate the reason for the poor performance of the TB-117 foams.

It is possible that the FR technology applied for the TB-117 foam reported in Dr. Blais' study far exceeded the minimal requirements of TB-117.

A presentation in early 2012 from a researcher from Underwriters Laboratories at a NIST workshop showed that foams reported to meet TB-117 had reduced burn duration in cone calorimeter (small scale) tests, lower heat release in mockup tests, and did not show much improvement in full scale performance. All FR chemicals are not equally effective in reducing fire risk.

- 3. Section 108 of the CPSIA requires the CHAP (and ultimately the Commission) to consider the possible health effects of any alternative plasticizers. Phthalates have been widely evaluated, by the Commission and other agencies, and found to be safe for intended uses— whereas many potential substitutes have not undergone significant scientific review. We are very concerned about the potential hazards to consumers of banning chemicals whose hazards we know only to replace them with chemicals whose possible hazards we don't understand. What is the Commission's policy regarding the possible replacement of phthalates with chemicals that have not been equally reviewed or assessed?**

CPSC staff reviews all possible chemical hazards, including possible phthalate replacements, using a standard risk assessment approach. The staff bases a recommendation to the Commission for regulation of a chemical under the FHSA on an assessment of both exposure and risk, not just the presence of the chemical. In considering exposure, the CPSC considers several factors: total amount of the chemical in the product; bioavailability of the chemical; accessibility of the chemical to children; age and foreseeable behavior of the children exposed to the product; foreseeable duration of the exposure; and marketing, patterns of use, and life cycle of the product.

The CPSC also assesses the toxicological data by evaluating available data from animal studies; human exposure data, if available, with specific attention to issues such as the routes of exposure; length of exposure (i.e., acute or chronic time frames); specific form of chemical; and dose-response relationships. CPSC staff estimates doses that correspond to substantial personal injury or substantial illness, for assessment under the FHSA. Staff evaluates all of the information and data collected in the product, toxicological, and exposure assessments to make conclusions about whether a product may be a hazardous substance.

4. **The CPSC’s mission is to protect the public against unreasonable risks, not all risks, from consumer products. The CPSIA likewise mandates “using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women and other[s].” We are concerned that the CHAP is favoring a precautionary approach and departing from the reasoned, scientifically-based approach that is contemplated by the governing statutes. For example, there has been discussion in public CHAP meetings about using uncertainty factors that are significantly more conservative than the factors that would be employed under CPSC guidelines – more in line with European precautionary standards. This approach goes against the U.S. standard of judging substances or products for actual risks and could have serious economic consequences if it is adopted by CPSC or elsewhere in the U.S. government.**

- a. **Will the Commission adhere to a scientific, risk-based approach rather than the precautionary principle as it conducts rulemaking under Section 108?**

The Commission will adhere to the statutory criteria set forth in Section 108 of the CPSIA as it conducts its rulemaking.

- b. **What steps, if any, is the Commission taking to ensure that the final rule issued is based on sound science and not simply precaution?**

The Commission will adhere to the provisions set forth in Section 108 of the CPSIA to ensure the final rule is promulgated pursuant to the law.

5. **The CPSC is charged with regulating over 15,000 products worth billions of dollars to the American economy each year. According to President Obama’s executive order 13579 on Improving Regulation and Regulatory Review, the agency is responsible for “developing a regulatory system that protects public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” As you prepare a rulemaking on phthalates and phthalates alternatives in children’s products, your agency should use its regulatory oversight responsibilities consistent with Executive Order 13579 and work to limit unnecessary burdens on small businesses and America’s innovators. Please explain the measures that the CPSC will employ to ensure that any rulemaking associated with the CHAP’s report will not stifle economic growth, innovation, competitiveness, and job creation.**

Section 108(b)(3) of the Consumer Product Safety Improvement Act (CPSIA) provides that, not later than 180 days after the Commission receives the CHAP’s report, “the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP].” After the CHAP issues its report, the Commission plans to pursue rulemaking in accordance with these requirements. Public input will inform the rulemaking process and provide the proper balance between economic growth, innovation, competitiveness, and job creation and the statutory requirements regarding phthalates mandated by the CPSIA.

6. According to OMB's Peer Review Bulletin, a scientific assessment meets the criteria to be considered "highly influential" if "the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest." Because state, federal and international regulatory agencies have expressed significant interest in the CHAP's scientific report, and because this report could profoundly affect future rulemakings with widespread impacts, this report clearly meets the criteria of a "highly influential" scientific document.

a. Please explain whether the Commission plans to treat the CHAP's scientific report as "highly influential"? If not, why?

CPSC understands the scientific importance of the CHAP report and will comply with the requirements regarding the report and the ensuing rulemaking set forth in section 108 of the CPSIA.

b. Was OMB consulted on this decision?

Staff has consulted with OMB on the Peer Review Bulletin.

7. OMB's Peer Review Bulletin requires a high level of transparency and public involvement in the peer review of "influential scientific assessments," like the CHAP report. According to the OMB Bulletin:

In order to obtain the most expert reviewers, agencies must "consider requesting that the public, including scientific and professional societies, nominate potential reviewers." This public involvement is crucial to assuring that the reviewers meet other criteria in the OMB Bulletin, including assuring that the reviewers "shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge" and be independent of the agency.

agencies are also instructed, "[w]henever feasible and appropriate," to "make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public."

This last obligation is echoed in the CPSC's rules, which state that: "In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission has

determined that it must involve the public in its activities to the fullest possible extent.”

CPSC’s clearance procedures underscore the need for transparency in the case of complex assessments like the CHAP report. According to the clearance procedures, CPSC’s staff and contractor technical reports related to health science and other issues having potentially high impacts on important public policies and private-sector decisions, “should be highly transparent.” CPSC’s clearance procedures also stipulate that “CPSC places great emphasis on its review process to ensure the quality of information disseminated.” These procedures specify that “a report prepared by a contractor to the Commission [must be] subject to a review process by Commission staff.”

- a. Please confirm that the CPSC will organize a peer review of the CHAP report that meets the requirements of OMB’s Peer Review Bulletin.**

A potential peer review plan is currently under development but has not yet been finalized.

- b. Has the CPSC solicited nominations of prospective reviewers? If so, what process was used and when?**

In August, 2011, CPSC asked the National Academy of Sciences (NAS) to provide names of scientists with expertise in areas relevant to the work of the CHAP on phthalates. NAS provided names to CPSC which were then vetted within the CPSC Office of the General Counsel for any possible conflicts of interest.

- c. How will CPSC assure that its reviewers fairly represent the relevant scientific perspectives and fields of knowledge?**

CPSC conveyed to the NAS information regarding the nature of the scientific issues to be considered in the CHAP report and trusted the knowledge and expertise of the NAS to nominate the most appropriate scientists for the peer review work. Based on CPSC staff’s knowledge of the risk assessment and phthalates scientific literature, staff believes the nominees who will peer review the CHAP draft report have the appropriate range of expertise to undertake that work.

- d. Will CPSC make the CHAP report publicly available for comment so that reviewers can gain the benefit of the public’s scientific views and knowledge?**

The very nature of a scientific peer review requires that all relevant data and information be made available to the peer reviewers so that they can be as informed as possible in understanding the scientific approaches taken and conclusions reached by the CHAP members. The peer reviewers are highly trained scientists and experts in the

same areas as the CHAP members. Peer reviewers will have access to the full public record and will be provided all supporting information including all reference papers cited in the report.

e. Will CPSC hold a public meeting on the CHAP report?

Section 108(b)(3) of the Consumer Product Safety Improvement Act (CPSIA) provides that, not later than 180 days after the Commission receives the CHAP's report, "the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP]." After the CHAP issues its report, the Commission plans to pursue a rulemaking in accordance with these requirements. A public meeting is one additional option CPSC could use as a forum for public input.

f. If CPSC does not intend to peer review the CHAP report, how will it "involve the public . . . to the fullest possible extent" and be able to say that the "information in the reports [is] highly transparent"?

Please see the answers to the questions above.

g. If the CHAP conducts a peer review using undisclosed reviewers, and uses a charge that no one has seen, does CPSC intend to claim that this is "its review process", will constitute a "CPSC-established review procedure", and will meet the requirement of the OMB Peer Review Bulletin that "each agency shall conduct a peer review on all influential scientific information that the agency intends to disseminate"?

A potential peer review plan is currently under development but has not yet been finalized.

8. CPSC's rules also provide that, "[t]o ensure public confidence in the integrity of Commission decision-making, the Agency, to the fullest possible extent, will conduct its business in an open manner free from any actual or apparent impropriety." You echoed this commitment during your confirmation hearing, pledging that the agency "will work to ensure that the Chronic Hazard Advisory Panel conducts an impartial . . . study . . . as required by the CPSIA." Without full transparency, the "peer review" process that the CPSC apparently is planning could appear to the public and key stakeholders as an attempt to use like-minded allies to add a veneer of scientific reliability to a biased process. If the Commission allows this to occur, or relies upon it to discharge the Commission's own responsibilities, how can the Commission claim that the process is "impartial," let alone "free from any actual or apparent impropriety"?

A potential peer review plan is currently under development but has not yet been finalized.

CPSC staff believes that the CHAP process has been transparent. In the two and a half years since the CHAP was convened, virtually every meeting, phone call, piece of correspondence, all data submitted, etc. has been made available to the public on the CPSC website

(<http://www.cpsc.gov/about/cpsia/chapmain.html>). The CHAP invited prominent research scientists to present their latest results and heard public testimony and written comments from interested parties. The CHAP members even agreed to an industry request to submit and discuss additional scientific studies at one of its public meetings, which took additional time.

The CHAP members also encouraged stakeholders to make their actual data (versus summaries of data) publicly available so that the CHAP might consider that data along with all other available public information. Some stakeholders chose not to release the more detailed data, because of concerns about proprietary business information. The CHAP evaluated any and all relevant data made available to it, including information provided by the industry that was made public.

9. **The OMB Peer Review bulletin instructs that, “[w]henever feasible and appropriate,” agencies should “make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public.” The CPSC echoes this point in its own rules and has said it must involve the public in its activities to the fullest extent possible in order to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products.**

- a. **How does the CPSC plan to involve the public in the review process?**

A potential peer review plan is currently under development but has not yet been finalized.

- b. **If CPSC does not solicit public comment, how will it: “[E]nsure that [the report] is accurate and not misleading” and otherwise “ensure the quality of information disseminated” in the report?**

CPSC will follow the statutory criteria set forth in Section 108 of the CPSIA in discharging its statutory mandate regarding the CHAP report and the ensuring rulemaking.

10. **Section 108 of the CPSIA clearly calls for the CHAP to prepare a thorough report that provides an accurate characterization of the scientific data for six phthalates and alternatives. As highlighted during the hearing, the law states that the CHAP must review “all relevant data, including the most recent, best-available, peer-reviewed scientific studies . . . that employ . . . objective methods.” During the hearing, I asked you specifically about this language and whether you personally support that the CHAP review encompasses the full weight of scientific evidence. To that question, you affirmatively responded, “I certainly do.”**

- a. **Please explain what measures the Commission will utilize to ensure that the CHAP does not omit certain pieces of scientific research, and instead identifies and**

actively considers all relevant data in determining what is the best-available science.

It is the responsibility of the CHAP to conduct the examination and I have confidence its work will satisfy the requirements of Section 108 of the CPSIA.

- b. Please explain how the Commission will properly consider the full weight of scientific evidence and literature.**

Section 108(b)(3) of the CPSIA provides that, not later than 180 days after the Commission receives the CHAP's report, the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule based on the CHAP report." Once the final CHAP report has been submitted to the Commission, CPSC staff will pursue rulemaking in accordance with the requirements of Section 108 of the CPSIA.

The Honorable G. K. Butterfield

1. **At the Subcommittee hearing on August 2, 2012, you briefly addressed the CPSC's decision to file an administrative complaint in order to stop Maxwell & Oberton from continuing to distribute Buckyballs and Buckycubes because of the serious injuries to children resulting from the ingestion of the high-powered magnets that compose these products. I understand that you are limited in your ability to respond to questions concerning this matter because it is currently being litigated, but to the extent possible, can you please provide the Subcommittee with additional information about the types of injuries caused by these products when they are ingested by children?**

On September 4, 2012, the Commission published a notice of proposed rulemaking (NPR) concerning magnet sets. 77 FR 53781. The preamble to the NPR provided information about the injuries that can result when children swallow these products (*see* pp. 53784-86). The NPR is available on the Commission's website at: <http://www.cpsc.gov/businfo/frnotices/fr12/magnetrpr.pdf>.

Detailed information on specific cases that involved young children requiring surgical intervention, including abdominal surgery and intestinal resectioning, is provided on pages 17-21 of the CPSC staff briefing package, available at: <http://www.cpsc.gov/library/foia/foia12/brief/magnetstd.pdf>.

The North American Society for Pediatric Gastroenterology, Hepatology and Nutrition (NASPGHAN) also released the results of a member survey on October 23, 2012, that details injuries reported in 480 magnet ingestion cases over the past 10 years. A summary of this survey is available at: <http://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/Warning-Labels-Ineffective-at-Preventing-High-Powered-Magnet-Ingestions.aspx>.

2. In her written testimony, Commissioner Nord criticized the Commission's determination that it was technologically feasible to limit total lead content for children's products to 100 parts per million as specified by Congress in section 101 of the Consumer Product Safety Improvement Act of 2008 (Pub. L. No. 110-114). Commissioner Nord stated: "This decision was particularly disturbing because the Commission had specific leeway in the statute to impose some balance through its judgments concerning the technological feasibility of such action." Can you please explain what the statute actually allowed the Commission to do and how the Commission arrived at its determination?

In the CPSIA, Congress established a very high threshold for the agency to exempt any children's product or component thereof that does not comply with the current statutory lead limit of .01 percent (100 parts per million). The statute states that beginning on August 14, 2011, all children's products must comply with the reduced lead limit "unless the Commission determines that a limit of 100 parts per million is not technologically feasible for a product or product category. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's product." Rather than leave the definition of "technological feasibility" to the discretion of the Commission, the statute provides an explicit definition, stating that the reduced lead limit *shall* be deemed technologically feasible with regard to a product or product category if:

- (1) A product that complies with the limit is commercially available in the product category;
- (2) Technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;
- (3) Industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or
- (4) Alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

If *any* one of the four criteria was satisfied, the Commission could not make a finding that it was not technologically feasible for a product or product category to meet the .01 percent lead limit. Our staff worked extensively to solicit input from the regulated community concerning the technological feasibility of compliance with the .01 percent lead limit for children's products and categories of children's products. Based on their analysis of all the information sought out by and submitted to the agency, our professional staff could not recommend that the Commission make a determination that it was not technologically feasible for any children's product or category of children's products to meet the .01 percent lead limit based on the statutory criteria necessary to support such a finding.

3. In her written testimony, Commissioner Northup stated: "The goal of regulatory review should be to *meaningfully* reduce regulatory burdens." (Emphasis in original.) Her testimony suggests no other goals for regulatory review.

a. Do you believe that the only goal of regulatory review is the reduction of regulatory burdens, as suggested by Commissioner Northup?

I believe the reduction of regulatory burdens is one of many goals of regulatory review. However, I do not agree with my former colleague that the single most important criterion for setting priorities should be the cost of the regulation to business. While I agree that cost should always be a significant factor, I do not believe any one factor should automatically take precedence over the others except, perhaps, for preventing or reducing deaths and injuries. That said, I note that the staff draft plan for prioritizing candidates for retrospective review includes numerous criteria that recognize the importance of costs in the reviews. Among these criteria are the cost of the regulation, including the impact on small businesses; the cost associated with the regulation; overlapping regulatory requirements; and the paperwork burden associated with the regulation.

In addition to these cost related criteria, staff has recommended a number of noncost related factors, including advancements in technology, age of a regulation, and input from stakeholders. I believe that all of staff's proposed factors should be considered when selecting rule review projects.

b. Do you believe that the Commission's proposed regulatory review plan provides the type of balanced approach called for in the President's Executive Orders? Please explain the benefits of this type of balanced approach compared to the one advocated by Commissioner Northup.

I believe the proposal by the Commission's professional staff is a very fulsome, balanced, and appropriate review plan. In the package presented to the Commission, staff formulated a plan that not only incorporated the elements drawn from the President's Executive Orders (EO) 13579 and 13563, but also set forth a defined method and schedule for identifying and reconsidering any Commission rules that are obsolete, unnecessary, unjustified, excessively burdensome, counterproductive, or ineffective, or that otherwise require modification without sacrificing the safety benefits of the rules. The plan also encourages public input and participation to find the right balance of priorities and resources. The plan also incorporates the requirement in Public Law 112-28 that the Commission seek and consider comments on ways to reduce the cost of third party testing requirements.

Furthermore, the plan contemplates the agency's finite resources, specifically considering ways to address review without diverting staff resources from some of the Commission's key safety activities. As I said in my testimony, diverting resources from our core safety mission is not acceptable to me, nor should it be acceptable to America's consumers, especially parents.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

January 31, 2013

The Honorable Barbara Mikulski
Chairman
Committee on Appropriations
United States Senate
S-128 Capitol
Washington, DC 20510

The Honorable Thad Cochran
Ranking Member
Committee on Appropriations
United States Senate
146A Capitol
Washington, DC 20510

Dear Chairman Mikulski and Ranking Member Cochran:

Pursuant to 31 U.S.C. § 720, I am writing to provide a written statement on action contemplated by the U.S. Consumer Product Safety Commission (CPSC) in response to the December 2012 Government Accountability Office (GAO) Report 13-150 entitled, "Consumer Product Safety Commission: Agency Faces Challenges in Responding to New Product Risks."

The conclusions section of the GAO Report noted that section 29(f) of the Consumer Product Safety Act (CPSA), as amended, has "not achieved the results expected by Congress" and that "CPSC may benefit from having more flexibility to exchange information with its counterparts in other countries, which would help CPSC prevent unsafe products from entering the U.S. marketplace." In order to remedy this issue, the GAO Report suggested that, "Congress may wish to amend section 29(f) of CPSA to allow CPSC greater ability to enter into information-sharing agreements with its foreign counterparts that permit reciprocal terms on disclosure of nonpublic information."

In a written response to the GAO Report, the Commission unanimously endorsed this recommendation and amendments to 29(f) that would allow additional information-sharing agreements with foreign counterparts. Through this letter, I wish to offer the technical assistance and support of CPSC staff should Congress decide to pursue these helpful changes to section 29(f) of the CPSA.

The Honorable Barbara Mikulski and Thad Cochran
January 31, 2013
Page 2

Thank you for your consideration of these comments. Should you or your staff have any questions, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, by telephone at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Inez Tenenbaum".

Inez M. Tenenbaum



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

January 31, 2013

The Honorable Hal Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
H-307, The Capitol
Washington, DC 20515

The Honorable Nita Lowey
Ranking Member
Committee on Appropriations
U.S. House of Representatives
1016 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rogers and Ranking Member Lowey:

Pursuant to 31 U.S.C. § 720, I am writing to provide a written statement on action contemplated by the U.S. Consumer Product Safety Commission (CPSC) in response to the December 2012 Government Accountability Office (GAO) Report 13-150 entitled, "Consumer Product Safety Commission: Agency Faces Challenges in Responding to New Product Risks."

The conclusions section of the GAO Report noted that section 29(f) of the Consumer Product Safety Act (CPSA), as amended, has "not achieved the results expected by Congress" and that "CPSC may benefit from having more flexibility to exchange information with its counterparts in other countries, which would help CPSC prevent unsafe products from entering the U.S. marketplace." In order to remedy this issue, the GAO Report suggested that, "Congress may wish to amend section 29(f) of CPSA to allow CPSC greater ability to enter into information-sharing agreements with its foreign counterparts that permit reciprocal terms on disclosure of nonpublic information."

In a written response to the GAO Report, the Commission unanimously endorsed this recommendation and amendments to 29(f) that would allow additional information-sharing agreements with foreign counterparts. Through this letter, I wish to offer the technical assistance and support of CPSC staff should Congress decide to pursue these helpful changes to section 29(f) of the CPSA.

The Honorable Hal Rogers and Nita Lowey
January 31, 2013
Page 2

Thank you for your consideration of these comments. Should you or your staff have any questions, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, by telephone at (301) 504-7660 or by e-mail at cday@cpsec.gov.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Inez Tenenbaum".

Inez M. Tenenbaum



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

January 31, 2013

The Honorable Darrell E. Issa
Chairman
Committee on Oversight &
Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight &
Government Reform
U.S. House of Representatives
2471 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa and Ranking Member Cummings:

Pursuant to 31 U.S.C. § 720, I am writing to provide a written statement on action contemplated by the U.S. Consumer Product Safety Commission (CPSC) in response to the December 2012 Government Accountability Office (GAO) Report 13-150 entitled, "Consumer Product Safety Commission: Agency Faces Challenges in Responding to New Product Risks."

The conclusions section of the GAO Report noted that section 29(f) of the Consumer Product Safety Act (CPSA), as amended, has "not achieved the results expected by Congress" and that "CPSC may benefit from having more flexibility to exchange information with its counterparts in other countries, which would help CPSC prevent unsafe products from entering the U.S. marketplace." In order to remedy this issue, the GAO Report suggested that, "Congress may wish to amend section 29(f) of CPSA to allow CPSC greater ability to enter into information-sharing agreements with its foreign counterparts that permit reciprocal terms on disclosure of nonpublic information."

In a written response to the GAO Report, the Commission unanimously endorsed this recommendation and amendments to 29(f) that would allow additional information-sharing agreements with foreign counterparts. Through this letter, I wish to offer the technical assistance and support of CPSC staff should Congress decide to pursue these helpful changes to section 29(f) of the CPSA.

The Honorable Darrell E. Issa and Elijah Cummings
January 31, 2013
Page 2

Thank you for your consideration of these comments. Should you or your staff have any questions, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, by telephone at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in black ink, appearing to read "Inez M. Tenenbaum". The signature is fluid and cursive, with the first name "Inez" being the most prominent part.

Inez M. Tenenbaum



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

January 31, 2013

The Honorable Thomas R. Carper
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Coburn
Ranking Member
Committee on Homeland Security and
Governmental Affairs
United States Senate
344 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper and Ranking Member Coburn:

Pursuant to 31 U.S.C. § 720, I am writing to provide a written statement on action contemplated by the U.S. Consumer Product Safety Commission (CPSC) in response to the December 2012 Government Accountability Office (GAO) Report 13-150 entitled, "Consumer Product Safety Commission: Agency Faces Challenges in Responding to New Product Risks."

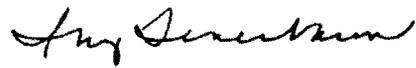
The conclusions section of the GAO Report noted that section 29(f) of the Consumer Product Safety Act (CPSA), as amended, has "not achieved the results expected by Congress" and that "CPSC may benefit from having more flexibility to exchange information with its counterparts in other countries, which would help CPSC prevent unsafe products from entering the U.S. marketplace." In order to remedy this issue, the GAO Report suggested that, "Congress may wish to amend section 29(f) of CPSA to allow CPSC greater ability to enter into information-sharing agreements with its foreign counterparts that permit reciprocal terms on disclosure of nonpublic information."

In a written response to the GAO Report, the Commission unanimously endorsed this recommendation and amendments to 29(f) that would allow additional information-sharing agreements with foreign counterparts. Through this letter, I wish to offer the technical assistance and support of CPSC staff should Congress decide to pursue these helpful changes to section 29(f) of the CPSA.

The Honorable Thomas R. Carper and Tom Coburn
January 31, 2013
Page 2

Thank you for your consideration of these comments. Should you or your staff have any questions, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, by telephone at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Inez M. Tenenbaum".

Inez M. Tenenbaum



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

March 22, 2013

The Honorable Adam Kinzinger
U.S. House of Representatives
1218 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Pompeo
U.S. House of Representatives
107 Cannon House Office Building
Washington, DC 20515

Dear Representatives Kinzinger and Pompeo:

Thank you for your letter of March 14, 2013, requesting an update on the Chronic Hazard Advisory Panel (CHAP) on phthalates. Specifically, you requested information on public participation in the CHAP report and subsequent rulemaking proceeding required pursuant to section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

Because the safety of phthalates and phthalate substitutes is a very important public health issue, effective implementation and enforcement of the requirements of section 108 of the CPSIA have been a high priority for me as Chairman. In section 108(b)(2) of the CPSIA, Congress required the Consumer Product Safety Commission (CPSC) to appoint an independent CHAP to conduct a *de novo* examination of the effects on children's health of all phthalates and phthalate alternatives used in children's toys and child care articles and for the CHAP to submit a final report to the agency after the completion of its examination. After submission of the CHAP's final report, the agency must commence related rulemaking in accordance with section 108(b)(3) of the CPSIA. The CHAP has undertaken its independent examination and is currently drafting its report. I am very eager for the CHAP to complete its work and for the agency to proceed as efficiently as possible to discharge its statutory obligation by beginning rulemaking.

The CHAP independently decided to obtain a scientific peer review of its draft final report as a prerequisite to its submission of a final report to the agency. The CPSC apprised the CHAP of the American Chemistry Council's request for the CHAP members to participate in a public peer review process, and the CHAP unanimously declined the request. Accordingly, CPSC plans to assist the CHAP in executing its scientific peer review of the draft final report while maximizing the transparency of this process to the extent practicable by proceeding as follows:

The CHAP's draft final report will be sent to scientific peer reviewers nominated by the National Academy of Sciences (NAS). These peer reviewers will be tasked with conducting a rigorous scientific review of the draft final report and will submit their comments to the CHAP. The CHAP will then consider the comments submitted by the peer reviewers and complete and submit its final report to CPSC.

After the peer review is completed and the CHAP submits its final report to CPSC, the agency plans to publicly release the final report and commence rulemaking in accordance with the statutory requirements contained in section 108(b)(3) of the CPSIA. Consistent with my commitment to transparency, the agency also anticipates publicly releasing the:

- CHAP's draft final report,
- peer reviewers' comments on the draft final report submitted to the CHAP,
- charge questions submitted to the peer reviewers, and
- identities and affiliations of the peer reviewers.

Through the CHAP's submission of its independent and final scientific report to the agency and CPSC's subsequent release of the CHAP's peer review materials, CPSC is respecting the independence of the CHAP to determine the most suitable peer review process for its report while also proceeding in an open and transparent manner prior to completing the rulemaking required by section 108 of the CPSIA. I have consulted with CPSC's expert scientific staff regarding the peer review plan outlined above, and they are confident the process is widely accepted and consistent with recognized practices in the scientific community. In addition, the CHAP and CPSC staff believe this process certainly satisfies scientific standards for a report of this nature.

An essential tenet of my leadership at CPSC is making the operations of the agency open and transparent to the public. The agency's involvement in the CHAP process has been no exception, and to date the public has had numerous opportunities to submit information and present its views—either in written or oral form—to the CHAP for its consideration as it works to draft and finalize its report. After the CHAP has subjected its draft final report to scientific peer review and submits its final report to the agency, I can assure you that all interested parties will have yet another chance to submit comments to the agency directly as a part of the phthalates rulemaking required by section 108(b)(3) of the CPSIA.

The safety of children is at the heart of our work at CPSC and will remain so while I am Chairman. Children, parents, and all consumers deserve a process that is scientifically rigorous, efficient, and transparent. We have achieved a proper balance in this regard and thus will proceed accordingly upon receipt of the final CHAP report.

The Honorable Adam Kinzinger and Mike Pompeo
March 22, 2013
Page 3

Thank you again for your interest in this very important issue. Should you or your staff have any questions, please do not hesitate to contact me or Christopher Day, Director of Legislative Affairs, by telephone at (301) 504-7660 or by e-mail at cday@cpsec.gov.

Very truly yours,

A handwritten signature in black ink that reads "Inez M. Tenenbaum". The signature is written in a cursive style with a large, prominent "I" and "M".

Inez M. Tenenbaum

Keefe Singer, Jenilee

From: Keefe Singer, Jenilee
Sent: Tuesday, May 08, 2012 2:46 PM
To: 'Bomberg, Jared (Commerce)'
Cc: Day, Christopher
Subject: RE: Nominations hearing question
Attachments: 120217 Appropriation History data.pdf

Hi Jared --

Per our discussion yesterday, below is a paragraph outlining the CPSC's recent accomplishments. Additionally, attached in a chart of our historical appropriations and staffing levels. Please let us know if you need any additional information.

Jenilee

"The CPSC has come a long way since the passage of the CPSIA. Thanks to the great work of the Commission, today, total lead content for children's products, including toys, is set at 100 parts per million; third party testing is mandatory for most children's products; registration cards accompany most durable infant and toddler products, so parents who register can receive direct notification of recalls; and tracking labels are placed directly on children's products, so parents can identify who made them long after packaging is discarded. Today, we have the strongest crib standard in the world and new safer, stronger standards for durable infant and toddler products like walkers, bath seats, and bedrails. The Commission has also been able to increase its number of full-time staff -- mainly technical and professional employees -- from a low of only 420 in FY 2008 to approximately 548 today. And, today, the CPSC has increased surveillance at ports, as well as a new IT system and a new laboratory."

From: Bomberg, Jared (Commerce) [mailto:Jared_Bomberg@commerce.senate.gov]
Sent: Monday, May 07, 2012 12:25 PM
To: Day, Christopher; Keefe Singer, Jenilee
Cc: Laitin, Anna (Commerce)
Subject: RE: Nominations hearing question

thanks

From: Day, Christopher [<mailto:CDay@cpsc.gov>]
Sent: Monday, May 07, 2012 12:25 PM
To: Bomberg, Jared (Commerce); Keefe Singer, Jenilee
Cc: Laitin, Anna (Commerce)
Subject: Re: Nominations hearing question

Jared:

Jenilee pulled the big "matrix" of CPSIA rules, and we will try to update it when we get back from our meetings in the early afternoon.

Having said that, I think there are 3 main "buckets" of stuff left for later this year: 1) the infant and toddler products standards (2 every six months) under section 104; 2) Commission action on the CHAP/phthalates recommendation (probably fall timeframe); and 3) a possible Commission recommendation to the Hill re reduced third-party testing requirements per section 2 of PL 112-28.

Chris

From: Bomberg, Jared (Commerce) [mailto:Jared_Bomberg@commerce.senate.gov]
Sent: Monday, May 07, 2012 11:34 AM
To: Day, Christopher; Keefe Singer, Jenilee
Cc: Laitin, Anna (Commerce) <Anna_Laitin@commerce.senate.gov>
Subject: Nominations hearing question

Hi,
Do you have a cheat sheet for CSPIA rulemakings and the extent to which they are complete/what is left? Any summary information along these lines would be a huge help on our end. Thanks

Jared

Jared Bomberg
Legislative Assistant
U.S. Senate Commerce Committee
428 Hart Building | Washington, D.C. 20510
Tel: (202) 224-1270 | Fax: (202) 228-4262

*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!!

CPSC APPROPRIATION HISTORY

(dollars in thousands)

2/16/2012

Year	Final Budget Authority*	Final FTE Authority	
1973	\$13,554	---	
1974	34,776	786	
1975	36,954	890	
1976	39,564	890	
1977	39,759	914	
1978	40,461	900	
1979	42,940	881	
1980	41,350	978	
1981	42,140	891	
1982	32,164	649	
1983	34,038	636	
1984	35,250	595	
1985	36,500	587	
1986	34,452	568	
1987	34,600	527	
1988	32,696	513	
1989	34,500	529	
1990	35,147	526	
1991	37,109	514	
1992	40,200	515	
1993	48,400	515	
1994	42,286	518	
1995	42,431	487	
1996	39,947	487	
1997	42,500	480	
1998	45,000	480	
1999	47,024	480	
2000	48,814	480	
2001	52,384	480	
2002	55,160	480	
2003	56,630	471	
2004	59,646	471	
2005	62,149	471	
2006	62,370	440	
2007	62,728	420	
2008	80,000	420	
2009	105,404	483	
2010	118,200	530	
2011	114,788	540	
2012	114,500	548	
Request	2013	116,425	560

Keefe Singer, Jenilee

From: Keefe Singer, Jenilee
Sent: Friday, June 15, 2012 5:02 PM
To: jared_bomberg@commerce.senate.gov; Laitin, Anna (Commerce) (Anna_Laitin@commerce.senate.gov); Fjeld, Christian (Commerce) <Christian_Fjeld@commerce.senate.gov> (Christian_Fjeld@commerce.senate.gov)
Cc: Day, Christopher; Cusey, William
Subject: Desk Magnet Incident Data and Outreach
Attachments: 20120615 Desk Magnet Incident Reports.xls

Hello:

It was good speaking with you earlier today. As requested, attached is our incident data for desk magnets. I also included below examples of our press outreach on this issue.

Buckyballs Recall Release : <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml10/10251.html>

CPSC Magnet Warning Press Release: <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml12/12037.html>

CPSC Magnet Warning Video: <http://www.cpsc.gov/vnr/asfroot/magnets.asx>

Magnet Safety Page from CPSC's OnSafety Blog: <http://www.cpsc.gov/onsafety/2011/11/magnet-dangers/>

Joint Statement from CPSC Chairman and Safe Kids: <http://www.safekids.org/our-work/news-press/latest-news/joint-statement-on-magnet-poisoning.html>

Tweets: May 10 – RT [@safekidsusa](#): [@OnSafety](#) & Safe Kids released a joint statement today on [@magnet](#) safety. Check out tips & advice: <http://bit.ly/LoCDb2>

May 7 – Your most-watched videos this year on our YouTube channel are magnet talk & safe sleep. What's your fave CPSC video? <http://bit.ly/jJbY3d>

Should you have any additional questions, please do not hesitate to contact us.

Have a great weekend –
Jenilee

Jenilee Keefe Singer
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
(301) 504-7488

Keefe Singer, Jenilee

From: Keefe Singer, Jenilee
Sent: Friday, November 09, 2012 4:28 PM
To: michelle.ash@mail.house.gov; felipe.mendoza@mail.house.gov
Cc: Day, Christopher; Cusey, William
Subject: FW: Subcommittee on Commerce, Manufacturing, and Trade: Additional Questions for the Record: 8.2.2012 Hearing
Attachments: 121109 CPSC Chairman Tenenbaum QFR Responses re August 2, 2012 Hearing.pdf

Michelle and Felipe:

Chairman Tenenbaum's QFR responses are attached. Please let us know if you have any questions.

Jenilee

From: Keefe Singer, Jenilee
Sent: Friday, November 09, 2012 4:25 PM
To: 'Kirby.Howard@mail.house.gov'
Cc: Day, Christopher; Cusey, William
Subject: RE: Subcommittee on Commerce, Manufacturing, and Trade: Additional Questions for the Record: 8.2.2012 Hearing

Kirby:

Attached please find a PDF document containing Chairman Tenenbaum's responses to questions for the record from the Subcommittee on Commerce, Manufacturing, and Trade's August 2, 2012, hearing entitled "Oversight of the Consumer Product Safety Commission."

Should you have any questions, please do not hesitate to call or e-mail me, or Chris Day at 301-504-7660 or cday@cpsc.gov.

Have a great weekend.

Jenilee

Jenilee Keefe Singer
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
(301) 504-7488

From: Howard, Kirby [<mailto:Kirby.Howard@mail.house.gov>]
Sent: Wednesday, October 10, 2012 3:38 PM
To: Day, Christopher
Cc: Mullan, Gib; Weinberg Taylor, Shannon; McCullough, Brian; Anderson, Paige
Subject: Subcommittee on Commerce, Manufacturing, and Trade: Additional Questions for the Record: 8.2.2012 Hearing

Chris,

Attached are Chairman Tenenbaum's additional questions for the record from our Subcommittee hearing entitled "Oversight of the Consumer Product Safety Commission," held on August 2, 2012. I will be sending the original, along with the others, to the address listed on the letters. Please note that I am attaching the Microsoft word version to help prepare the responses. Considering the volume of questions, the relative due date has been set on October 31, 2012. Feel free to email me if you have any questions.

Thanks,
Kirby

Brian Kirby Howard
Legislative Clerk
Energy & Commerce Committee
202.225.2927





UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

November 9, 2012

The Honorable Mary Bono Mack
Chairman
House Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and
Trade
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bono Mack:

Attached please find responses to the written questions for the record submitted by you and certain other Members of the Subcommittee in connection with the August 2, 2012, hearing entitled "Oversight of the Consumer Product Safety Commission." An electronic version of these responses will also be provided to Mr. Brian Kirby Howard, Legislative Clerk for the Subcommittee.

Thank you again for the opportunity to testify before the Subcommittee. Should you have any questions or require additional information, please do not hesitate to contact me or Christopher Day, Director of Congressional Relations, at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in cursive script that reads "Inez Tenenbaum".

Inez M. Tenenbaum

Attachment

The Honorable Mary Bono Mack

REDUCING REGULATORY BURDENS AND COSTS

- 1. H.R. 2715 granted you the authority to exempt products, or classes of products, from the tracking label requirements. Has the Commission granted any exemptions? Has the Commission conducted any analysis on what products or classes are likely candidates to exempt from the requirement? If not, why not?**

Section 6 of H.R. 2715 (now P.L. 112-28) stated that “the Commission may, by regulation, exclude a specific product or class of products from the requirements in subparagraph (A) [tracking label requirement] if the Commission determines that it is not practicable for such product or class of products to bear the marks required by such subparagraph.” To date, the Commission has not issued any regulations under this new authority. Instead, the Commission issued a Statement of Policy (SOP) concerning tracking labels on July 20, 2009. (A copy of the SOP is available at <http://www.cpsc.gov/about/cpsia/sect103policy.pdf>.) In that Statement, the Commission noted that no specific labeling system was required. (“At this point, the Commission is not imposing any such uniform requirements, but expects that manufacturers will use their best judgment to develop markings that best suit their business and product.”) The Statement also recognized six circumstances where it might not be practicable for manufacturers to include tracking labels on a product, including products sold in bulk vending machines.

The Commission also noted its desire to reduce burdens posed by the tracking label requirement, particularly by avoiding duplicative requirements. To that end, the Statement provided: “The Commission believes that required information already permanently marked either to brand the product or otherwise to comply with other Commission or federal regulations, such as those promulgated under the Textile, Wool and Fur Acts or country of origin labeling rules, could be considered part of the ‘distinguishing marks’ called for by Section 103(a). Any such marking would have to be permanent as required by Section 103(a).” Given the flexibility provided in the Statement of Policy, the lack of stakeholder requests for exemptions, and the need to take action on safety priorities, the Commission has not yet conducted an analysis of candidates that could be exempted from the tracking label requirement.

- 2. Using the authority H.R. 2715 provided, the Commission voted to approve a petition and grant a functional purpose exemption from lead content limits for certain metal components of children’s ride-on tractors. Would the reasoning of this exemption extend to other products? Is the Commission going to reconsider previously submitted petitions or take the initiative to exempt other materials provided the exemptions will result in no measurable impact on public health or safety? If not, please explain.**

Under the new authority provided, the Commission granted a functional purpose exemption for certain metal components of children’s ride-on tractors. 77 FR 20614 (April 5, 2012). In addition, the Commission granted the same exemption to similar children’s products such as other children’s ride-on products that contain similar aluminum alloy component parts. Any

future petition would likely be factually unique, thus making it difficult to predict the likely disposition of future petitions. In the ride-on-tractor petition, however, I was pleased that this petitioner identified and requested only a minor increase in the permissible lead content limits for a few specific components of the children's ride-on tractors produced by his company.

The Commission has not considered previously submitted petitions because the new authority requires certain findings that were not required prior to H.R. 2715. However, the Commission will consider any petition resubmitted in accordance with the requirements for parties wishing to resubmit any previously submitted petitions set forth in section 101(b)(1)(F) of the CPSIA.

The Commission, subject to resource allocations in future operating plans, has also directed CPSC staff to undertake certain work to reduce third party testing costs consistent with assuring the compliance of children's products. Among the materials to be reviewed for possible determinations regarding lead content limits include adhesives in manufactured woods and synthetic food additives.

- 3. We passed H.R. 2715 in part due to the huge financial burden manufacturers have had to face in regards to testing costs since the passage of CPSIA. Does the CPSC know how many jobs were lost or how many companies are not able to invest in new jobs (except testing companies) due to this new financial hardship? Has the Commission undertaken any analysis of the effect of increased costs on innovation and product development?**

The Commission has implemented the third party testing provisions as mandated by Congress in CPSIA and the H.R. 2715 amendments. The Regulatory Flexibility Act (RFA) statement associated with the third party testing rule contains staff economic impact projections. After discharging our statutory duty pursuant to section 14(i)(3)(B) of the CPSA (as amended by P.L. 112-28) to review public comments associated with the reduction of third party testing costs consistent with assuring compliance, the Commission voted to direct staff to further investigate, pending resource allocations in future Commission operating plans, a number of options that staff indicated potentially may reduce third party testing consistent with assuring compliance.

See <http://www.cpsc.gov/library/foia/ballot/ballot13/3rdparty.pdf>.

- 4. H.R. 2715 required the Commission to seek comments on ways to reduce third party testing costs and to issue new or revised testing regulations within one year - which was August 12. The Commission noticed a request for comment last November. Where is the Commission with respect to revising or issuing new testing regulations?**

On August 29, 2012, CPSC staff submitted to the Commission a briefing package, "Consideration of Opportunities to Reduce Third Party Testing Costs Consistent with Assuring the Compliance of Children's Products." On October 10, 2012, the Commission voted to direct staff to further investigate, pending resource allocations in future Commission operating plans, a number of options that staff indicated potentially may reduce third party

testing consistent with assuring compliance. See <http://www.cpsc.gov/library/foia/ballot/ballot13/3rdparty.pdf>.

5. **Has the CPSC considered allowing compliance with the European Toy Safety directive (EN-71) to be regarded as an acceptable demonstration of compliance with the US Toy Standard (ASTM F963)? If not, why not?**

As part of the vote mentioned in response to your previous question, the Commission directed the staff, pending resource allocations in future Commission operating plans, to draft a Request for Information (RFI) for publication in the *Federal Register* to determine which, if any, tests in international standards are equivalent to tests in comparable CPSC-administered children' product safety rules. See <http://www.cpsc.gov/library/foia/ballot/ballot13/3rdparty.pdf>. The provisions of EN-71 would very likely be included within the scope of any undertaken RFI on this subject and would be considered accordingly.

6. **CPSC's periodic testing rule will take effect in February 2013. This rule will exponentially increase the testing, record keeping and other burdens imposed by the CPSIA. We are aware that there has been a proposal to offer--free-of-charge for small businesses--privately developed software that could help enable compliance with this extremely complex new regulation. This would be very similar to the IRS "Free File" program, which makes available, free-of-charge, tax filing software for millions of moderate-income Americans every year.**

- a. **How does the Commission view such a program? Would such a program require Commission approval?**

While nothing prohibits private companies that wish to offer such a service from doing so, the Commission cannot endorse a company's privately developed software. Because 15 software companies participate in the IRS "Free File" program, the government is not in the position of favoring a particular company in that instance.

- b. **Testing for phthalates is expensive, averaging between \$300 and \$500 per toy or product component. Last year the Commission, in an apparent attempt to reduce this burden, excluded from testing "materials known not to contain phthalates." Has the Commission developed a list of such materials? If not, why not?**

On August 17, 2009, the Commission published a notice of availability regarding a Statement of Policy (SOP) for testing component parts for phthalates (74 FR 41400). The SOP includes lists of materials that "do not normally contain phthalates and, therefore, might not require testing" for phthalates. The Statement of Policy is available at <http://www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf>.

On October 3, 2012, the Commission directed the staff, pending resource allocations in future operating plans, to explore certain opportunities to reduce third party testing costs consistent with assuring compliance. One of the nine activities approved by the

Commission is to research the feasibility of a list of materials determined not to contain prohibited phthalates. Another activity is to investigate the use of Fourier transform infrared spectroscopy to determine compliance to the phthalates content limit. The staff briefing package describing these activities is available at <http://www.cpsc.gov/library/foia/foia12/brief/reduce3pt.pdf>.

7. **Also with respect to phthalates, H.R. 2715 requires the Commission within one year after enactment to address inaccessibility, either by adopting the same guidance as applies to lead inaccessibility or by promulgating a rule providing new guidance for phthalates. What is the status of the Commission complying with H.R. 2715?**

On July 31, 2012, the Commission published "Proposed Guidance on Inaccessible Component Parts of Children's Toys and Child Care Articles Containing Phthalates." 77 FR 45297. The comment period on the proposed guidance closed October 1, 2012. CPSC staff is currently in the process of reviewing the comments and developing a staff briefing package with proposed final guidance for the Commission's consideration.

8. **We have been told that there was a staff effort to develop guidance on what products constitute a "toy." What is the status of that effort?**

The Commission published staff draft guidance on which children's products constitute "toys" on Feb. 12, 2009. See <http://www.cpsc.gov/about/cpsia/draftphthalatesguidance.pdf>. The Commission has considered the possibility of publishing additional guidance but there are no plans for staff to send a new briefing package to the Commission at this time.

9. **The proliferation of conflicting product safety standards at the State level has become a significant issue for manufacturers and retailers. How does the CPSC plan to address this rapidly growing patchwork problem?**

Several of the Commission's statutes contain explicit provisions concerning the federal preemption of state standards (*see, e.g.* section 26 of the Consumer Product Safety Act, section 18 of the Federal Hazardous Substances Act, section 16 of the Flammable Fabrics Act, and section 7 of the Poison Prevention Packaging Act). The CPSIA also added some provisions concerning preemption (for example, section 106(h) of the CPSIA regarding state toy standards). Whether any particular state product safety standard would be preempted by a particular CPSC standard would be a question for the courts in an individual case. A court would likely look to these statutory provisions in resolving such a question.

10. **The CPSIA requires that the CPSC issue accreditation requirements for test labs at least 90 days before a standard goes into effect. The publication of accreditation requirements triggers a 90-day clock at the end of which a manufacturer will be required to certify products to the standard based on third party testing. I understand that an updated version of the toy safety standard (ASTM F963-11) has gone into effect but the CPSC has yet to publish corresponding accreditation requirements.**

- a. Is the Commission of the opinion that the deadline for issuing accreditation criteria does not apply if a standard is revised?**

Staff has interpreted that the 90-day deadline stated in section 14(a)(3)(B)(6) of the CPSA does apply when the Commission issues accreditation criteria for revised standards, such as the now-mandatory standard ASTM F963-11. As of August 14, 2011, the Commission is required to follow the rulemaking procedures of the Administrative Procedure Act (5 U.S.C. § 553) to issue notices of requirements for accreditation of third party conformity assessment bodies. Accordingly, on May 24, 2012, the Commission published "Proposed Requirements Pertaining to Third Party Conformity Assessment Bodies." 77 FR 31086. That *Federal Register* notice included a proposed revision to the notice of requirements for the ASTM F963-11 revised standard. CPSC staff intends to forward to the Commission a draft final rule for "Requirements Pertaining to Third Party Conformity Assessment Bodies" before the end of this year.

- b. If the Commission does intend to issue new accreditation criteria, will it also continue to recognize results from labs that were accredited under the prior version of the standard?**

For those tests that are equivalent (unchanged), or are functionally equivalent in the older and newer versions of the standard, test results from testing laboratories accredited to the older version of the standard will be accepted for children's product certification purposes. For new tests that were not in the older version of the standard or for tests that were substantially changed, accreditation to the newer version of the standard will be required for test results to be accepted for children's product certification.

- 11. I understand that some manufacturers maintain that CPSC lacks jurisdiction over infant car seats, even if they can also be used outside of a vehicle, because they are "motor vehicle equipment" subject to the exclusive jurisdiction of the Department of Transportation. Does the Commission have a memorandum of understanding with DoT about this? Do you believe that it would be helpful for us to clarify the Commission's jurisdiction over child seats?**

We do not have a memorandum of understanding with the Department of Transportation, but CPSC staff has been working with ASTM and representatives from the National Highway Traffic Safety Administration (NHTSA) to revise the hand held carrier standard. CPSC staff also intends to send the Commission a package proposing to make it a mandatory rule under section 104 of the CPSIA.

The hand held carrier standard focuses on injuries that occur when the carrier is used outside the vehicle as a carrier, infant seat, or attached to a stroller. However, because the product is dual-use, CPSC is careful not to recommend design or labeling changes that may impact the carrier's function as a car seat, or conflict with NHTSA's regulations. Car seats are, however, covered by the product registration card rule in section 104 of the CPSIA.

At the time the product registration card rule was proposed, we received comments from car seat manufacturers requesting that we harmonize our requirements with NHTSA in light of its program for car seat registration. As a result, we made some changes to the rule and discussed those changes in the preamble to the final rule. 74 FR 68668, 68671 (December 29, 2009). However, clarification of the Commission's jurisdiction of infant car seats used outside a motor vehicle would be helpful.

- 12. One factor driving up the cost of third party testing is that different retailers often demand that testing be done by their own lab or one that they have special trust in. An individual test may cost \$250, for example, but the manufacturer may need to have the same \$250 test done by six different labs to satisfy all the different retailers. That adds up to a whopping \$1500. Is this an area where the CPSC can help reduce costs?**

No. The scenario described above is an independent business relationship that a manufacturer has established with the retailer.

REGULATORY REVIEW

- 1. Has the CPSC taken into consideration Executive Orders 13563 and 13579 in the rules it has enacted since these Executive Orders were issued? If not, why not?**

Executive Order 13579, "Regulation and Independent Regulatory Agencies" (E.O. 13579), focuses specifically on independent agencies. Section 1 of the Executive Order sets out a general policy for "wise regulatory decisions," noting that "[t]o the extent permitted by law, such decisions should be made only after consideration of their costs and benefits." It states that independent regulatory agencies should promote the goals, and to the extent permitted by law, comply with the provisions of Executive Order 13563, "Improving Regulation and Regulatory Review" (E.O. 13563). Except for rules that Congress has explicitly directed the Commission to issue under the CPSIA, the rules that the Commission has proposed or finalized since the President issued the Executive Orders follow the principles and policies set forth in E.O. 13579 and 13563. For rules required by the CPSIA, the Commission makes its decisions based on the considerations directed in that law.

- 2. The Commission has now issued a number of mandatory standards for durable nursery products such as cribs. Those standards are exempt from some of the rulemaking requirements that usually apply to consumer product safety standards. Do you think that these durable nursery standards nevertheless impose the least burdensome requirements that adequately reduce the risk of injury?**

Because rules issued under section 104 of the CPSIA were specifically exempted by Congress from the procedures and findings required for rules issued under section 9 of the CPSA (codified at 15 U.S.C. §§ 2051–2089) and are statutorily required to provide the highest level of safety that is feasible, Commission staff has not done an analysis to determine whether these rules impose the least burdensome requirements that adequately reduce the risk of injury. I note, however, that most of the rules the Commission has issued

under this provision to date are substantially the same as the relevant voluntary standards for those products that are developed by the industry.

3. **Does CPSC have any authority to regulate bath salts when used for non-therapeutic purposes? Does it make any difference if there is proof that the manufacturer or seller is aware of the misuse? How can CPSC coordinate efforts with the Drug Enforcement Administration or the Food and Drug Administration to address the sale and consumption of synthetic chemicals found in household products, such as bath salts, K2 and spice?**

The product you ask about goes by the street name “bath salts” because they are sold in powder form and may look like bath salts. However, they are in fact designer drugs that have effects similar to amphetamine and cocaine. Chemically, they are entirely different from actual bath salts. We do not consider these to be a household product under the regulatory authority of CPSC, but rather are drugs under the authority of the Drug Enforcement Administration. DEA provides a fact sheet concerning bath salts on its website (http://www.justice.gov/dea/druginfo/drug_data_sheets/Bath_Salts.pdf).

4. **In a recent Op-Ed you stated the CPSC would turn to tip-over issues in the coming months. Every year there are a few incidents involving kitchen ranges tipping when installers do not install the provided anti-tip brackets, the use of which is prescribed in most building codes. Tipover events can result in grievous harm, particularly to children or to the elderly. A number of these incidents occur in low income housing, including HUD-supported housing. Have you reached out to HUD on this issue? Would you consider establishing a joint initiative with HUD to require its employees and contractors to install anti-tip brackets in HUD-supported housing and to set up programs to check existing ranges for compliance?**

In Fall of 2011, CPSC worked with the U.S. Department of Housing and Urban Development’s (HUD) Healthy Homes Program to communicate CPSC information on tipover safety through HUD’s newsletters. In 2013, CPSC will work to develop and implement an initiative with HUD, and possibly with retailers, aimed at installing anti-tipover devices on ranges in public housing.

5. **How often has the staff used the threat of a Commission press release under the public interest health and safety provision to encourage firms to agree to conduct a recall?**

On three occasions, the Commission staff has determined the public health and safety required the release of safety information to the public and sought Commission approval for a release of such safety information to the public.

- a. **Has the CPSC instituted any procedural changes or given staff any guidance to guard against abuse of this tool of persuasion? If yes, please submit for the record copies of any such guidance or procedure documents. If no, please explain why the CPSC has not crafted such official staff guidance or procedure documents.**

The reasons for issuing a press release where the Commission has found that the public health and safety requires a lesser period of notice than set forth in section 6(b)(1) of the CPSA, and the circumstances where it may be appropriate to make such finding, are detailed in Commission regulations at 16 CFR 1101.23.

- b. When the CPSC decides to meet to consider issuing a press release under its public interest health and safety authority, does the Commission notify the relevant product manufacturer? If not, why not?**

If the Commission considers issuing a press release and making a public health and safety finding in that release, it does so pursuant to the requirements of section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2055(b), which requires CPSC to provide notice to the manufacturer.

- c. Before issuing a press release under its public interest health and safety authority, does the Commission give the relevant manufacturers an opportunity to be heard or submit evidence? Does the Commission automatically receive all materials provided to the staff?**

If Commission staff recommends use of this authority, the Commission votes to issue a press release that makes a public health and safety finding, shortening the time period for disclosure. As part of the decision to make such a finding and shorten the section 6(b)(1) time periods, the Commission will receive the relevant information and background materials from staff.

- d. What factors does the Commission use to determine when a hearing under section 15 is appropriate versus use of a press release?**

Use of a press release to warn the public about a hazard does not inhibit the Commission staff's ability to also seek further notice and a remedy through an administrative proceeding under section 15 of the CPSA. In cases that present a significant risk of injury to the public, it may be beneficial to first provide a warning to the public about the hazard before the Commission staff is ready to commence with an administrative proceeding.

- 6. The Commission's resources have roughly doubled since 2008 under the CPSIA. Despite the growth of the Commission and its budget, we repeatedly hear there are not enough resources to accomplish everything the Commission would like to accomplish.**

- a. How does the Commission prioritize investigations and enforcement matters? Do you prioritize those hazards that present the greatest risk to the greatest percentage of the population?**

Yes, the Commission prioritizes those hazards that present the greatest risk to the greatest percentage of the population. The Office of Compliance and Field Operations and the Office of Import Surveillance are responsible for enforcing mandatory rules and

requirements as well as the surveillance of consumer products on the market and at ports of entry to ensure that hazardous products do not enter the distribution chain. Enforcement of existing and newly mandated rules and targeted surveillance activities allow for a multidisciplinary approach to enforcement. Identifying those products that present a risk (in an effort to be more preventive than reactive) through review of incident reports, trade complaints and other information sources requires close and constant interaction with technical and epidemiological staff.

- b. How does the Commission identify those hazards? Is the CPSC using data-driven, fact-based analysis, or is the Commission following something more like the precautionary principle?**

CPSC collects data from a variety of data sources to aid in the identification of hazards associated with the use of consumer products. This data is used to identify hazards and develop appropriate mitigation strategies. The Commission applies the criteria in 16 CFR 1009.8(c) to establish Commission priorities.

- 7. Over the last 10 years, the number of traffic fatalities and injuries has declined significantly. In fact, the most recent data from the National Highway Traffic Safety Administration (NHTSA) shows traffic fatality rates at a 60-year low. Part of this may be attributable to the sluggish economy, but there have been significant advancements in safety, too. How do the injury and fatality statistics for CPSC compare? Are deaths and injuries relating to consumer products declining significantly also?**

A significant decline in reported consumer product-related deaths and estimated injuries in the past ten years does not appear evident in available data. The age-adjusted consumer product-related rates of deaths and injuries have increased in the most recent decade for which data are available. However, the CPSC's work to ensure the safety of consumer products—such as toys, cribs, power tools, cigarette lighters, and household chemicals—has contributed to a decline in rate of deaths and injuries associated with consumer products over the past 40 years.

- 8. In working with voluntary standard organizations, the CPSC staff often provides incident data, including its own in-depth investigations of incidents, to help inform the process.**

- a. How meaningful are these anecdotal data?**

Anecdotal incident data provide a meaningful minimum number of known incidents. What is unknown is the degree to which this might understate the actual number of incidents that occurred nationally.

The value in the anecdotal data comes from the detailed descriptions of the hazard scenarios that they can provide. In particular, through in-depth investigations, staff can obtain answers to important questions that normally are not included in media reports, death certificates, or the CPSC's National Electronic Injury Surveillance System

(NEISS) cases that are coded from medical records. Collection of anecdotal incident data also accelerates staff's awareness of fatal incidents as the lag for reporting via death certificates differs by state. It should also be noted that not all data used by CPSC is anecdotal. NEISS, for example, is a national probability survey that supports national estimates of consumer product-related injuries seen in U.S. hospital emergency facilities.

- b. If the data are not statistically representative of a problem, why do the standards need to address the problem?**

If even the minimum number of known incidents is suggestive of an unreasonable risk to public safety, then it is our duty to address these risks. The greater concern might actually be how many incidents are occurring that are not reported.

- c. Does it mean that the standards are protecting against problems that are rare, making the products more expensive than they need to be?**

No. Our evidence based standards take into consideration the severity of injury and the addressability of the hazard that are suggestive of an ongoing risk to public safety. The general limitation of our anecdotal incident data is the degree to which it understates the actual occurrence of serious incidents.

- d. Do you think a standard should protect against every risk that has ever happened, no matter how rare? If not, how do you determine when the standard should guard against a risk and when it is unnecessary to do so?**

As a matter of public record, you will not find a statement from CPSC staff or the Commission stating that standards should protect against every risk that has ever happened no matter how rare. Standards development involves a multidisciplinary team that conducts not only a review of reported incidents but often includes testing and research on the products, input from health and behavioral scientists, and economic assessments of the potential costs to manufacturers and importers of proposed standards. The general concern lies with the likelihood of *future* occurrence and the potential severity of these incidents. The Commission must determine which risk areas of public safety to address in a given year, with our limited resources, and prioritize accordingly.

- 9. According to an October 2011 CPSC memo available on the Commission's website, both total injuries and injury rates to children from toys have increased during the period from 2006-2010, which covers the period since the CPSIA was enacted providing the CPSC new authorities and additional resources. While more injuries may not be indicative of defective or unsafe products, can you explain why the injury rate is increasing?**

The October 2011 Toy-Related Deaths and Injuries Calendar Year 2010 report (<http://www.cpsc.gov/library/toymemo10.pdf>) showed an increase in the estimated number

of toy-related emergency department treated injuries for all ages and for children younger than 15 years of age and younger than five years of age. However, neither the five year trend since 2006 nor the year over year comparison between 2009 and 2010 indicates that the increases are statistically significant. While the estimated injuries appear to increase, Commission staff cannot rule out that the apparent differences observed in the estimates are attributable to random variation. Therefore, because Commission staff cannot establish that a true change has occurred, any attempts to pinpoint causal factors would be speculative.

- 10. The largest manufacturer of portable gas cans recently declared bankruptcy, due mostly to questionable liability suits. As a result, there may be a shortage of new gas cans manufactured in the U.S., but people will still need to fuel their lawn mowers and deliver gas to vehicles on the side of the road. It is a distinct possibility that people will return to using milk jugs or other inappropriate containers that can lead to very serious harm. Is there anything the CPSC can do to head off this grave problem? Do you require any additional authority to act?**

I do not believe there is any need for action from the CPSC with regard to this company's filing for bankruptcy. According to the company's website, it filed for reorganization under Chapter 11 of the Bankruptcy Code this past summer, has been continuing as an ongoing concern while in Chapter 11, and, as the company's Q&A on its website states: "It is business as usual." See <http://www.blitzusa.com/chapter11/Customer%20Q&A%20FINAL%20110811.pdf>.

More recently, news reports indicate that another company has bought the manufacturing plant and plans to resume manufacturing gas cans there. See http://www.tulsaworld.com/business/article.aspx?subjectid=461&articleid=20120915_461_E1_MIAMIO656046.

- 11. Last September, the Commission voted to reverse its April 2010 interpretive rule on the term "unblockable drain" as used in the Pool and Spa Safety Act. The CPSC apparently determined that certain drain covers were insufficient to comply with the law, requiring any public pool owner/operator – including state and local governments - to install an additional backup drain system at considerable additional expense.**

- a. How many times has the CPSC called for a vote to switch a previous Commission vote?**

While I am not able to provide an exact count, occasionally the Commission changes a previous vote. For example, the Commission has sometimes voted to initiate rulemaking and later decided to terminate the rulemaking. In 1988, the Commission published an advance notice of proposed rulemaking (ANPR) to enlarge the dimensions of the small parts cylinder used to evaluate whether toys or other articles intended for children under three years of age contain small parts. 53 FR 20865. In 1990, the Commission voted to terminate the rulemaking. 55 FR 26076. In 1985, the Commission published an ANPR concerning all-terrain vehicles (ATVs). 50 FR 23139. In 1991, the Commission voted to terminate that rulemaking. 56 FR 47166. In 1994, the

Commission published an ANPR to amend the baby walker standard. 59 FR 39306. In 2002, the Commission terminated that rulemaking. 67 FR 31165.

- b. Did the Commission seek legal advice as to whether there should be notice and comment prior to reconsidering the interpretation? If yes, please provide a copy of such advice for the record.**

Any memorandum containing legal advice to the Commission is confidential and protected from disclosure by the deliberative process attorney client privileges. The Commission has not waived its privileges to disclose the contents of any legal memorandum, and we would respectfully suggest that providing any such memo in response to a request where it will be included on the public record would waive the privilege.

- c. After reconsideration, the CPSC established May 28, 2012 as the new compliance deadline. Does that remain the official compliance deadline? How many pools are currently compliant with the CPSC's revised determination?**

The compliance date for facilities that relied on the Commission's interpretive rule for unblockable drains and installed large, compliant, unblockable drain covers over smaller outlets (sumps) was extended and noticed in the *Federal Register* by the Commission on May 24, 2012. The new compliance date is May 23, 2013.

Staff is still reviewing files to identify previously compliant facilities that used unblockable drain covers in the manner defined by the interpretive rule. Staff has conducted almost 6,200 inspections and has found approximately 100 facilities that would no longer be considered compliant based on the revocation of the interpretive rule.

- d. Please provide for the record an estimate of how much pool owners and operators spent on unblockable drain covers to comply with the original interpretation. Please also provide for the record an estimate how much more will those same pool owners and operators have spent or need to spend on modifications to comply after CPSC's about face.**

CPSC staff does not have the necessary data available to provide such an estimate.

- 12. There were a number of media reports in July reporting the CPSC had filed a lawsuit against the makers of "Buckyballs." At the hearing, you testified that the case would be heard by an administrative law judge. Vice Chairman Blackburn inquired from where the administrative law judge would be selected. In response, you replied from "Washington, D.C., probably, or it might be in Maryland."**

- a. From which agency will the administrative law judge be borrowed? Does the CPSC specify from which agency they would like to borrow an administrative law judge? Does the CPSC specify any particular criteria such as background or**

expertise when it requests an administrative law judge? If yes, please detail your request (agency or particular criteria) for the record.

The Commission staff did not specify from which agency it wanted to borrow an administrative law judge. The Commission staff was notified by the Office of Personnel Management that the administrative law judge would be loaned from the U.S. Coast Guard. The Acting Chief of Administrative Law Judges for the Coast Guard selected the judge(s) to be loaned to the Commission in this matter.

- b. In recent years, the lawyers of the Compliance staff have been transferred en masse to the Office of the General Counsel. The one exception was the head of the Office of Compliance, who must by law, be an attorney. Recently, however, the head of Compliance was also transferred to the Office of General Counsel. What steps is the Commission taking to ensure appropriate segregation of the attorneys prosecuting the case from those that must advise the Commission?**

The position of Director, Office of Compliance and Field Operations was not transferred to the Office of General Counsel but instead continues to report to the Deputy Executive Director, Safety Operations. It should also be noted that the former Director, Office of Compliance and Field Operations requested reassignment to the Office of General Counsel thus vacating the position of Director, Office of Compliance and Field Operations.

The former head of Compliance and Field Operations is an attorney in the Regulatory Affairs Division of the Office of the General Counsel and is not advising the Commission on the Buckyballs litigation. The Office of General Counsel maintains a separation of functions in which attorneys prosecuting the action will not be advising the Commission. *See* 16 C.F.R. 1025.68.

- c. Why was the complaint in the Buckyballs matter signed by the Executive Director of the agency? Doesn't that associate him with the prosecution of the case such that he will have to be separated from the Commission too?**

The Acting Director of Compliance and Field Operations is recused as a matter of law from participating in this matter. Because there is no person occupying the position of Assistant Executive Director for Compliance and Field Operations and the Acting Director is recused by law, a majority of the Commission agreed to have the Executive Director sign the complaint. The Executive Director does not render a decision in an adjudicative proceeding and does not advise officials who render such decisions, as explained in Commission regulations at 16 C.F.R. 1025.68.

The Honorable Charles F. Bass

- 1. I'm aware that there is a proposed ruling to allow use of X-Ray Fluorescence (XRF) to certify products as lead free. It's my understanding that there are multiple XRF**

techniques, including handheld XRF and so-called HD XRF. It appears from the proposed rule that both techniques would be acceptable, but can you confirm to the committee that the rule will enable use of both the widely-accepted handheld XRF techniques which are deployed across the supply chain, as well as the emerging HD XRF methods?

The "Proposed Rule: Requirements Pertaining to Third Party Conformity Assessment Bodies" includes provisions to widen the use of both "HD XRF" (a common shorthand for Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams, as described in ASTM F2853-10e1) as well as "handheld" XRF (more generically known as Energy Dispersive X-Ray Fluorescence Spectrometry, as described in ASTM F2617-08) for third party testing for certification. These provisions would enable the use of either type of XRF, with limitations as described in the proposed rule, for measuring lead in homogeneous metals, glass, crystals and other materials. This proposed rule would not widen the use of "handheld" XRF to include determinations of lead in painted surfaces of consumer products because at present no XRF method is available other than HD XRF (ASTM F2853-10e1) for determining compliance to 16 CFR part 1303 for painted surfaces on children's products with respect to the limit of 0.009 percent lead by weight.

- 2. Knowing that one of the priorities of the CPSC is to increase public awareness around the dangers of carbon monoxide poisoning, would you please share with the Committee what activities the Commission is currently undertaking?**

Prevention of carbon monoxide poisoning deaths and injuries caused by consumer products is a key priority for the CPSC. To comprehensively address this hazard, the Commission has taken a two-pronged approach that focuses on both product innovation and consumer outreach and education.

On the product innovation side, CPSC staff has focused a great deal of effort on reducing carbon monoxide poisoning deaths from portable gasoline generators. In just the three year period from 2006 to 2008, there were an estimated 233 non-fire carbon monoxide poisoning deaths to consumers associated with the use of portable gasoline-powered generators in the United States. In September of this year, CPSC staff released a report detailing the development and demonstration of a prototype portable generator that can dramatically reduce carbon monoxide (CO) emissions from certain common portable gasoline-powered generators. When the prototype was tested in the common fatal scenario of a generator operating in the attached garage of a single family home, health effects modeling performed on the results showed that the prototype increased the hypothetical garage occupant's escape time interval to 96 minutes compared to only eight minutes provided by the original, unmodified unit. A copy of this report may be found on the CPSC website.

<http://www.cpsc.gov/LIBRARY/FOIA/FOIA12/os/portgen.pdf>

CPSC also engages in robust education and outreach using a variety of outlets. The Commission communicates the dangers of carbon monoxide poisoning through the use of earned media, conducting television, radio and print interviews most often as rapid response in conjunction with major, power-disrupting storms such as hurricanes and snow storms,

when greater use of generators exposes more people to the hazard. We also use social media outreach, e-publication downloads from the dedicated CO Information Center page on CPSC.gov and the distribution of messages to grassroots partners through our Neighborhood Safety Network. Twice a year CPSC issues reminders to install fresh batteries in CO and smoke alarms in conjunction with daylight savings time.

In addition, CPSC has used its OnSafety blog, YouTube, Twitter and its FireSafety.gov website to promote new developments in technology including making CO alarms more effective and, this year, new developments in reducing CO emissions in generators. These efforts have resulted in an estimated audience impression of more than 100 million people during FY2012. This year, Congressional District offices in areas generally impacted by hurricane season were provided CO informational safety packets to share with their constituents. This information is also posted to the CPSC's website. Field staff has also provided Congressional offices with informational materials in the wake of severe weather events causing power outages. As the winter season approaches, CPSC will continue to promote CO awareness by warning consumers of dangers associated with home heating equipment. During FY2013, CPSC will also begin staging a second CO Poster contest for school children that became the most popular contest on Challenge.gov when first held.

The Honorable Greg Harper

- 1. Chairman Tenenbaum, I was pleased to read your op-ed in The Hill last week where you indicated that you are taking a more collaborative approach with the window covering industry regarding cord safety. I am further pleased that you have spent the time visiting manufacturing facilities to better understand the difficulties in eliminating cords for all products. Can you tell me, without revealing any proprietary information, about these visits and what you learned? How are you proposing to move forward from here?**

Commission staff has recently participated in several meetings with the Window Covering Manufacturers Association (WCMA) and individual members. In addition, I traveled this past summer to personally meet with the leadership of several manufacturers and to tour their production facilities. During these meetings, we discussed the types of window covering products currently on the market, as well as individual manufacturer efforts to redesign window coverings to eliminate or substantially reduce the strangulation hazard posed by some corded window coverings.

Overall, my discussions during these visits were positive and indicate a willingness to work together towards consensus solutions. It is my hope that we can use these discussions as a springboard to work cooperatively to meaningfully improve consumer awareness of the strangulation risk corded window covering products can pose to young children, as well as resolve outstanding concerns regarding the current WCMA window covering safety standard to address the stragulations risk from corded window coverings.

2. **Chairman Tenenbaum, I am a big supporter of promoting government and industry cooperation. I think it is important for both to understand the need for safety and how best to achieve the safest product possible. You also discussed in your op-ed your efforts to better educate the consumer. With this in mind can you tell me about your plans for the rest of this year and next with the Window Covering Safety Council and your efforts to educate new parents about potential hazards to children associated with window coverings?**

CPSC has again partnered with the Window Covering Safety Council to jointly launch safety messaging during Window Covering Safety Month in October 2012. This year's collaborative efforts included my participation in the Council's public service announcement and a statement for its media release. CPSC has also tweeted safety messages, direct responses to consumers' questions, and links to reference materials during the October 9, 2012, #Cord Safety Twitter party hosted by the Window Covering Safety Council. In addition, a newly launched window covering safety information center on CPSC's website promotes repair kits offered by the Window Covering Safety Council along with other information.

- a. **Can you tell us more about the CPSC's collaborative programs with the Council?**

Please see previous answer.

- b. **Aren't promoting education and raising awareness some of the best tools the Consumer Product Safety Commission has in its arsenal?**

Promoting education and raising awareness is part of our comprehensive effort, along with enhancing voluntary standards, encouraging technological safety innovations, and ongoing compliance initiatives designed to ensure the highest level of protection for children. Identifying and addressing the most pressing consumer product safety priorities, working with stakeholders to build safety into products, timely and accurate detection of risks, and quick response to remove hazards, all work with our goal of raising awareness to reduce product-related deaths and injuries.

The Honorable Brett Guthrie

1. **As you know, the power tools industry developed a revised set of voluntary safety standards in November of 2007 for table saws. Products using those new standards were introduced to the marketplace thereafter and were required to meet those standards beginning in early 2010. That voluntary standard was enhanced in October of 2011 with improved performance standards under a broader set of cutting conditions.**
 - a. **Is it accurate that the CPSC had not collected any data from the current products that are compliant with the current voluntary standards, and that the CPSC based**

its advanced notice of proposed rulemaking for a mandatory rule on data from older, noncompliant saws?

The Commission published an advance notice of proposed rulemaking (ANPR) concerning table saw blade injuries on October 11, 2011. 76 FR 62678. The voluntary standard was revised in October 2011. Thus, incident data reflecting the new voluntary standard is not yet available for the staff to review. Any subsequent steps in the rulemaking that the Commission decides to pursue (notice of proposed rulemaking and final rule) would include a review of data available at those stages.

b. Is CPSC now collecting more up-to-date information on accidents incurred under the 2007 voluntary standard for table saws?

CPSC staff continuously receives reports related to consumer products through various means, including news clippings, death certificates, and consumer submitted reports. Table saw-related incident reports are reviewed by CPSC staff to leverage any information available. These reports are anecdotal and may or may not be related to a table saw that is compliant under the 2007 voluntary standard. CPSC staff also collects emergency department-treated injury data via the National Electronic Injury Surveillance System (NEISS).

Though this system does collect information about table saws, it is not possible to differentiate pre- and post-2007 voluntary standard-compliant saws within the data. A special study would be required to gather this level of detail—similar to the special study that was performed on stationary saws in 2007-2008. Another study of this nature is not planned for table saws. However, CPSC staff has awarded contracts for the collection of data concerning if and how owners of new table saws are using the modular blade guard system that is part of the current voluntary standard.

c. If so, will this data be weighed equally when considering a proposed mandatory safety standard for table saws?

The data that CPSC staff will be collecting is from a convenience sample of new table saw users who will be recruited to participate in the study. This study will not be in the same form as the previous table saw injury study, and it cannot be used in the same manner. CPSC staff's goal in collecting this data is to better understand if and how consumers are using the modular blade guard system that is part of the current voluntary standard. This information will be used along with additional information collected to guide CPSC's staff recommendations during the rulemaking process. In addition to the information gathered from this study, CPSC staff will consider any and all other relevant incident data that is available when it considers a possible proposed standard for table saws.

2. Doesn't the CPSC need to gather data on the compliant saws using the current voluntary standard before you can move forward with a mandatory standard? As I understand it, the CPSC is statutorily directed to rely on voluntary standards over a

mandatory standard as long as “compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.” (15 U.S.C. § 2056(b))

The CPSC must consider the adequacy of, and level of compliance with, applicable voluntary standards before it can issue a final mandatory consumer product safety standard for a product. CPSC staff has awarded contracts for the collection of data concerning if and how owners of new table saws are using the modular blade guard system that is part of the current voluntary standard. This will aid staff in determining whether the current voluntary standard would eliminate or adequately reduce the risk of injury addressed. The study will be completed prior to the issuance of any final mandatory rule.

- a. **How would the CPSC be able to judge the risk of injury under, and substantial compliance with, the new voluntary standards if you have not collected and analyzed data on the table saws using those standards?**

The ANPR is the beginning of the rulemaking process. As the rulemaking progresses, the CPSC will collect and analyze the data that become available, including compliance with any applicable voluntary standards. Prior to the issuance of any final mandatory rule, CPSC staff will complete an analysis of the effectiveness of current voluntary standards.

3. **Following up on the CPSC advanced notice of proposed rulemaking for table saws, one of the main options CPSC asks for comments on for a mandatory rule is a patented technology, owned and controlled by one company, based on blade contact flesh detection technology. I understand it was this company’s CEO who originally petitioned the CPSC to consider rulemaking in this area.**

- a. **Is CPSC aware that the Federal Trade Commission recently testified before Congress raising concerns about a patent holder using adopted standards to demand higher royalties or licensing fees as result of a standard? The FTC testimony noted that “[i]ncorporating patented technologies into standards has the potential to distort competition by enabling [standard essential patent] owners to use the leverage they acquire as a result of the standard setting process to negotiate high royalty rates and other favorable terms after a standard is adopted that they could not have credibly demanded beforehand.” (<http://www.ftc.gov/os/testimony/120711standardpatents.pdf>)**

The ANPR presented three regulatory alternatives to address table saw blade contact injuries: (1) a voluntary standard, (2) a mandatory rule with performance requirements, and (3) a labeling rule specifying warnings and instructions. The Commission has not determined which, if any, option to pursue. We note that section 7 of the CPSA requires the Commission to express any mandatory consumer product safety standard in terms of performance requirements, rather than mandating any particular design.

- b. Are you concerned that a single patent holder, such as the single patent holder in possession of flesh detection technology for table saws, could demand higher royalties or refuse to license on reasonable and non-discriminatory terms if their patented technology is incorporated into a mandatory standard? Does the CPSC share the FTC's concern about incorporating patented technologies into standards?**

Please see the previous answer.

The Honorable Pete Olson

- 1. I understand that the Commission has spent \$566,360.00 on a contractor by the name of SEA Ltd. to conduct testing of ROVs and that SEA issued a report about its initial work in April 2011. Despite multiple requests from the Recreational Off-Highway Vehicle Association and its member companies to meet with SEA and to learn more about its work and despite the fact that industry has initiated several meetings with CPSC to share information and discuss the issues, CPSC waited 15 months to hold a meeting between SEA and industry, and that meeting finally occurred just a few weeks ago. Is withholding information and access to CPSC consultants funded at taxpayer expense your idea of government transparency? How do you expect industry to be responsive to CPSC's positions when you withhold critical information from it?**

The CPSC has maintained openness throughout this process and has not withheld information collected by SEA Ltd. In April 2011, CPSC staff published a 494 page report with SEA's test methodology and test results on nine recreational off-highway vehicles (ROVs) of different makes and models. The vehicles were tested between May 3, 2010, and October 12, 2010. The six months between the completion of testing and publication of the data involved analysis of the data, drafting a final report, and agency clearance to publish documents. In August 2011, CPSC staff published additional results for a tenth vehicle that was tested in May 2011. Furthermore, in July 2012, CPSC staff hosted a public meeting to allow SEA to present its data and to answer questions from ROHVA.

The CPSC staff has worked with ROHVA and continues to work with ROHVA as evidenced by the multiple public meetings and comment letters submitted by CPSC staff during the voluntary standard canvass process.

- 2. I understand that, while industry was waiting for 15 months to get more information about SEA's work, ROHVA proactively conducted extensive testing on its own to evaluate the testing approach described in the SEA report. During the long overdue meeting, I understand that SEA revealed details regarding its testing methodology that had not been previously disclosed, which may require ROHVA to conduct more testing to effectively evaluate the SEA testing approach. Extensive time and resources were wasted as a result of CPSC's failure to disclose information about its contractor's work. I understand that SEA also has conducted other testing for CPSC that still has not been disclosed to ROHVA. Will you commit to providing timely and complete disclosure of**

all information regarding the work of CPSC contractors with respect to ROVs and to change course and work collaboratively with industry to promote safety?

As noted above, in April 2011, CPSC staff published a 494 page report with SEA's test methodology and test results on nine recreational off-highway vehicles (ROVs) of different makes and models. The vehicles were tested between May 3, 2010, and October 12, 2010. The six months between the completion of testing and publication of the data involved analysis of the data, drafting a final report, and agency clearance to publish documents. In August 2011, CPSC staff published additional results for a tenth vehicle that was tested in May 2011. In July 2012, CPSC staff hosted a public meeting to allow SEA to present its data and to answer questions from ROHVA.

CPSC staff has not received any reports with test methodology or test results from ROHVA on any of the testing it has performed. In public meetings with the CPSC, ROHVA has only presented slides with selective data. In addition, CPSC staff believes that the limited data that ROHVA has provided is based on an incorrect formula to calculate a key value. For reasons unknown, ROHVA did not use the correct formula used by the National Highway Traffic Safety Administration (NHTSA), by SEA, and by ROHVA's own voluntary standard (ANSI/ROHVA 1-2011).

I note again that CPSC staff has worked with ROHVA and continues to work with ROHVA as evidenced by the multiple public meetings and comment letters submitted by CPSC staff during the voluntary standard canvass process.

3. **I assume you would agree that a pass-fail test must be reproducible from one lab to another and that the government cannot mandate that all testing be conducted by a single entity at a single facility. Has CPSC or its contractors conducted any testing to determine whether its pass-fail test methodology and results are reproducible at facilities other than the one SEA used?**

CPSC staff agrees that a pass-fail test must include a protocol that is repeatable and can be performed by any qualified test facility. The ANPR for ROVs began a rulemaking process that could result in a mandatory consumer product safety standard for ROVs. As part of the ongoing rulemaking effort on ROVs, CPSC staff has performed standard vehicle dynamics tests that have been developed by NHTSA to gather information on the dynamic characteristics of these vehicles. If and when requirements are finalized, they will include performance requirements that can be tested with a protocol that is repeatable and can be tested by any qualified test facility.

4. **Has the CPSC attempted to establish a correlation between vehicle characteristics that will be dictated by its proposed tests and standards and the incidents that you say you are trying to prevent? What were the results of the correlation analyses? Do you intend to move forward with a mandatory standard in the absence of evidence of such a correlation?**

The CPSC published an advance notice of proposed rulemaking (ANPR) concerning recreational off-highway vehicles (ROVs) on October 28, 2009. 74 FR 55495. The ANPR

began a rulemaking process, one result of which could be a mandatory standard for ROVs. CPSC staff is assessing public comments received in response to the ANPR and is evaluating other relevant data and information to develop a staff briefing package for the Commission. The Commission will consider the staff's briefing package when determining whether to issue a notice of proposed rulemaking (NPR).

CPSC staff has completed a multidisciplinary review of more than 400 reported ROV-related incidents where victim, vehicle, and incident characteristics were analyzed. The results indicate significant hazard patterns that include vehicle rollovers, and victims ejected and hit by the vehicle resulting in death or injury. This analysis will be part of the staff's briefing package for a possible NPR. If the Commission decides to issue an NPR, the public would have another opportunity to comment, staff would prepare a briefing package with all relevant data and information concerning a possible final rule, and at that point the Commission would decide whether to publish a final rule.

5. **I understand that in the early 1990s CPSC conducted a multi-disciplinary study of ATV incidents to determine the causes of crashes, but that CPSC has not conducted such a study of ROV incidents. Since CPSC has not conducted such a study, ROHVA again proactively conducted its own multi-disciplinary study of ROV incidents. In November 2011, ROHVA presented its analysis to CPSC staff that concluded the testing standards in dispute would have had absolutely no impact on the occurrence of at least 90% of serious incidents. Does CPSC have any evidence that contradicts ROHVA's finding?**

CPSC staff has completed a multidisciplinary review of more than 400 reported ROV-related incidents where victim, vehicle, and incident characteristics were analyzed. The results indicate significant hazard patterns that include vehicle rollovers, and victims ejected and hit by the vehicle resulting in death or injury. Using the results of this analysis, CPSC staff is working to create standards that would reduce these identified hazard patterns.

6. **Has CPSC done any analyses comparing the relative safety of ROVs that existed when CPSC issued its ANPR in 2009, ROVs that conform to the current voluntary standard, and ROVs that would conform to CPSC staff's proposed mandatory standard?**

On October 28, 2009, the CPSC published an advance notice of proposed rulemaking (ANPR) concerning recreational off-highway vehicles (ROVs). 74 FR 55495. The ANPR began a rulemaking process that could result in a mandatory consumer product safety standard for ROVs. CPSC staff has not completed the rulemaking effort on ROVs and has no current proposed mandatory standard.

The ROVs that existed when CPSC issued its ANPR in 2009 meet almost all the requirements in the current voluntary standard.

7. **I understand that federal law reserves mandatory standards for those products where industry fails to develop voluntary standards to prevent unreasonable risks of injury. If that is the case, why would CPSC move forward with a mandatory ROV standard when industry has been proactive in developing standards and has tried repeatedly to work with your agency? If CPSC believes that the current voluntary standard does not**

adequately address unreasonable risk of injury related to ROV use, what exactly is inadequate about the voluntary standard? What data does CPSC have to support its claim that those aspects of the voluntary standard are inadequate?

As stated above, the CPSC published an ANPR in 2009 that discussed a voluntary standard, as well as a mandatory standard, as regulatory options. Before the Commission could issue a final mandatory rule in the proceeding it would need to determine that either (1) the voluntary standard is not likely to result in the elimination or adequate reduction in the risk of injury, or (2) it is unlikely there will be substantial compliance with the voluntary standard. At this point, the Commission has only issued an ANPR and has not made any determinations about the adequacy of the voluntary standard.

CPSC staff has worked with ROHVA and continues to work with ROHVA as evidenced by the multiple public meetings and comment letters submitted by CPSC staff during the voluntary standard canvass process. CPSC staff's comment letter to ROHVA dated March 10, 2011, summarizes CPSC staff's concerns with the voluntary standard in the areas of lateral stability, vehicle handling, and occupant protection. (A copy of the letter is available at <http://www.cpsc.gov/volstd/atv/commcanvass03102111.pdf>.)

The Honorable Mike Pompeo

1. *Database/ Facebook / 6(b)*

What is the status of the lawsuit brought against the CPSC last year by anonymous companies over the agency's botched interpretation of the database language in the Consumer Product Safety Improvement Act of 2008? Would you please notify the subcommittee and my office as soon as there are further developments in that case?

CPSC was sued by a single anonymous company, Company Doe, as reflected in the publicly available docket for the case (Case No. 11-2958, D. Md.). A redacted version of the decision in the case, dated July 31, 2012, was posted on PACER on October 22, 2012. The portions of the case not on the public docket are under seal and CPSC cannot comment further.

On September 28, 2012, the government filed a notice of appeal at the district court as shown on the publicly available docket for the U.S. Court of Appeals for the Fourth Circuit, docket number 12-2210. The agency cannot comment beyond what is available on the public docket because the case is under seal.

Has the court decided whether the agency misinterpreted the statute, as the companies claimed—and as I believe?

A redacted version of the decision in the case, dated July 31, 2012, was posted on PACER on October 22, 2012. The case is under seal and the Commission cannot comment on the decision beyond what is in the redacted version of the decision.

In your written testimony you stated: “I think SaferProducts.gov has gained wide approval and acceptance.” How can you say that in the face of a lawsuit by industry? How many regulations issued by CPSC in the last 5 years have led to lawsuits? Doesn’t the presence of a lawsuit tend to argue against the idea that the database has gained wide approval and acceptance?

The lawsuit involves one single anonymous company and a singular report, not a lawsuit by industry. With more than 11,000 reports of harm or potential harm publicly posted to date, the SaferProducts.gov consumer database continues to serve as a vital safety tool for use by parents, doctors, emergency responders, and consumers across the country to alert the public to potentially hazardous products. None of the underlying regulations the Commission has issued in the last five years, including the database rule, has been challenged in court. No party has sought judicial review of any regulation issued during that time period.

In your oral testimony, you indicated that if the federal court rules against the CPSC in the pending database lawsuit, the agency will not pledge to immediately take down the database that was constructed in violation of the statute. Why not? Please explain what remedy you believe would be appropriate, what remedy the plaintiffs are seeking, and what remedy the agency’s professional staff recommends in the event that the agency loses the lawsuit.

Section 6A of the CPSA requires the Commission to maintain the publicly available database, and by law the Commission may not take it down. The recent decision concerning one incident reported to the SaferProducts.gov consumer database does nothing to change the agency’s statutory mandate and enduring commitment to provide the public with a timely and searchable database containing reports of harm relating to the use of consumer products. Consistent with the remedy set forth by the decision, the Commission did not post the individual report.

Is the agency still considering starting a Facebook page that would violate the requirements Congress has put in place for any kind of public database?

I believe that the CPSC has the authority to provide the public with product safety information through the use of Facebook—a free resource with almost one billion followers that almost all other federal agencies already use. Furthermore, I believe that using Facebook will allow CPSC to reach new audiences with critical information that will save lives and prevent injuries. However, I plan to further study this subject prior to deciding whether to authorize the CPSC’s Office of Communications to use Facebook as an additional means to distribute critical consumer product safety information.

I am told that the agency is refusing to accept appeals over material inaccuracies. If true, why?

Section 6A(c)(4) of the CPSA, 15 U.S.C. § 2055a(c)(4), sets forth Commission procedures for determining claims of material inaccuracy for reports of harm or comments that are

submitted to CPSC. No provisions of the CPSA or Commission regulations provide for appeals of Commission determinations regarding claims of material inaccuracy.

I am told that the agency does not remove duplicate references on the database to the same underlying incident. If that is true, why not?

We do not publish two reports that are exactly the same. When we do publish two different reports that are about the same incident we link them. Linked reports are displayed in the database as “associated reports” and count as a single report in search results.

2. *Phthalates/testing lab irregularity*

We have heard from manufacturers that they frequently experience instances where products pass lead or phthalates tests at one laboratory and fail at another laboratory.

Apart from the testing costs themselves, costs of these failures to the manufacturer include, among others: 1) costs of removal from store shelves, 2) costs of destroying failed products, 3) costs of reformulating products, and 4) costs of notifying CPSC because the products are non-compliant.

CPSC has been asked repeatedly to issue a clear statement on statistical uncertainty with regard to testing results. Some industry groups have said that addressing statistical uncertainty bands for laboratory test results to deal with the known problem of inter-laboratory variability may be the single most important action CPSC could take to help reduce costs associated with CPSIA testing and certification requirements. When and how does the Commission plan to address this concern? Why has the agency thus far refused to establish statistical variability parameters?

Perhaps some industry groups are unaware that there are many international guidelines in use that deal with the issue of measurement uncertainty. These include documents such as the ISO Guide to the Expression of Uncertainty in Measurement; the EURACHEM/CITAC Guide: Use of uncertainty information in compliance assessment; ASME B89.7.3.1-2001, Guidelines for Decision Rules: Considering measurement uncertainty in determining conformance to specification; and ILAC-G8:03/2009, Guidelines on the reporting of compliance with specification.

Current ILAC guidelines, which are consistent with the other international guidelines, and ISO/IEC 17025 clearly address the matter of statistical uncertainty and how testing labs should give appropriate consideration to measurement uncertainty when assessing compliance with specification. These requirements ensure the specification limit mandated by Congress, for both lead and phthalates, is not breached by the measurement result plus the expanded uncertainty.

CPSC methods require testing Certified Reference Materials (CRMs) that closely match the material of the tested product, along with samples, to verify the test method. CPSC methods require the results for the CRMs yield relative standard deviations well within

±20 percent. CPSC staff experience is that this is easily achieved for these well characterized materials.

In some cases, firms may be referring to measurement uncertainty where material variability is actually the driving factor for differences seen between laboratories as different samples are tested and different results are obtained.

3. *Third Party Testing Relief*

When this Congress passed H.R. 2715 last year, it gave the CPSC authority to take steps to reduce the costs of complying with the CPSIA—and particularly the costs of third party testing. Did the agency’s professional staff recommend issuing the third party testing rule despite H.R. 2715? Or did the staff recommend making adjustments to the rule and/or seeking additional public comment before issuing the rule in the wake of H.R. 2715? If the agency’s professional staff recommended that the third party testing rule be revised to take advantage of the authority given in H.R. 2715, what recommendations for further relief did the staff offer that the Commission declined to accept?

The agency’s professional staff did not recommend issuing the rule at that time. However, at the time the recommendation was made to repropose the rule, staff did not have recommendations for further relief developed.

In H.R. 2715 Congress gave you the authority to address the exorbitant cost of third party testing. Based on our directive and your existing authority, do you have sufficient authority to solve the third party testing cost problem? Why has more relief not been granted even though Congress acted to enable it? Do you believe the agency is prevented from granting further relief? If so, what legal changes are needed to enable further relief from third party testing costs? Where exactly are you barred from providing relief?

Based on the language of H.R. 2715, the staff developed a set of recommended potential opportunities for Commission consideration regarding reducing third party testing costs consistent with assuring compliance. Fifteen of the sixteen recommended opportunities did not require additional authority to be granted to the Commission.

The Request for Comments was published in the *Federal Register* on November 8, 2011. See <http://www.cpsc.gov/businfo/frnotices/fr12/3ptreduce.pdf>. After the comment period ended, the professional staff considered the comments and conducted its own examination of the testing and labeling (16 CFR part 1107) and component part testing (16 CFR part 1109) rules. Within one year of the passage of H.R. 2715, the project team completed its work and presented to the Commission a set of recommended opportunities for third party testing burden reduction consistent with assuring compliance. As noted, the Commission recently voted, pending resource allocations in future operating plans, to direct the staff to pursue nine of the actions it had identified. The staff will proceed with that direction pursuant to Commission direction in subsequent operating plans.

I believe the Commission lacks the authority to implement one of the staff recommended opportunities regarding the use of process certification techniques for children's product certification purposes. Section 14 of the CPSA requires third party testing for children's product certification, material change, and periodic testing. All of the tests in the applicable children's product testing rules require third party conformity assessment body testing. The statute does not allow the Commission to alter the basic requirement of third party testing.

What specific changes did the agency make to its third party testing rule specifically by taking advantage of the authority given in H.R. 2715? In other words, what new relief did the agency provide in the rule that it was not going to provide anyway before that statute passed?

No specific changes have to date been made to the testing and labeling rule (16 CFR part 1107) in response to H.R. 2715 (other than moving forward with addressing the statutory change from random samples to representative samples) because the rule was at the final rule stage, and further changes would not have been subject to notice and comment. The Commission published a Request for Comment, as directed by section 14(i)(3) of the CPSA (and amended by H.R. 2715), regarding reducing third party testing burdens consistent with assuring compliance. The Commission also issued a notice of proposed rulemaking regarding the testing of representative samples.

4. *Phthalates / Chronic Hazard Advisory Panel*

The Chronic Hazard Advisory Panel appointed by the CPSC Commissioners is late in submitting its report on phthalates. I am hearing from manufacturers that use phthalates that the CHAP process has not been transparent. Chairman Tenenbaum, you promised transparency at the CPSC. Will you pledge to release the results of the peer review done on the CHAP study as well as the charge given to peer reviewers by the CPSC?

The report of the CHAP is a highly complex scientific document. As such, it has taken the CHAP members longer to complete because of the breadth of the data that needed to be analyzed and the nature of the analysis itself (a cumulative risk assessment involving a variety of different phthalates and exposures). In addition, one of the CHAP members became seriously ill during the first several months of 2012. CPSC staff would disagree with the assertion that the CHAP process has not been transparent. In fact, in the two and a half years since the CHAP was convened, virtually every meeting, phone call, piece of correspondence, and all data submitted has been made available to the public on the CPSC website (<http://www.cpsc.gov/about/cpsia/chapmain.html>). The CHAP invited prominent research scientists to present their latest results and heard public testimony and written comments from interested parties. The CHAP members even agreed to an industry request to submit and discuss additional scientific studies at one of its public meetings, which took additional time.

The CHAP members also encouraged stakeholders to make their actual data (versus summaries of data) publicly available so that the CHAP might consider that data along with all other available public information. Some stakeholders chose not to release the more detailed data, because of concerns about proprietary business information. The CHAP evaluated any and all relevant data made available to it, including information provided by the industry that was made public.

Staff will continue to strongly support and encourage the open and transparent process CPSC has employed since the inception of the CHAP as the CHAP concludes its work.

Will peer reviewers be given all of the supporting information and not just the risk assessment itself to conduct their peer review?

The very nature of a scientific peer review requires that all relevant data, supporting information, and the full public record be made available to peer reviewers so that they can be as informed as possible in understanding the scientific approaches taken and conclusions reached.

Will CPSC consider the CHAP report a Highly Influential Scientific Assessment (HISA) and treat it accordingly?

CPSC understands the scientific importance of the CHAP report and will comply with the requirements regarding the report and the ensuing rulemaking set forth in section 108 of the CPSIA.

For example, to the extent that the CHAP's analysis relies on cumulative risk assessment, will the agency ensure that the framework of the cumulative risk assessment is itself peer reviewed?

Assessing the cumulative risk assessment approach taken by the CHAP would be one of the elements of a scientific peer review.

Will the CPSC refrain from issuing an interim rule when it issues the CHAP report, instead allowing full opportunity for public comment on any proposed rule that follows the CHAP report?

Section 108(b)(3) of the Consumer Product Safety Improvement Act (CPSIA) provides that, not later than 180 days after the Commission receives the CHAP's report, "the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP]." After the CHAP issues its report, the Commission plans to pursue rulemaking in accordance with these requirements.

5. *Obama Executive Order*

President Obama issued an Executive Order instructing all federal agencies, including independent agencies like the CPSC, to find ways to reduce the costs of regulations

already on the books. It is my understanding that the CPSC intends to fulfill that requirement in the upcoming year by taking a look at existing regulations on mid-sized rugs and on animal testing.

Is that true? When is the last time the CPSC even performed animal testing? Please ask the professional staff to estimate the percentage of the total cost of complying with all CPSC regulations that is represented by complying with these two regulations. Do you believe that these two regulations are among those whose revision promises to meet the goal of the executive order to reduce the onerous costs of the regulations put out by your agency, or does it make a mockery of the executive order to pick these two relatively minor regulations?

On July 11, 2011, President Obama issued Executive Order 13579, Regulation and Independent Regulatory Agencies (E.O. 13579).” The Executive Order stated that “independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” E.O. 13579 further stated that independent regulatory agencies should develop and release a public plan for the periodic review of existing significant regulations. CPSC staff drafted a plan for retrospective review of existing rules. (The Commission was not able to agree on a plan, voting 2-2 on the staff’s draft plan.)

The staff’s draft plan set forth criteria for choosing rules to review and, as directed by OMB memorandum M-11-28, included an initial list of candidate rules for review over the next two years. The initial selection of rules was based on the staff’s assessment of resources available and the limited period of time remaining in the fiscal year. The draft plan provided for review in FY 2012 of the toy caps rule, animal testing rules, and an assessment of burdens related to third party testing. The draft plan proposed and sought public comment on the potential for review of the following rules in FY 2013: (1) continued assessment of how to reduce burdens related to third party testing; (2) alternatives to third party testing that would be available for small batch manufacturers; (3) clarifying size definitions under the carpet and rug flammability standards; and (4) eliminating requirements related to the Federal Caustic Poison Act.

The CPSC has not performed animal testing since September 2008. CPSC staff considered this to be an example of “outmoded, ineffective” regulations that should be modified and updated as contemplated by E.O. 13579. With regard to the carpet and rug flammability standards, under current regulations there is a gap in coverage that has created confusion for manufacturers, particularly now that third party testing is required for some carpets and rugs. CPSC staff cannot estimate the total cost of complying with all CPSC regulations that is represented by complying with these two regulations. I note, however, that E.O. 13579 is not focused solely on reducing costs of existing regulations, but also asks agencies to “modify, streamline, expand, or repeal” those rules that “may be outmoded, ineffective,[or] insufficient.” I also note that the CPSC staff’s draft plan called for review of burdens related to third party testing, requirements that several public commenters felt impose significant costs that should be reduced.

6. *ROVs (Recreational Off-highway Vehicles)*

Why does the CPSC seem intent on pressing forward for a mandatory standard on ROVs rather than working with industry the way NHTSA does with the automobile companies to devise meaningful safety tests with repeatable results?

On October 28, 2009, the CPSC published an advance notice of proposed rulemaking (ANPR) concerning recreational off-highway vehicles (ROVs). 74 FR 55495. The ANPR began a rulemaking process that could result in a mandatory consumer product safety standard for ROVs. Throughout this process, CPSC staff has repeatedly met with industry representatives to facilitate an exchange of information and improvements to the voluntary standard as evidenced by multiple public meetings and comment letters submitted by CPSC staff during the voluntary standard canvass process. As the CPSC continues with the rulemaking process, one of the considerations will be the adequacy of the voluntary standard. Under section 9(f)(3)(D) of the CPSA, before the Commission can issue a final mandatory consumer product safety rule it must make certain findings about the adequacy of the relevant voluntary standard and the likely level of compliance with the voluntary standard.

7. *Buckyballs*

The CPSC routinely relies on the sufficiency of warning labels to keep children away from other adult products like, say, gasoline cans. Why then does the agency believe that warning labels are not an adequate solution to deal with the safety risk posed by a desk toy marketed to adults like Buckyballs? Has the agency taken steps to ban Buckeyballs and similar products as a banned hazardous substance, akin to lawn darts? If not, why not?

On September 4, 2012, the CPSC published a notice of proposed rulemaking (NPR) proposing a safety standard for magnet sets. 77 FR 53781. The preamble to the NPR (and the staff's briefing package upon which the NPR is based) explains why the Commission believes the standard it proposes is necessary to address the risks posed by sets of small, powerful magnets and why warning labels are not likely to adequately reduce the risk of injury. Specifically, the preamble notes that these magnets pose a unique hazard that many children, adults, and health care providers may not recognize. The injuries resulting from swallowing these magnets can be far more severe than swallowing other small items. When magnets are ingested they become attracted to each other, trapping intestinal tissue, and resulting in perforation of the intestine or bowel. Furthermore, while the magnet sets are marketed to adults, they have a strong appeal to children and are widely available to children.

While warning labels are appropriate in certain circumstances, the CPSC does not believe that they would be adequate to reduce the risk of injury with this product. The preamble to the proposed rule discusses the limitations of warnings for this product (*see* 77 FR at 53788-89). For example, magnet sets are likely to become separated from their packaging, and the magnets could not be individually labeled. Thus, users and parents may not see the warnings. Another limitation is the difficulty conveying in a label the unique and more severe hazard

that ingesting powerful magnets present compared to swallowing other small nonmagnetic objects. Furthermore, among the users of this product are adolescents who may swallow the magnets while imitating body piercings. Parents may not understand the risk posed to adolescents and may allow them to have the product in spite of warnings, and adolescents may not heed the warnings.

The magnet set NPR was issued under sections 7 and 9 of the Consumer Product Safety Act. (We note that the ban of lawn darts was mandated by Congress. P.L. 100-61, 102 Stat 3183, November 5, 1988.) The proposed rule would set size and strength requirements and would prohibit magnet sets that do not meet those requirements. Under the proposal, if a magnet set contains a magnet that fits within the CPSC's small parts cylinder, magnets from that set would be required to have a flux index of 50 or less, or they would be prohibited.

8. *Budget*

How many agency employees attended the ICPHSO meeting in Orlando, Florida in February, 2011? What was the total cost of their travel and attendance at the conference?

Twenty-six agency employees attended the ICPHSO Training and Symposium Conference in Orlando, Florida in February, 2011. The total cost of their travel and attendance was \$35,641.20.

Staff attendance at ICPHSO was a critical element in our global education and outreach efforts involving many of our stakeholders. The staff attending this conference participated in and led multiple interactive workshops and plenary sessions reaching over 700 stakeholders in one training session. These stakeholders included manufacturers, importers, distributors, retailers, consumer advocates, testing laboratories, trade associations, and domestic and international regulators (attendees represented over thirty countries).

How much money has the agency budgeted (and how much has it already spent) for redesigning its logo and ordering items featuring the new logo?

The final cost for the CPSC logo was \$7,829.44. There are no additional expenditures planned. No new items have been ordered specifically to replace items with the existing seal. The new logo is currently being used on the agency's website, in staff presentations, on social media platforms, and other public facing platforms. As new publications, videos and agency products are being ordered or replaced, use of the agency logo will be included in the design and production.

How much money has the agency budgeted (and how much has it already spent) for consulting services for the agency's new strategic plan?

The contract support costs for the Strategic Plan required by the Government Performance and Results Act was \$977,155. The contract costs for the Operational Review was \$919,079. The total contract costs were \$1,896,235. The last invoice was paid in November 2010. There is no money budgeted for a strategic plan in FY 2013.

How much money has the agency budgeted (and how much has it already spent) on an editor to ensure that documents reflect your preferred writing style? How does the agency justify this expense given that anything published in the Federal Register will be edited according to the style of that publication anyway?

The agency has one career employee that, as part of his/her job responsibilities, reviews documents, reports and other written materials that are disseminated to the public and Congress. However, this employee is, first and foremost, a seasoned attorney who serves in the Office of the General Counsel. This employee's legal duties include reviewing contracts and contract solicitations for legal sufficiency; participating in the development of procedural rules for various aspects of Commission activities; providing legal review and advice on budget, appropriations, directives, and other general law issues; coordinating with other federal agencies having concurrent jurisdiction with the Commission (based upon direction from the Commission and key staff personnel), including negotiating and drafting memoranda of understanding with other federal agencies; and providing legal guidance on responses to petitions and advising on legal aspects of decision making on these petitions. In addition to these legal duties this employee serves as CPSC's legal editor and its Plain Writing Officer, per the Plain Writing Act of 2010. This position is a GS-14.

The Honorable Adam Kinzinger

1. I understand that CPSC is in the process of finalizing a Standard for the Flammability of Residential Upholstered Furniture that would allow furniture manufacturers two options for fulfilling the national requirements. One option would be through compliance with a smoldering-ignition test, known as "Type I." The second "Type II" approach would require the use of an interior barrier to meet both a smoldering and an open-flame test.

a. What data supports allowing the Type I smolder-only option, given that open-flame risk for upholstered furniture is still a concern in American homes based on National Fire Protection Association data?

As stated in the 2008 Notice of Proposed Rulemaking (NPR), addressable residential upholstered furniture fires resulting from smoking material (primarily cigarettes) were responsible for 90 percent of deaths and 65 percent of injuries in the 2004-2006 period. The focus of the 2008 NPR was to address the primary ignition scenario based on the national fire data.

2. Dr. Matt Blais of Southwest Research Institute recently issued a paper demonstrating that flame retardants in foam not only help to prevent a fire from starting, but also limit the overall heat release from an upholstered furniture fire. This is significant because reducing the overall heat release from a burning piece of furniture may delay the time to "flashover" in a room.

In view of this research, do you agree that limiting the use of flame retardants in furniture would forfeit this added critical function that flame retardants provide?

Recent open flame ignited large scale tests conducted by CPSC included FR foams that met the California Technical Bulletin 117 (TB-117) requirements. The flame retardant (FR) foams tested by CPSC have not shown much improvement in flammability performance when tested in bench and large scale. It is important to note, however, that these large scale test results did not intend to represent all TB-117 or FR treated foams and the results are relevant to these specific materials. Furthermore, it was not within the scope of this test program to investigate the reason for the poor performance of the TB-117 foams.

It is possible that the FR technology applied for the TB-117 foam reported in Dr. Blais' study far exceeded the minimal requirements of TB-117.

A presentation in early 2012 from a researcher from Underwriters Laboratories at a NIST workshop showed that foams reported to meet TB-117 had reduced burn duration in cone calorimeter (small scale) tests, lower heat release in mockup tests, and did not show much improvement in full scale performance. All FR chemicals are not equally effective in reducing fire risk.

- 3. Section 108 of the CPSIA requires the CHAP (and ultimately the Commission) to consider the possible health effects of any alternative plasticizers. Phthalates have been widely evaluated, by the Commission and other agencies, and found to be safe for intended uses— whereas many potential substitutes have not undergone significant scientific review. We are very concerned about the potential hazards to consumers of banning chemicals whose hazards we know only to replace them with chemicals whose possible hazards we don't understand. What is the Commission's policy regarding the possible replacement of phthalates with chemicals that have not been equally reviewed or assessed?**

CPSC staff reviews all possible chemical hazards, including possible phthalate replacements, using a standard risk assessment approach. The staff bases a recommendation to the Commission for regulation of a chemical under the FHSA on an assessment of both exposure and risk, not just the presence of the chemical. In considering exposure, the CPSC considers several factors: total amount of the chemical in the product; bioavailability of the chemical; accessibility of the chemical to children; age and foreseeable behavior of the children exposed to the product; foreseeable duration of the exposure; and marketing, patterns of use, and life cycle of the product.

The CPSC also assesses the toxicological data by evaluating available data from animal studies; human exposure data, if available, with specific attention to issues such as the routes of exposure; length of exposure (i.e., acute or chronic time frames); specific form of chemical; and dose-response relationships. CPSC staff estimates doses that correspond to substantial personal injury or substantial illness, for assessment under the FHSA. Staff evaluates all of the information and data collected in the product, toxicological, and exposure assessments to make conclusions about whether a product may be a hazardous substance.

4. **The CPSC’s mission is to protect the public against unreasonable risks, not all risks, from consumer products. The CPSIA likewise mandates “using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women and other[s].” We are concerned that the CHAP is favoring a precautionary approach and departing from the reasoned, scientifically-based approach that is contemplated by the governing statutes. For example, there has been discussion in public CHAP meetings about using uncertainty factors that are significantly more conservative than the factors that would be employed under CPSC guidelines – more in line with European precautionary standards. This approach goes against the U.S. standard of judging substances or products for actual risks and could have serious economic consequences if it is adopted by CPSC or elsewhere in the U.S. government.**

- a. **Will the Commission adhere to a scientific, risk-based approach rather than the precautionary principle as it conducts rulemaking under Section 108?**

The Commission will adhere to the statutory criteria set forth in Section 108 of the CPSIA as it conducts its rulemaking.

- b. **What steps, if any, is the Commission taking to ensure that the final rule issued is based on sound science and not simply precaution?**

The Commission will adhere to the provisions set forth in Section 108 of the CPSIA to ensure the final rule is promulgated pursuant to the law.

5. **The CPSC is charged with regulating over 15,000 products worth billions of dollars to the American economy each year. According to President Obama’s executive order 13579 on Improving Regulation and Regulatory Review, the agency is responsible for “developing a regulatory system that protects public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” As you prepare a rulemaking on phthalates and phthalates alternatives in children’s products, your agency should use its regulatory oversight responsibilities consistent with Executive Order 13579 and work to limit unnecessary burdens on small businesses and America’s innovators. Please explain the measures that the CPSC will employ to ensure that any rulemaking associated with the CHAP’s report will not stifle economic growth, innovation, competitiveness, and job creation.**

Section 108(b)(3) of the Consumer Product Safety Improvement Act (CPSIA) provides that, not later than 180 days after the Commission receives the CHAP’s report, “the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP].” After the CHAP issues its report, the Commission plans to pursue rulemaking in accordance with these requirements. Public input will inform the rulemaking process and provide the proper balance between economic growth, innovation, competitiveness, and job creation and the statutory requirements regarding phthalates mandated by the CPSIA.

6. According to OMB's Peer Review Bulletin, a scientific assessment meets the criteria to be considered "highly influential" if "the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest." Because state, federal and international regulatory agencies have expressed significant interest in the CHAP's scientific report, and because this report could profoundly affect future rulemakings with widespread impacts, this report clearly meets the criteria of a "highly influential" scientific document.

a. Please explain whether the Commission plans to treat the CHAP's scientific report as "highly influential"? If not, why?

CPSC understands the scientific importance of the CHAP report and will comply with the requirements regarding the report and the ensuing rulemaking set forth in section 108 of the CPSIA.

b. Was OMB consulted on this decision?

Staff has consulted with OMB on the Peer Review Bulletin.

7. OMB's Peer Review Bulletin requires a high level of transparency and public involvement in the peer review of "influential scientific assessments," like the CHAP report. According to the OMB Bulletin:

In order to obtain the most expert reviewers, agencies must "consider requesting that the public, including scientific and professional societies, nominate potential reviewers." This public involvement is crucial to assuring that the reviewers meet other criteria in the OMB Bulletin, including assuring that the reviewers "shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge" and be independent of the agency.

agencies are also instructed, "[w]henever feasible and appropriate," to "make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public."

This last obligation is echoed in the CPSC's rules, which state that: "In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission has

determined that it must involve the public in its activities to the fullest possible extent.”

CPSC’s clearance procedures underscore the need for transparency in the case of complex assessments like the CHAP report. According to the clearance procedures, CPSC’s staff and contractor technical reports related to health science and other issues having potentially high impacts on important public policies and private-sector decisions, “should be highly transparent.” CPSC’s clearance procedures also stipulate that “CPSC places great emphasis on its review process to ensure the quality of information disseminated.” These procedures specify that “a report prepared by a contractor to the Commission [must be] subject to a review process by Commission staff.”

- a. Please confirm that the CPSC will organize a peer review of the CHAP report that meets the requirements of OMB’s Peer Review Bulletin.**

A potential peer review plan is currently under development but has not yet been finalized.

- b. Has the CPSC solicited nominations of prospective reviewers? If so, what process was used and when?**

In August, 2011, CPSC asked the National Academy of Sciences (NAS) to provide names of scientists with expertise in areas relevant to the work of the CHAP on phthalates. NAS provided names to CPSC which were then vetted within the CPSC Office of the General Counsel for any possible conflicts of interest.

- c. How will CPSC assure that its reviewers fairly represent the relevant scientific perspectives and fields of knowledge?**

CPSC conveyed to the NAS information regarding the nature of the scientific issues to be considered in the CHAP report and trusted the knowledge and expertise of the NAS to nominate the most appropriate scientists for the peer review work. Based on CPSC staff’s knowledge of the risk assessment and phthalates scientific literature, staff believes the nominees who will peer review the CHAP draft report have the appropriate range of expertise to undertake that work.

- d. Will CPSC make the CHAP report publicly available for comment so that reviewers can gain the benefit of the public’s scientific views and knowledge?**

The very nature of a scientific peer review requires that all relevant data and information be made available to the peer reviewers so that they can be as informed as possible in understanding the scientific approaches taken and conclusions reached by the CHAP members. The peer reviewers are highly trained scientists and experts in the

same areas as the CHAP members. Peer reviewers will have access to the full public record and will be provided all supporting information including all reference papers cited in the report.

e. Will CPSC hold a public meeting on the CHAP report?

Section 108(b)(3) of the Consumer Product Safety Improvement Act (CPSIA) provides that, not later than 180 days after the Commission receives the CHAP's report, "the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule [related to the findings of the CHAP]." After the CHAP issues its report, the Commission plans to pursue a rulemaking in accordance with these requirements. A public meeting is one additional option CPSC could use as a forum for public input.

f. If CPSC does not intend to peer review the CHAP report, how will it "involve the public . . . to the fullest possible extent" and be able to say that the "information in the reports [is] highly transparent"?

Please see the answers to the questions above.

g. If the CHAP conducts a peer review using undisclosed reviewers, and uses a charge that no one has seen, does CPSC intend to claim that this is "its review process", will constitute a "CPSC-established review procedure", and will meet the requirement of the OMB Peer Review Bulletin that "each agency shall conduct a peer review on all influential scientific information that the agency intends to disseminate"?

A potential peer review plan is currently under development but has not yet been finalized.

8. CPSC's rules also provide that, "[t]o ensure public confidence in the integrity of Commission decision-making, the Agency, to the fullest possible extent, will conduct its business in an open manner free from any actual or apparent impropriety." You echoed this commitment during your confirmation hearing, pledging that the agency "will work to ensure that the Chronic Hazard Advisory Panel conducts an impartial . . . study . . . as required by the CPSIA." Without full transparency, the "peer review" process that the CPSC apparently is planning could appear to the public and key stakeholders as an attempt to use like-minded allies to add a veneer of scientific reliability to a biased process. If the Commission allows this to occur, or relies upon it to discharge the Commission's own responsibilities, how can the Commission claim that the process is "impartial," let alone "free from any actual or apparent impropriety"?

A potential peer review plan is currently under development but has not yet been finalized.

CPSC staff believes that the CHAP process has been transparent. In the two and a half years since the CHAP was convened, virtually every meeting, phone call, piece of correspondence, all data submitted, etc. has been made available to the public on the CPSC website

(<http://www.cpsc.gov/about/cpsia/chapmain.html>). The CHAP invited prominent research scientists to present their latest results and heard public testimony and written comments from interested parties. The CHAP members even agreed to an industry request to submit and discuss additional scientific studies at one of its public meetings, which took additional time.

The CHAP members also encouraged stakeholders to make their actual data (versus summaries of data) publicly available so that the CHAP might consider that data along with all other available public information. Some stakeholders chose not to release the more detailed data, because of concerns about proprietary business information. The CHAP evaluated any and all relevant data made available to it, including information provided by the industry that was made public.

9. **The OMB Peer Review bulletin instructs that, “[w]henever feasible and appropriate,” agencies should “make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public.” The CPSC echoes this point in its own rules and has said it must involve the public in its activities to the fullest extent possible in order to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products.**

- a. **How does the CPSC plan to involve the public in the review process?**

A potential peer review plan is currently under development but has not yet been finalized.

- b. **If CPSC does not solicit public comment, how will it: “[E]nsure that [the report] is accurate and not misleading” and otherwise “ensure the quality of information disseminated” in the report?**

CPSC will follow the statutory criteria set forth in Section 108 of the CPSIA in discharging its statutory mandate regarding the CHAP report and the ensuring rulemaking.

10. **Section 108 of the CPSIA clearly calls for the CHAP to prepare a thorough report that provides an accurate characterization of the scientific data for six phthalates and alternatives. As highlighted during the hearing, the law states that the CHAP must review “all relevant data, including the most recent, best-available, peer-reviewed scientific studies . . . that employ . . . objective methods.” During the hearing, I asked you specifically about this language and whether you personally support that the CHAP review encompasses the full weight of scientific evidence. To that question, you affirmatively responded, “I certainly do.”**

- a. **Please explain what measures the Commission will utilize to ensure that the CHAP does not omit certain pieces of scientific research, and instead identifies and**

actively considers all relevant data in determining what is the best-available science.

It is the responsibility of the CHAP to conduct the examination and I have confidence its work will satisfy the requirements of Section 108 of the CPSIA.

- b. Please explain how the Commission will properly consider the full weight of scientific evidence and literature.**

Section 108(b)(3) of the CPSIA provides that, not later than 180 days after the Commission receives the CHAP's report, the Commission shall, pursuant to section 553 of title 5, United States Code, promulgate a final rule based on the CHAP report." Once the final CHAP report has been submitted to the Commission, CPSC staff will pursue rulemaking in accordance with the requirements of Section 108 of the CPSIA.

The Honorable G. K. Butterfield

- 1. At the Subcommittee hearing on August 2, 2012, you briefly addressed the CPSC's decision to file an administrative complaint in order to stop Maxwell & Oberton from continuing to distribute Buckyballs and Buckycubes because of the serious injuries to children resulting from the ingestion of the high-powered magnets that compose these products. I understand that you are limited in your ability to respond to questions concerning this matter because it is currently being litigated, but to the extent possible, can you please provide the Subcommittee with additional information about the types of injuries caused by these products when they are ingested by children?**

On September 4, 2012, the Commission published a notice of proposed rulemaking (NPR) concerning magnet sets. 77 FR 53781. The preamble to the NPR provided information about the injuries that can result when children swallow these products (*see* pp. 53784-86). The NPR is available on the Commission's website at: <http://www.cpsc.gov/businfo/frnotices/fr12/magnetnpr.pdf>.

Detailed information on specific cases that involved young children requiring surgical intervention, including abdominal surgery and intestinal resectioning, is provided on pages 17-21 of the CPSC staff briefing package, available at: <http://www.cpsc.gov/library/foia/foia12/brief/magnetstd.pdf>.

The North American Society for Pediatric Gastroenterology, Hepatology and Nutrition (NASPGHAN) also released the results of a member survey on October 23, 2012, that details injuries reported in 480 magnet ingestion cases over the past 10 years. A summary of this survey is available at: <http://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/Warning-Labels-Ineffective-at-Preventing-High-Powered-Magnet-Ingestions.aspx>.

2. In her written testimony, Commissioner Nord criticized the Commission's determination that it was technologically feasible to limit total lead content for children's products to 100 parts per million as specified by Congress in section 101 of the Consumer Product Safety Improvement Act of 2008 (Pub. L. No. 110-114). Commissioner Nord stated: "This decision was particularly disturbing because the Commission had specific leeway in the statute to impose some balance through its judgments concerning the technological feasibility of such action." Can you please explain what the statute actually allowed the Commission to do and how the Commission arrived at its determination?

In the CPSIA, Congress established a very high threshold for the agency to exempt any children's product or component thereof that does not comply with the current statutory lead limit of .01 percent (100 parts per million). The statute states that beginning on August 14, 2011, all children's products must comply with the reduced lead limit "unless the Commission determines that a limit of 100 parts per million is not technologically feasible for a product or product category. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's product." Rather than leave the definition of "technological feasibility" to the discretion of the Commission, the statute provides an explicit definition, stating that the reduced lead limit *shall* be deemed technologically feasible with regard to a product or product category if:

- (1) A product that complies with the limit is commercially available in the product category;
- (2) Technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning or the term;
- (3) Industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or
- (4) Alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

If *any* one of the four criteria was satisfied, the Commission could not make a finding that it was not technologically feasible for a product or product category to meet the .01 percent lead limit. Our staff worked extensively to solicit input from the regulated community concerning the technological feasibility of compliance with the .01 percent lead limit for children's products and categories of children's products. Based on their analysis of all the information sought out by and submitted to the agency, our professional staff could not recommend that the Commission make a determination that it was not technologically feasible for any children's product or category of children's products to meet the .01 percent lead limit based on the statutory criteria necessary to support such a finding.

3. In her written testimony, Commissioner Northup stated: "The goal of regulatory review should be to *meaningfully* reduce regulatory burdens." (Emphasis in original.) Her testimony suggests no other goals for regulatory review.

- a. Do you believe that the only goal of regulatory review is the reduction of regulatory burdens, as suggested by Commissioner Northup?**

I believe the reduction of regulatory burdens is one of many goals of regulatory review. However, I do not agree with my former colleague that the single most important criterion for setting priorities should be the cost of the regulation to business. While I agree that cost should always be a significant factor, I do not believe any one factor should automatically take precedence over the others except, perhaps, for preventing or reducing deaths and injuries. That said, I note that the staff draft plan for prioritizing candidates for retrospective review includes numerous criteria that recognize the importance of costs in the reviews. Among these criteria are the cost of the regulation, including the impact on small businesses; the cost associated with the regulation; overlapping regulatory requirements; and the paperwork burden associated with the regulation.

In addition to these cost related criteria, staff has recommended a number of noncost related factors, including advancements in technology, age of a regulation, and input from stakeholders. I believe that all of staff's proposed factors should be considered when selecting rule review projects.

- b. Do you believe that the Commission's proposed regulatory review plan provides the type of balanced approach called for in the President's Executive Orders? Please explain the benefits of this type of balanced approach compared to the one advocated by Commissioner Northup.**

I believe the proposal by the Commission's professional staff is a very fulsome, balanced, and appropriate review plan. In the package presented to the Commission, staff formulated a plan that not only incorporated the elements drawn from the President's Executive Orders (EO) 13579 and 13563, but also set forth a defined method and schedule for identifying and reconsidering any Commission rules that are obsolete, unnecessary, unjustified, excessively burdensome, counterproductive, or ineffective, or that otherwise require modification without sacrificing the safety benefits of the rules. The plan also encourages public input and participation to find the right balance of priorities and resources. The plan also incorporates the requirement in Public Law 112-28 that the Commission seek and consider comments on ways to reduce the cost of third party testing requirements.

Furthermore, the plan contemplates the agency's finite resources, specifically considering ways to address review without diverting staff resources from some of the Commission's key safety activities. As I said in my testimony, diverting resources from our core safety mission is not acceptable to me, nor should it be acceptable to America's consumers, especially parents.

Keefe Singer, Jenilee

From: Keefe Singer, Jenilee
Sent: Thursday, December 13, 2012 5:11 PM
To: 'Fjeld, Christian (Commerce)'
Cc: Bomberg, Jared (Commerce); Laitin, Anna (Commerce); Day, Christopher; Cusey, William
Subject: RE: Status?
Attachments: House Bill_draft compromise_v2 (2) - edits.docx

All:

I added the language we just discussed in track changes. Please let me know if you have any additional questions.

Jenilee

From: Fjeld, Christian (Commerce) [mailto:Christian_Fjeld@commerce.senate.gov]
Sent: Thursday, December 13, 2012 4:30 PM
To: Keefe Singer, Jenilee
Cc: Bomberg, Jared (Commerce); Laitin, Anna (Commerce); Day, Christopher; Cusey, William
Subject: RE: Status?

COB is probably the latest, but I'd prefer sooner. I'm hopeful that this doesn't have to be a big complicated process.

From: Keefe Singer, Jenilee [<mailto:JKSinger@cpsc.gov>]
Sent: Thursday, December 13, 2012 4:08 PM
To: Fjeld, Christian (Commerce)
Cc: Bomberg, Jared (Commerce); Laitin, Anna (Commerce); Day, Christopher; Cusey, William
Subject: RE: Status?

I should be in touch soon. When is the latest that I can get it to you?

From: Fjeld, Christian (Commerce) [mailto:Christian_Fjeld@commerce.senate.gov]
Sent: Thursday, December 13, 2012 3:53 PM
To: Keefe Singer, Jenilee
Cc: Bomberg, Jared (Commerce); Laitin, Anna (Commerce)
Subject: Status?

Jenilee – not to be too much of a pain, but we told Senator Vitter's staff that we'd try to have something over to them today, but are reluctant to do so without your technical feedback. Doable on your end?

Christian

Christian Tamotsu Fjeld
Senate Committee on Commerce, Science, and Transportation

*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via

Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!!

SEC. 1. SHORT TITLE.

SEC. 2. SENSE OF CONGRESS.

SEC. 3. DRYWALL LABELING REQUIREMENT.

(a) LABELING REQUIREMENT.— Beginning 180 days after the date of enactment of this Act, the gypsum board labeling provisions of ASTM International Standard C1264-11 (ASTM C1264-11), as they exist on the date of enactment of this Act shall become considered consumer product safety standards enforceable as issued by the a Commission rule promulgated under section 914(c) of the Consumer Product Safety Act (15 U.S.C. 205863(c)).

Except as provided in subsection (b), not later than one year after the date of enactment of this Act, the Consumer Product Safety Commission shall promulgate a final rule under section 14(e) of the Consumer Product Safety Act (15 U.S.C. 2063(e)) requiring that each sheet of drywall manufactured or imported for use in the United States be permanently marked with the name of the manufacturer and the month and year of manufacture.

(b) EXCEPTION.—

(1) VOLUNTARY STANDARD.— Subsection (a) shall not apply if the Consumer Product Safety Commission determines that—

- A— a voluntary standard pertaining to drywall manufactured or imported for use in the United States is adequate to permit the identification of the manufacturer of such drywall and the month and year of manufacture; and
- B— such voluntary standard is or will be in effect not later than 2 years after the date of enactment of this Act.

(2) FEDERAL REGISTER.— Any determination made under paragraph (1) shall be published in the Federal Register.

(c) TREATMENT OF VOLUNTARY STANDARD FOR PURPOSES OF ENFORCEMENT.— Except as provided in subsection (d), if the Commission determines that a voluntary standard meets the conditions under subsection (b)(1), then the labeling requirement of that standard shall be enforceable as a Commission rule promulgated under section 14(e) of the Consumer Product Safety Act (15 U.S.C. 2063(e)) beginning on the date that is the later of— (1) 180 days after publication of the determination under subsection (b); or (2) the effective date contained in the voluntary standard.

(d)

(db) REVISION OF VOLUNTARY STANDARD.— If the labeling requirement in of a voluntary standard that met the conditions of subsection (ab)(1) is subsequently revised, the organization responsible for the standard shall notify the Commission no later than 60 days after final approval of the revision. The labeling requirement of the revised voluntary standard shall become enforceable as a Commission rule promulgated under section 14(e) of the Consumer Product Safety Act (15 U.S.C. 2063(c)), in lieu of the prior version, effective 180 days after the Commission is notified of the revision (or such later date the Commission may specify), unless within 90 days after receiving that notice the Commission determines that the labeling

Formatted: Font: 11 pt

Formatted: Font: (Default) Times New Roman, 11 pt

Formatted: Font: (Default) Times New Roman, 11 pt

Formatted: Font: 11 pt, Bold

Formatted: Font: 11 pt

Formatted: Font: 11 pt, Highlight

Formatted: Font: 11 pt

Formatted: Font: 11 pt

Formatted: Font: 11 pt

Formatted: Highlight

requirement of the revised voluntary standard does not adequately identify the board by manufacturer and month and year of manufacture meet the requirements of subsection (b)(1)(A), in which case the Commission shall continue to enforce the prior version.

Formatted: Highlight

SEC. 4. SULFUR CONTENT IN DRYWALL STANDARD.

(a) RULE ON SULFUR CONTENT IN DRYWALL REQUIRED.—Except as provided in subsection (c), not later than two years after the date of enactment of this Act, the Consumer Product Safety Commission shall promulgate a final rule pertaining to drywall manufactured or imported for use in the United States that limits sulfur content to a level not associated with elevated rates of corrosion in the home.

(b) RULE MAKING; CONSUMER PRODUCT SAFETY STANDARD.—A rule under subsection (a)—
(1) shall be promulgated in accordance with section 553 of title 5, United States Code; and
(2) shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

(c) EXCEPTION.—

(1) VOLUNTARY STANDARD.—Subsection (a) shall not apply if the Commission determines that—
A. a voluntary standard pertaining to drywall manufactured or imported for use in the United States limits sulfur content to a level not associated with elevated rates of corrosion in the home; and
B. such voluntary standard is or will be in effect not later than two years after the date of enactment of this Act; and
C. such voluntary standard is developed promulgated by ASTM International or another voluntary consensus standard setting body.

Formatted: Highlight

(2) FEDERAL REGISTER.—Any determination made under paragraph (1) shall be published in the Federal Register.

(d) TREATMENT OF VOLUNTARY STANDARD FOR PURPOSES OF ENFORCEMENT.—If the Commission determines that a voluntary standard meets the conditions in subsection (c)(1), the sulfur content limit in such voluntary standard shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058) beginning on the date that is the later of—(1) 180 days after publication of the Commission's determination under subsection (c); or (2) the effective date contained in the voluntary standard.

(e) REVISION OF VOLUNTARY STANDARD.—If the sulfur content limit of a voluntary standard that met the conditions of subsection (c)(1) is subsequently revised, the organization responsible for the standard shall notify the Commission no later than 60 days after final approval of the revision. The sulfur content limit of the revised voluntary standard shall become enforceable as a Commission rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), in lieu of the prior version, effective 180 days after the Commission is notified of the revision (or such later date as the Commission may specify), unless within 90 days after receiving that notice the Commission determines that the sulfur content limit of the revised voluntary standard does not meet the requirements of subsection (c)(1)(A), in which case the Commission shall continue to enforce the prior version.

(f) FUTURE RULEMAKING.—Notwithstanding any other provision of this Act, the Commission, at any time subsequent to publication of the consumer product safety rule required by subsection (a) or a determination under subsection (c), may initiate a rulemaking in accordance with section 553 of title 5, United States Code, to reduce the sulfur content limit or to include any provision relating to the

composition or characteristics of drywall that the Commission determines is reasonably necessary to protect against the degradation in home components or health. Any rule promulgated under this subsection shall be treated as a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

SEC. 5. REVISION OF REMEDIATION GUIDANCE FOR DRYWALL DISPOSAL REQUIRED.

Formatted: Font: Bold

Not later than 120 days after the date of enactment of this Act, the Consumer Product Safety Commission shall revise its "Remediation Guidance for Homes with Corrosion from Problem Drywall" to specify that problematic drywall removed from homes pursuant to the guidance should not be reused or used as a component in production of new drywall.

Amend the title so as to read: "A bill to prevent the introduction into commerce of unsafe drywall, to ensure the manufacturer of drywall is readily identifiable, to ensure that problematic drywall removed from homes is not reused, and for other purposes."



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
 THE SECRETARIAT - OFFICE OF THE SECRETARY
 FREEDOM OF INFORMATION
 4330 EAST WEST HIGHWAY
 BETHESDA, MD 20814**

REQUEST FOR DOCUMENTS

DATE: April 23, 2013

FROM: Keisha Murchison, The Secretariat - Office of the Secretary/FOI

REQUEST #: 13-F-00416

REQUEST INFO.: Request a copy of each written response or letter from the CPSC to a Congressional Committee (not a congressional office) (or Committee Chair) in calendar years 2012 and 2013 to date.

REQUESTER:

Office	Sent Date	Due Date	Received Date	Delivery Method
OLA	April 23, 2013	May 07, 2013	April 23, 2013	

This letter authorizes your office to search for responsive documents for the attached request under the Freedom of Information/Privacy Act. Action Requested:

- (1) Search and **RETURN TO OS/FOI (Room 820)** any and all records located that may be responsive to the attached request. If possible, records in electronic format would be greatly appreciated.
- (2) Identify and explain any potential sensitive portions, but **DO NOT** delete or purge those portions. We need to see the portions to apply FOIA Exemptions, if we decide to withhold portions. We process all records with a presumption of openness cognizant of the requirements of the Open Government Act of 2007.
- (3) Document the file search information and relevant fee data to allow us to compute the fee charges. If you believe the fees may be prohibitive (e.g., in excess of 4 hours of search time or 500 pages) provide the basis for your estimate **prior** to performing the file search.

RESULTS OF FILE SEARCH: (TO BE COMPLETED BY THE OFFICE PERFORMING THE FILE SEARCH)

NO RECORDS located responsive to the request : _____

Material being returned to OS/FOI as requested : _____

File Search Performed by : _____

Date : _____

Fee Information: Search Time : _____ Hour(s) _____ Minute(s)

Review time to recommend withholdings : _____ Hour(s) _____ Minute(s)

Duplication services, number of pages : _____ Pages

Other processing charges or notes : _____

Day, Christopher

From: Day, Christopher
Sent: Tuesday, July 31, 2012 8:14 PM
To: Ash, Michelle
Cc: Keefe Singer, Jenilee; Cusey, William
Subject: Answers to Questions
Attachments: 120801 CPSIA Section 104 Rules.doc

Importance: High

FOR COMMITTEE USE ONLY

Michelle:

Per our discussion earlier today, here are answers to the 3 questions you posed:

- 1) Status of Phthalates Accessibility Proceeding: The Commission approved a Notice of Proposed Guidance on July 19, 2012, by a 4-0 vote, pursuant to the requirement in PL 112-28. Pursuant to the proposed guidance notice, Commission staff will now receive public comment and then ready final guidance for full Commission review in the near future.

Here's a link to the proposed guidance package: <http://www.cpsc.gov/library/foia/foia12/brief/phthalatesinaccessible.pdf>

- 2) Status of the CHAP: The Chronic Hazard Advisory Panel (CHAP) is continuing their work. One of the members has been dealing with a very serious illness, which has delayed submission of their report. As of now, we hope to receive it later this year.
- 3) Summary of 104 rules/status: Attached is a sheet that details the rules scheduled for consideration under section 104, and staff proposed timeframes. I would note that this chart is a few months old, but I hope to get an updated version tomorrow.

Hope this information is helpful. Please let me know if you need anything else.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

CPSIA Section 104 Rules

Completed

<u>Rule</u>	<u>Published in FR</u>	<u>Effective</u>
Bath seats	6/4/2010	12/6/2010 (16 CFR 1215)
Walkers	6/21/2010	12/21/2010 (16 CFR 1216)
Full-size and non-full-size cribs	12/28/2010	6/28/2011 (16 CFR 1219)
Toddler beds	4/20/2011	10/20/2011 (16 CFR 1217)
Bed rails	2/29/2012	8/29/2012 (16 CFR 1224)
Play Yards	6/27/2012 (Commission vote; awaiting FR pub.)	

Proposed

<u>Rule</u>	<u>NPR Published</u>
Infant Swings	2/10/2012
Bassinets and Cradles	4/28/2012

Pending

<u>Rule</u>	<u>Staff Target NPR Date¹</u>
Carriers (soft infant and toddler)	12/2012
Carriers (hand-held infant)	12/2012
Strollers	12/2012
Carriers (frame/back)	2/2013
Carriers (infant slings)	2/2013
Infant bath tubs	8/2013
Booster Seats	8/2014
Portable Hook-on Chairs	8/2014
Expansion Gates	8/2014
Infant bouncer seats	2/2015
Children's Folding Chairs	2/2015
Baby Changing Tables	2/2015
Stationary Activity Centers	2/2015

¹ These are all staff target NPR dates, and have not been reviewed or approved by, and may not necessarily represent the views or targets dates of, the Commission.

Day, Christopher

From: Day, Christopher
Sent: Thursday, November 29, 2012 1:26 PM
To: Ash, Michelle (Michelle.Ash@mail.house.gov)
Cc: Keefe Singer, Jenilee (JKSinger@cpsc.gov); Cusey, William (WCusey@cpsc.gov); Levine, Jason
Subject: Bed Rails Memo
Attachments: 121129 EPID_bedrail_memo Cleared.pdf

Michelle:

Per our earlier discussion, attached please find a copy of the bed rail memo (cleared for public release). It represents a preliminary scan of deaths, injuries, and hazard patterns associated with adult bed rails. The memorandum does not go into the jurisdictional issue (FDA v. CPSC) or potential next steps – but those are items that Commissioner Adler's office and staff are working on.

Hope this is helpful. Please let us know if you have any questions.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814

Memorandum

Date: October 11, 2012

TO : Richard McCallion
Adult Portable Bed Rails Project Manager
Division of Mechanical Engineering
Directorate for Engineering Sciences

THROUGH: Kathleen Stralka
Associate Executive Director
Directorate for Epidemiology

Stephen Hanway
Director, Division of Hazard Analysis
Directorate for Epidemiology

FROM : Angie Qin
Division of Hazard Analysis
Directorate for Epidemiology

SUBJECT : Adult Portable Bed Rail-Related Deaths, Injuries, and Potential Injuries: January 2003 to September 2012¹

I. Introduction

This memorandum provides the statistics on deaths and injuries and characterizes the types of hazard patterns related to adult portable bed rails (product code 4075) from January 2003 to September 2012. The counts are based on reports received by U.S. Consumer Product Safety Commission (CPSC) staff. The report also includes the estimated number of emergency department-treated injuries from January 2003 to December 2011.

The ASTM International (ASTM) voluntary standard for portable bed rails is ASTM F 2085, *Standard Consumer Safety Specification for Portable Bed Rails*. According to the ASTM definition, a "portable bed rail" is a device intended to be installed on an adult bed to prevent children from falling out of bed. These bed rails are intended for children who can get in and out of an adult bed unassisted, typically ranging in age from 2 to 5 years old. Adult bed rails are generally designed for use by adults, particularly

¹ This analysis was prepared by the CPSC staff. It has not been reviewed or approved by, and may not necessarily reflect the views of, the Commission.

Not all of these incidents are addressable by an action the CPSC could take; however, it was not the purpose of this memorandum to evaluate the addressability of the incidents, but rather to quantify the number of fatalities and injuries reported to CPSC staff. If the date of incident or injury is not reported, date of entry is used.

CPSC Hotline: 1-800-638-CPSC(2772) CPSC's Web Site: <http://www.cpsc.gov>

CPSC PRODUCT IDENTIFICATION
K...
PRODUCTS IDENTIFIED
— INDEXED BY: PETITION
ROULEMAKING ADMIN. PROC. Q
— WITH PORTIONS REMOVED: —

older adults. Some manufacturers of adult bed rails make medical claims regarding their product, and therefore, those bed rails would likely fall under the jurisdiction of the U.S. Food and Drug Administration. This review is not intended to address jurisdictional questions. In this memorandum, CPSC staff limited the data to incidents reporting user age to be 13 years or older; incidents where the user's age is unknown or unreported are also included.

II. Incident Data²

CPSC staff received 160 incidents, which included 155 fatalities and 5 non-injuries or "injury not reported" incidents, related to adult portable bed rails that occurred and were reported from January 2003 to September 2012. There were 98 death certificates that contained limited information on the incident scenario. The remaining reports were submitted to CPSC staff through various sources, such as consumer hotline and Internet reports, medical examiner/coroner reports, newspaper clippings, and from retailers and manufacturers. The victims' ages (fatalities and non-injuries or "injury not reported" incidents) ranged from 13 to 103 years. There were 6 incidents (4%) with unknown or unreported age. The reporting is ongoing. The number of reported fatalities, injuries, and non-injury or "injury not reported" incidents may change in the future.

A. Fatalities

There were 155 fatal adult portable bed rail-related incidents that occurred and were reported from January 2003 to September 2012.

Table 1: Distribution of Reported Fatal Bed Rail-Related Incidents by Year

Year of Incident*	Fatalities
2003	17
2004	25
2005	20
2006	26
2007	19
2008	19
2009	8
2010	7
2011	11
2012	3
Total	155

Source: CPSC epidemiological databases IP11, INDP and DTHS.

* If the date of incident or injury is not reported, the date reported is used.

Note: Data in italics indicates reporting is ongoing for 2009–2012.

¹ The CPSC databases searched were the In-Depth Investigation (INDP) file, the Injury or Potential Injury Incident (IP11) file, and the Death Certificate (DTHS) file. These reported deaths and incidents are not a complete count of all that occurred during this time period. However, they do provide a minimum number of deaths and incidents occurring during this time period and illustrate the circumstances involved in the incidents related to adult bed rails.

All data coded under product code 4075 (Bed Rails), where the patients' ages was 13 years or older, were extracted. Upon careful joint review with ES and IIS staff, some cases were considered out of scope for the purposes of this memo. Cases specifying hospital bed and incidents occurring in hospitals were excluded. Cases involving bed rail injuries resulting from playing, running, and tripping are excluded. Examples of such excluded cases are incidental cases, falls or strains while pushing or carrying the bed rail, tripping over the bed rail, or tripping and hitting the bed rail. With the exception of incidents occurring at U.S. military bases in foreign countries, all incidents occurring outside of the United States have been excluded. All incidents where a hazardous environment in and around the bed rail resulted in fatalities, injuries, or near-injuries were retained.

Of the fatal incidents, 143 incidents (93%) were related to rail entrapment; 11 incidents (7%) were related to falls on the bed rail; and 1 was categorized as a miscellaneous incident (the victim hit his head on the rail). The ages of the fatality victims ranged from 14 to 103 years old. One hundred and twenty nine decedents (83%) were 60 and over; 19 (12%) were between 30 and 60 years old; 6 (4%) were under 30 years old, and 1 was of an unknown age. About half of the reports concerning the fatality victims indicated that the victim had some kind of medical condition. Reported conditions included cardiovascular disease (15%), Alzheimer's disease, dementia, or other mental limitations (12%), seizure (4%), mobility limitations or paralysis (3%), Parkinson's disease (3%), cerebral palsy (3%), multiple sclerosis (2%), the victim taking medication (2%), multiple conditions (1%), pulmonary disease (1%), or other conditions (4%). Most injuries (61%) occurred at home. The rest occurred at nursing homes (16%), assisted living facilities (10%), hospice facilities (2%), other (3%), or unspecified locations (8%).

Table 2: Distribution of Reported Fatal Bed Rail-Related Incidents by Age

Age	Fatalities
13 to 30 years	6
30 to 60 years	19
60 years and over	129
Not reported	1
Total	155

Source: CPSC epidemiological databases IPII, INDP and DTHS

Table 3: Distribution of Reported Fatal Bed Rail-Related Incidents by Medical Conditions

Medical Conditions	Fatalities
Cardiovascular disease	23
Alzheimer's disease/dementia/mental limitation	18
Seizure	6
Mobility/paralysis	5
Parkinson's disease	4
Cerebral palsy	4
Multiple sclerosis	3
Drug medicated	3
Multiple conditions	2
Pulmonary disease	2
Other*	6
No medical condition reported	79
Total	155

Source: CPSC epidemiological databases IPII, INDP and DTHS.

*Other included tracheotomy and G-tube, severe burn, post hip surgery, Lesch-Nyhan syndrome, amyotrophic lateral sclerosis, cancer hospice.

Table 4: Distribution of Reported Fatal Bed Rail-Related Incidents by Injury Location

Injury Location	Fatalities
Home	94
Nursing home	25
Assisted living facility	15
Hospice	3
Other*	5
Unknown	13
Total	155

Source: CPSC epidemiological databases IPH, INDP and DTHS

*Other included a care home, a foster home, a group home, a hotel, and an adult family home.

B. Non-fatal Incidents

There were 5 non-fatal adult portable bed rail-related incidents that occurred and were reported from January 2003 to September 2012. Of the non-fatal incidents, 2 incidents were related to rail entrapment; 1 incident report states that people may become entrapped due to the bed rail moving away from the bed, and the second incident states that the victim's arm got trapped between the mattress and the top of the rail while he was sleeping. One incident was related to a broken side rail (the small boards on the side rails ripped through the screws, causing the boards underneath to fall); and the remaining 2 incidents were categorized as miscellaneous incidents (a misleading label and an inquiry about a replacement for a recalled product). No injury was reported for these 5 non-fatal incidents.

III. Hazard Patterns

CPSC staff reviewed all 160 incidents to identify hazard patterns associated with adult portable bed rails. The hazard patterns can be grouped into four categories based on the components presenting the hazard. The category list is ordered from the highest frequency to the lowest.

- A. *Rail entrapment*: There were 145 incidents related to rail entrapment. This category included incidents in which the victim was caught, stuck, wedged, or trapped between the mattress/bed and the bed rail, between bed rail bars, between a commode and rail, between the floor and rail, or between the headboard and rail. Based on the narrative, the most frequently injured body parts were the neck and head. Most of these incidents (143 out of 145) resulted in fatalities.
- B. *Falls*: There were 11 incidents related to falls. This category included incidents in which the victim fell off the bed rail, climbed over the bed rail, fell and hit the bed rail or fell due to an unraised bed rail. All incidents resulted in a fatality.
- C. *Miscellaneous*: There were 3 incidents with miscellaneous problems (the victim hit his head on the rail, a complaint about a misleading label, and a complaint inquiring about a replacement for a recalled bed rail). This category included 1 death and 2 non-injuries.
- D. *Structural integrity*: There was 1 incident related to a structural component problem. In the incident, the small boards on the side rails ripped through the screws, causing the boards underneath to fall. No injury was reported.

Table 5: Distribution of Reported Bed Rail-Related Incidents by Components Presenting the Hazard (1/1/2003 to 9/30/2012) (Victims age 13 years or older)

Hazards	Counts
Rail entrapment	145
Falls	11
Miscellaneous	3
Structural integrity	1
Total	160

Source: CPSC epidemiological databases IP11, INDP and DTHS.

IV. National Injury Estimates³

There were an estimated 36,900 adult portable bed rail-related injuries (sample size=881, coefficient of variation=0.08) that were treated in U.S. hospital emergency departments from January 2003 to December 2011. Partial estimates for 2012 will not be available until NEISS data for 2012 is finalized in spring 2013. The injury estimates for individual years are not reportable because they fail to meet publication criteria.⁴ There was no statistically significant increase or decrease observed in the estimated injuries from one complete year to the next ($p>0.1$), nor was there any statistically significant trend observed from January 2003 to December 2011 ($p=0.40$).

No deaths were reported through NEISS. The data included an age range from 13 to 101 years old. The injuries were fairly evenly distributed among age groups. Thirty-nine percent were 60 years and over; 34 percent were between 30 and 60 years old; and 27 percent were younger than 30 years old. Most of the injuries (92%) were treated and released. The following injury characteristics occurred most frequently:

- Injured body part – head (14%), lower leg (12%), foot (12%)
- Injury type – laceration (30%), contusions/abrasions (30%), fracture (14%).

³ The source of the injury estimates is the National Electronic Injury Surveillance System (NEISS), a statistically valid injury surveillance system. NEISS injury data are gathered from emergency departments of hospitals selected as a probability sample of all the U.S. hospitals with emergency departments. The surveillance data gathered from the sample hospitals enable the CPSC staff to make timely national estimates of the number of injuries associated with specific consumer products.

All data coded under product code 4075 for patients' ages 13 years or older was extracted. Upon careful joint review with ES and HS staff, some cases were considered out of scope for the purposes of this memo. Cases specifying hospital bed were excluded. Cases involving bed rail injuries resulting from playing, running, and tripping are excluded. Examples of such excluded cases are incidental cases, falls or strains while pushing or carrying the bed rail, tripping over bed rail, or tripping and hitting the bed rail. These records were excluded prior to deriving the statistical injury estimates.

⁴ According to the NEISS publication criteria, an estimate must be 1,200 or greater, the sample size must be 20 or greater, and the coefficient of variation must be 33 percent or smaller.

Day, Christopher

From: Day, Christopher
Sent: Wednesday, January 16, 2013 8:09 PM
To: Ash, Michelle (Michelle.Ash@mail.house.gov)
Subject: Sequestration Options and Gun Safety
Attachments: 130116 Chairman's Gun Safety Points.pdf; 130116 CPSC Sequestration Possible Cuts FOUO.pdf

CONFIDENTIAL
FOR OFFICIAL/COMMITTEE USE ONLY

Michelle:

Per our discussion earlier and your request, attached is a bit more information on: 1) possible CPSC options (cuts) if sequestration is implemented on March 1; and 2) the Chairman's initiative on the safety and effectiveness of certain gun trigger locks and gun safes.

Sequestration Scenarios/Cuts

The budget options document was drawn up in September 2012, but still represents the agency's best efforts to responsibly plan for the possibility of sequestration. Possible cuts are outlined in 3 columns. The top column represents new projects that would be deferred/terminated if we did not receive our full FY 13 request (\$122.4 million), and held at the FY 12 level (approx. \$114.5 million). For all intents and purposes, this is where we are now. The cuts/deferrals in the next two columns (and the 528 FTE ceiling) would be implemented if the 8.2 percent cut is implemented on March 1. As you can see, it would have a very negative impact on many CPSC offices and programs.

Chairman's Gun Safety Initiative

The other document provides a bit more specificity regarding the Chairman's proposals to review the effectiveness of certain gun safety devices within the Commission's jurisdiction, specifically trigger locks and gun safes.

I hope this information is helpful. Please let me know if you need anything else –

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

January 16, 2012

In response to the President's national call to action on gun safety, CPSC Chairman Inez Tenenbaum plans during the coming months to initiate the following modest yet meaningful contributions:

- Since consumers should be able to trust any gun safety technologies they choose to employ to keep children and others safe and to prevent unauthorized access to firearms, the Chairman plans to assess prior work undertaken by industry and agency staff related to the effectiveness of certain gun safety devices within the agency's jurisdiction, specifically trigger locks and gun safes, and proceed as warranted.
- The Chairman intends to work, as necessary, with her colleagues at CPSC and members of the relevant voluntary standards bodies to examine whether industry may offer additional gun safety devices, to the extent those devices fall within the jurisdiction of the agency.
- The Chairman pledges to use her full authorities as chairman to assist, as needed, in seeking additional creative solutions through constructive dialogue with those industries whose products fall within the agency's jurisdiction.
- If Congress chooses to provide the CPSC with additional relevant authorities, the Chairman will work with her colleagues at CPSC to diligently undertake any new legislative mandates in this area.

Appendix

**Detailed List of Project,
Operating and FTE Deferrals**

	Office	Description	Deferred Amount	Cumulative Agency Funding	Comment	
		FY13 Congressional Budget Request		\$ 122,425		
Pursuant to 2013 Appropriations	EXFS	Relocation	- 6,000.0		New Appropriation Request - Not in CR	
	CPSC	14 New FTE Requested in FY13	- 1,785.0		New Appropriation Request - Not in CR	
	EXT	E-Records Management	- 360.0		New Appropriation Request - Not in CR	
	EXT	FISMA COOP development	- 400.0		New Appropriation Request - Not in CR	
	EXT	Addition of Model #	- 350.0		New Appropriation Request - Not in CR	
	EXT	IT Application Support	- 237.0		New Appropriation Request - Not in CR	
		Pursuant to FY13 Appropriations	- 9,132.0	\$ 113,293		
Projects Deferred until March 2013	EXHR	Nano	- 2,000.0		Project deferred	
	OCM	PSSA I&E	- 1,000.0		Project deferred	
	EXT	Budget Application	- 50.0		Project canceled	
	EXHR	Bed Clothes Open Flame Ignition	- 100.0		Project deferred	
	EXHR	SRM Cigarette	- 115.0		Project deferred	
	EXHR	CO Alarm Testing/Poster Contest	- 155.0		Project deferred/scaled back	
	EXHR	Spray Polyurethane Foam Studies	- 43.0		Project deferred/scaled back	
	EXC	VGB State Enforcement Program	- 175.0		Project deferred/scaled back	
	EXC	ATV Undercover State Enforcement Program	- 25.0		Project deferred	
	EXGO	S. E. Asia and Asia Pacific programming	- 88.0		Project deferred/scaled back	
	EXGO	European International Organization Support	- 50.0		Project deferred/scaled back	
	EXT	IT Security Requirements	- 635.8		Project deferred/scaled back	
		Defer Projects Until March 2013	- 4,438.8	\$ 108,856		
Reduce Operating Allowances until March 2013	EXHR	Laboratory Sciences	- 55.0		Operating reduction	
	EXC	Compliance Operating	- 17.0		Operating reduction	
	EXFM	CFO Operating	- 25.0		Operating reduction	
	OGC	OGC Litigation Fund	- 55.0		Operating reduction	
	EXIS	Import Surveillance Operating	- 45.0		Operating reduction	
	EXRM	HR Operating	- 6.7		Operating reduction	
	OEX	OEX Operating	- 20.0		Operating reduction	
	OCM	OCM Operating	- 16.0		Operating reduction	
	OG	OG Operating	- 7.0		Operating reduction	
	OEEO	OEEO Operating	- 4.0		Operating reduction	
	OIA	Leg Affairs Operating	- 4.0		Operating reduction	
			Reduce Operating Allowances	- 835.7	\$ 108,021	
	CPSC	Hiring Ceiling at \$28		- 2,598.0	\$ 105,471	20 vacancies held, reop Jan 2013
CPSC	Unallocated/Contingency		+ 529.0	\$ 106,000		
	Grand Total		- 18,425.4	\$ 106,000	11	

Day, Christopher

From: Day, Christopher
Sent: Thursday, January 31, 2013 6:55 PM
To: Day, Christopher
Cc: Keefe Singer, Jenilee (JKSinger@cpsc.gov); Cusey, William (WCusey@cpsc.gov)
Subject: CPSC Correspondence to OMB
Attachments: 130131 CPSC_OMB Passback_signed.pdf

Pursuant to section 27(k) of the Consumer Product Safety Act (CPSA), as amended, and section 203 (a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), attached please find a PDF copy of correspondence sent by the Commission to the Office of Management and Budget earlier today.

As always, please feel free to call or email with any questions –

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

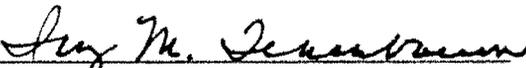
January 31, 2013

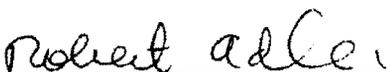
The Honorable Jeffrey Zients
Acting Director
Executive Office of the President
Office of Management and Budget
Washington, DC 20503

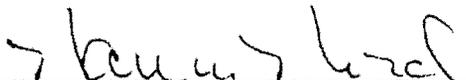
Dear Mr. Zients:

On behalf of the U.S. Consumer Product Safety Commission, we have reviewed and accept the Office of Management and Budget's passback level for fiscal year 2014. Pending further guidance, we will formulate our President's Budget to Congress in accordance with those levels.

Very truly yours,


Inez M. Tenenbaum, Chairman


Robert S. Adler, Vice Chairman


Nancy A. Nord, Commissioner

Day, Christopher

From: Day, Christopher
Sent: Thursday, February 07, 2013 5:38 PM
To: McGarvey, Carla (Carla.McGarvey@mail.house.gov)
Cc: Ash, Michelle (Michelle.Ash@mail.house.gov)
Subject: Additional Gun Safe Information
Attachments: Leonard F Morrissey MPA.vcf

Carla:

It was good speaking with you earlier regarding the issue of gun safes and, specifically, the Commission's past actions in the area and any applicable voluntary standards.

As mentioned on the call, the Commission has to date conducted one recall of a gun safe (in 2005; failure of latching mechanism). Here is a link to that recall notice: <http://www.cpsc.gov/en/Recalls/2005/CPSC-Perm-a-Store-Announce-Recall-of-Inprint-Safe-Boxes-for-Handguns/>

The main voluntary safety standard for gun safes that the Commission is aware of is the ASTM International F 2456, "Standard Specification for Youth-Resistant Firearms Containers," which was last updated in 2009. The standard is copyrighted, but if you contact Len Morrissey (vCard attached) he should be able to get you a copy for internal office use.

Hope this information is helpful. Please let me know if you need anything else –

Chris

Leonard F. Morrissey MPA
IU International
Director Technical Committee Operati...
(610) 832-9719 Work
lmorris@astm.org
Address 100 Barr Harbor Drive
P.O. Box
West Conshohocken, PA 0700
119428-2959
USA

Day, Christopher

From: Day, Christopher
Sent: Wednesday, April 25, 2012 3:16 PM
To: Jones, Erik (Commerce)
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: RE: Request from the Senate Commerce Committee
Attachments: 120425 Helmet Replacement E-mail and Memo.pdf; 120412 Helmet Replacement E-mail and Memo.pdf

CONFIDENTIAL/
MAY CONTAIN INFORMATION PROTECTED BY 15 U.S.C. 2055(b)

Erik:

Thanks for your e-mail. Pursuant to this request, I discussed this matter with Elliot Kaye in the Chairman's office and we examined documents in the Commission's possession that detail any actual or proposed public/private collaborations on youth player safety.

Our efforts identified two sets of documents: 1) an e-mail and "draft" helmet replacement program proposal received from the National Football League (NFL) on April 12, 2012; and 2) an e-mail and "final" helmet replacement proposal received from the NFL today at 1:07 pm. (I have not carefully reviewed the memo attached to both e-mails, but I believe both copies are the same or substantively almost the same -- even though they were received two weeks apart.)

We will treat this inquiry as a continuing request, and forward any additional responsive correspondence or documents when we receive them until the request is terminated. I would also note that the memo attached to the e-mail is marked "confidential" and contains information that may be protected from public release (by the Commission) pursuant to section 6(b) of the Consumer Product Safety Act (CPSA), as amended, (15 U.S.C. 2055(b)). Accordingly, we respectfully request that these documents be used for official committee purposes only.

I hope this information is helpful. As always, please let us know if you have any questions.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

From: Jones, Erik (Commerce) [mailto:Erik_Jones@commerce.senate.gov]
Sent: Wednesday, April 25, 2012 11:43 AM
To: Day, Christopher
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: Request from the Senate Commerce Committee

Chris—

On behalf of Senator Rockefeller, and pursuant to Commerce Committee oversight responsibilities, I request, to the extent available, any documents currently in the possession of the Commission detailing the current state of any public/private collaborations on youth player safety. I am requesting this information as a follow up to two recent interactions between the Committee staff and CPSC representatives.

On February 3, 2012, at the request of Chairman Rockefeller's staff, CPSC representatives provided a briefing on CSPC Chairman Tenenbaum's initiatives on sports concussions and football helmets. At that meeting, CPSC representatives discussed initiatives that included various entities in the football community coming together to improve player safety—particularly at the youth level.

On April 12, 2012, CPSC representatives attended Chairman Rockefeller's roundtable at Shepherd University in Shepherdstown, West Virginia, and again mentioned that the CPSC Chairman is continuing to work on this issue.

Please let me know if you have any questions.

Best,

Erik Jones

Erik Jones
Deputy General Counsel
Senate Committee on Commerce, Science & Transportation
202.224.9452

Day, Christopher

From: Kaye, Elliot
Sent: Wednesday, April 25, 2012 1:21 PM
To: Day, Christopher
Subject: FW: Helmet Replacement Program update
Attachments: helmet replacement_FINAL.docx

Chris,

As you can see, this document just came in (in fact I have not even read it or the email yet). I am imagining it would also be consistent with the request from Chairman Rockefeller and thus would suggest its inclusion as well. Thanks.

EK

(b)(3):CPSA Section 6(a),(b)(4)

USA Football will only launch the application once all commitments have been confirmed and the parties agree to be bound by them.

NFL: \$500,000 to fund new helmets plus \$150,000 to fund USA Football's project administration and execution costs.

NFLPA: \$150,000

NOCSAE: \$100,000

NCAA: \$25,000

This will be followed by execution of the Agreement. We will circulate the Agreement shortly.

- Measurement/Evaluation – Dave Halstead has agreed to help us develop a plan to collect data and measure this pilot program, which will guide how we move forward with the program in future years. In addition, USA Football and Ed Fisher of NAERA have established a uniform set of data that all reconditioners will be required to collect and report following each visit to a youth league. This data should provide us with a better understanding of the scope of the 10 year old+ helmet problem.

Thank you very much for your continued commitment to this program. Please don't hesitate to contact me if you have any questions.

David

Day, Christopher

From: Kaye, Elliot
Sent: Wednesday, April 25, 2012 1:23 PM
To: Day, Christopher
Subject: FW: Helmet Replacement Program
Attachments: helmet replacement_FINAL.docx

As requested

(b)(3):CPSA Section 6(a),(b)(4)

Day, Christopher

From: Day, Christopher
Sent: Thursday, May 03, 2012 1:19 PM
To: Jones, Erik (Commerce)
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: RE: Request from the Senate Commerce Committee
Attachments: 120503 NFL Helmet Replacement Program E-mail.pdf

CONFIDENTIAL/
MAY CONTAIN INFORMATION PROTECTED BY 15 U.S.C. 2055(b)

Erik:

As a follow-up to your April 25 request, attached please find an e-mail (scanned as a PDF document) that we received this morning from the National Football League (NFL) that appears responsive to Chairman Rockefeller's inquiry.

The attached e-mail contains information that may be protected from public release (by the Commission) pursuant to section 6(b) of the Consumer Product Safety Act (CPSA), as amended, (15 U.S.C. 2055(b)). Accordingly, we respectfully request that these documents be used for official committee purposes only.

As always, please let us know if you have any questions.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

From: Jones, Erik (Commerce) [mailto:Erik_Jones@commerce.senate.gov]
Sent: Wednesday, April 25, 2012 11:43 AM
To: Day, Christopher
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: Request from the Senate Commerce Committee

Chris—

On behalf of Senator Rockefeller, and pursuant to Commerce Committee oversight responsibilities, I request, to the extent available, any documents currently in the possession of the Commission detailing the current state of any public/private collaborations on youth player safety. I am requesting this information as a follow up to two recent interactions between the Committee staff and CPSC representatives.

On February 3, 2012, at the request of Chairman Rockefeller's staff, CPSC representatives provided a briefing on CPSC Chairman Tenenbaum's initiatives on sports concussions and football helmets. At that meeting,

CPSC representatives discussed initiatives that included various entities in the football community coming together to improve player safety—particularly at the youth level.

On April 12, 2012, CPSC representatives attended Chairman Rockefeller's roundtable at Shepherd University in Shepherdstown, West Virginia, and again mentioned that the CPSC Chairman is continuing to work on this issue.

Please let me know if you have any questions.

Best,

Erik Jones

Erik Jones
Deputy General Counsel
Senate Committee on Commerce, Science & Transportation
202.224.9452

Day, Christopher

From: Kaye, Elliot
Sent: Thursday, May 03, 2012 12:52 PM
To: Day, Christopher
Subject: Fw: Helmet Replacement Program update

Chris,

Pursuant to the request we received from Chairman Rockefeller, can you please forward this information to his staff?
Thanks.

EK

(b)(3):CPSA Section 6(a),(b)(4)

(b)(3):CPSA Section 6(a),(b)(4)

Day, Christopher

From: Day, Christopher
Sent: Tuesday, May 08, 2012 6:47 PM
To: Mbabazi, Natasha (Commerce); jared_bomberg@commerce.senate.gov; anna_laitin@commerce.senate.gov; Fjeld, Christian (Commerce); tyler_roth@commerce.senate.gov; collenne_wilder@commerce.senate.gov; andrew_clough@commerce.senate.gov; john_williams@commerce.senate.gov; docs@commerce.senate.gov
Cc: Keefe Singer, Jenilee; Cusey, William
Subject: Thursday (5/10) Nomination Hearing -- Written Testimony of Marietta S. Robinson
Attachments: 120510 Written Statement of Marietta S. Robinson FINAL.pdf; 120510 Written Statement of Marietta S. Robinson FINAL.doc

At the request of Marietta S. Robinson, Nominee for Commissioner, U.S. Consumer Product Safety Commission (CPSC), I am forwarding a Word and PDF copy of her written testimony in conjunction with Thursday's nomination hearing. 50 copies of this testimony will also be delivered to Russell 254 tomorrow morning.

As always, please let me know if you have any questions or concerns.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

**Statement of Marietta S. Robinson
Nominee to be a Member of the
U.S. Consumer Product Safety Commission**

Good morning Chairman Rockefeller, Ranking Member Hutchison, and distinguished Members of the Committee.

Thank you for the opportunity to appear before you today as a nominee for Commissioner of the U.S. Consumer Product Safety Commission (CPSC). I am extremely honored that President Obama has nominated me for this position. If confirmed, I look forward to working with Chairman Inez Tenenbaum and Commissioners Nancy Nord, Robert Adler, and Ann Northup to continue the excellent bipartisan work they have carried out in the past few years to implement the Consumer Product Safety Improvement Act of 2008 (CPSIA) and keep consumers, and particularly children, safe from potentially hazardous consumer products.

Before I begin my testimony I would like to take a brief moment to introduce my family. Sitting behind me is my son, Steven Robinson, who is Executive Dean of Planning, Research, and Quality at Mott Community College in Flint, Michigan; my daughter-in-law, Katherine; my grandchildren, Owen and Julia; and my nephew, Kyle Clark. My daughter, Renee, is Vice-President of Marketing for a Swedish software company and lives in Stockholm, Sweden with my Swedish son-in-law, Viktor, and my other three grandchildren, Hugo, Vera and Erik. While the Swedish part of my family and my father, Dr. Herbert Sebree, who lives in Seattle, are unable to attend today, I want to thank them and my family who is here for their wonderful support throughout the nomination process.

I am very sad that my incredible late husband, James K. Robinson, is not here with us today. Jim and I both grew up in Michigan and were married for 28 wonderful years until his death in August 2010. He was an inspiration to so many and had a career that included several stints of public service, including serving as Assistant Attorney General (AAG) of the Criminal Division of the Department of Justice in the Clinton Administration. Jim was a tower of strength and support for me throughout my career and would have been so proud to be here today.

I approach this position with more than 30 years of legal experience. I received my undergraduate degree with High Distinction from The University of Michigan-Flint, my law degree from University of California Los Angeles School of Law, and have been a litigator since 1978. Before starting my own firm in 1989, I was voted into the partnerships of two of Michigan's most highly respected law firms, one that, in litigation, primarily represents corporate defendants and one that primarily represents plaintiffs. During my career, I have represented businesses of every size and injured individuals in just about every type of civil litigation.

In addition to my law practice, from 1989 to 1997, I served as a federally-appointed Trustee of the Dalkon Shield Trust, which provided compensation to consumers injured through the use of a defective intrauterine device (IUD). Working with my fellow Trustees, we devised a system that distributed \$2.3 billion in compensation to more than 300,000 claimants in more than 120 countries. These claimants had injuries ranging from simple use of the IUD to infertility, death, and brain-injured children. At the conclusion, we were able to give a ninety percent *pro rata* distribution to the claimants, in addition to the settlement amounts already paid due to the responsible way in which we ran the Trust. I am very proud to have played a leadership role in what is generally regarded as one of the most successful mass-tort claim facilities to date.

In 2010, I became the first woman President of the International Society of Barristers, an invitation-only group of approximately 650 plaintiffs and defense trial attorneys, who share that they try jury cases, do so with honesty and integrity, and have achieved a very high level of respect from fellow lawyers and judges.

If confirmed, I believe that I will be able to use my diverse professional experience to make a number of substantive contributions at the CPSC.

Specifically, I hope to focus on three main areas.

First, I look forward to working with Chairman Tenenbaum and my fellow Commissioners to complete the final rules and requirements of the CPSIA and a recently enacted package of amendments to that law, Public Law 112-28. In doing so, I want to assure the Committee that I will approach this task with an open door and listen carefully to all stakeholders. If confirmed, I look forward to working with the Commission on rules that are both fair and highly protective of consumers of all ages.

Second, I believe one of the most important things the Commission can and must focus on doing is enforcing existing product safety requirements and making sure that violative products never enter this country in the first place. The Commission has recently enhanced its Office of Import Surveillance, which puts CPSC "boots on the ground" in select U.S. ports of entry. This office also shares data with U.S. Customs and Border Protection in order to further target potentially dangerous products. If confirmed, I look forward to working with my fellow Commissioners to further strengthen this critical program.

Third, I believe outreach and education are critical elements of the Commission's work. Rules and regulations are important, but changing attitudes and behaviors are also key elements of preventing tragedies such as tip-over incidents, where a small child climbs on furniture and causes a television or other heavy object to fall off, often resulting in serious injury or death. If confirmed, I look forward to leveraging the Commission's existing resources, as well as its social media tools, to get the word out that prevention is better than reaction.

Finally, if confirmed, I look forward to working with CPSC's talented professional staff. For a small agency, CPSC is privileged to have some of the nation's best scientific and technical staff. They are unsung heroes in the product safety world, and it would be an honor to work with them.

Thank you again for the opportunity to appear before you today. I look forward to answering any questions you may have.

Day, Christopher

From: Day, Christopher
Sent: Wednesday, May 09, 2012 9:09 PM
To: Jones, Erik (Commerce)
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: RE: Request from the Senate Commerce Committee
Attachments: 120509 NFL Helmet Replacment Program E-Mail.pdf

CONFIDENTIAL/
MAY CONTAIN INFORMATION PROTECTED BY 15 U.S.C. 2055(b)

Erik:

As a follow-up to your April 25 request, attached please find another e-mail (scanned as a PDF document) that we received this afternoon from the National Football League (NFL) that appears responsive to Chairman Rockefeller's inquiry.

The attached e-mail contains information that may be protected from public release (by the Commission) pursuant to section 6(b) of the Consumer Product Safety Act (CPSA), as amended, (15 U.S.C. 2055(b)). Accordingly, we respectfully request that these documents be used for official committee purposes only.

As always, please let us know if you have any questions.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

From: Jones, Erik (Commerce) [<mailto:Erik.Jones@commerce.senate.gov>]
Sent: Wednesday, April 25, 2012 11:43 AM
To: Day, Christopher
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: Request from the Senate Commerce Committee

Chris—

On behalf of Senator Rockefeller, and pursuant to Commerce Committee oversight responsibilities, I request, to the extent available, any documents currently in the possession of the Commission detailing the current state of any public/private collaborations on youth player safety. I am requesting this information as a follow up to two recent interactions between the Committee staff and CPSC representatives.

On February 3, 2012, at the request of Chairman Rockefeller's staff, CPSC representatives provided a briefing on CSPC Chairman Tenenbaum's initiatives on sports concussions and football helmets. At that meeting, CPSC representatives discussed initiatives that included various entities in the football community coming together to improve player safety—particularly at the youth level.

On April 12, 2012, CPSC representatives attended Chairman Rockefeller's roundtable at Shepherd University in Shepherdstown, West Virginia, and again mentioned that the CPSC Chairman is continuing to work on this issue.

Please let me know if you have any questions.

Best,

Erik Jones

Erik Jones
Deputy General Counsel
Senate Committee on Commerce, Science & Transportation
202.224.9452

Day, Christopher

From: Kaye, Elliot
Sent: Wednesday, May 09, 2012 5:42 PM
To: Day, Christopher
Subject: Fw: Helmet Replacement Program update

Chris,

Pursuant to Chairman Rockefeller's request, can you please forward this email to his staff? Thanks.

EK

(b)(3):CPSA Section 6(a),(b)(4)

Day, Christopher

From: Day, Christopher
Sent: Friday, May 11, 2012 7:09 PM
To: Jones, Erik (Commerce)
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: RE: Request from the Senate Commerce Committee
Attachments: 120511 NFL Helmet Replacement Program Announcement.pdf

CONFIDENTIAL/
MAY CONTAIN INFORMATION PROTECTED BY 15 U.S.C. 2055(b)

Erik:

As a continuing follow-up to your April 25 request, attached please find a copy of the NFL's official press announcement for the helmet replacement program that we received this afternoon. (Note that is marked "embargoed" until Tuesday, May 15, 2012.) Like previous documents, this appears responsive to Chairman Rockefeller's inquiry.

As with previous documents, the attachment contains information that may be protected from public release (by the Commission) pursuant to section 6(b) of the Consumer Product Safety Act (CPSA), as amended, (15 U.S.C. 2055(b)). Accordingly, we respectfully request that these documents be used for official committee purposes only.

As always, please let us know if you have any questions.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

From: Jones, Erik (Commerce) [mailto:Erik_Jones@commerce.senate.gov]
Sent: Wednesday, April 25, 2012 11:43 AM
To: Day, Christopher
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: Request from the Senate Commerce Committee

Chris—

On behalf of Senator Rockefeller, and pursuant to Commerce Committee oversight responsibilities, I request, to the extent available, any documents currently in the possession of the Commission detailing the current state of any public/private collaborations on youth player safety. I am requesting this information as a follow up to two recent interactions between the Committee staff and CPSC representatives.

On February 3, 2012, at the request of Chairman Rockefeller's staff, CPSC representatives provided a briefing on CSPC Chairman Tenenbaum's initiatives on sports concussions and football helmets. At that meeting, CPSC representatives discussed initiatives that included various entities in the football community coming together to improve player safety—particularly at the youth level.

On April 12, 2012, CPSC representatives attended Chairman Rockefeller's roundtable at Shepherd University in Shepherdstown, West Virginia, and again mentioned that the CPSC Chairman is continuing to work on this issue.

Please let me know if you have any questions.

Best,

Erik Jones

Erik Jones
Deputy General Counsel
Senate Committee on Commerce, Science & Transportation
202.224.9452

Day, Christopher

From: Kaye, Elliot
Sent: Friday, May 11, 2012 5:19 PM
To: Day, Christopher
Subject: Fw: Helmet Replacement Program update
Attachments: 2012 Helmet Replacement Announcement.doc

Chris,

Pursuant to Chairman Rockefeller's request, can you please forward the below to his staff? Thanks.

EK

(b)(3):CPSA Section 6(a),(b)(4)



FOR IMMEDIATE RELEASE
5/15/12

Youth Football Safety and Helmet Replacement Partnership Launches

Partnership between NFL, NFL Players Association, USA Football, Centers for Disease Control and Prevention (CDC), National Athletic Equipment Reconditioners Association (NAERA), NCAA, National Operating Committee on Standards for Athletic Equipment (NOCSAE), Sporting Goods Manufacturers Association (SGMA), Rawlings, Riddell, Schutt, and Xenith is supported by U.S. Consumer Product Safety Commission

As part of a joint commitment to player safety, a group of sports entities and equipment manufacturers has entered into an unprecedented partnership to create a youth football safety and helmet replacement program for youth in underserved communities. The initiative will remove helmets that are 10 years old or older and replace them with new helmets at no cost to the beneficiary leagues and will provide coaches with the latest educational information to help keep their young athletes safer and healthier.

In its first year, the program is being piloted in four markets: the California Bay Area, Gulf Coast region, Northern Ohio, and the tri-state region around New York City. The NFL, NFLPA, NCAA and NOCSAE have committed a combined total of approximately \$1 million to the program in its first year. The pilot program is designed to provide valuable information on the state of youth football helmets, including the number of helmets 10 years old or older in use. As of 2012, NAERA members will no longer recondition or recertify any helmet that is 10 years of age or older. NOCSAE will collect the helmets when removed and use them for ongoing research programs.

USA Football, the sport's national governing body and the Official Youth Football Development Partner of the NFL and NFLPA, will lead the execution of the program. Other partners in the initiative are the NFL, NFL Players Association, CDC, NAERA, NCAA, NOCSAE and the SGMA. Equipment manufacturers Rawlings, Riddell, Schutt, and Xenith are providing discounted helmets. To learn more or apply for helmets, visit www.usafootball.com/playersafety

The effort, initiated by CPSC Chairman **INEZ TENENBAUM**, is expected to educate thousands of youth football coaches on vital health and safety issues and provide nearly 13,000 new helmets to youth football players in low-income communities in 2012. Helmets will be distributed beginning in July.

"We are pleased to be part of this initiative, which will give children in underserved communities access to new helmets, and to reach coaches and parents with educational information to help protect young athletes from head injuries," said NFL Commissioner **ROGER GOODELL**. "This program is part of our focus on player safety at all levels of the game. We are proud to join with these well-respected organizations to make the Helmet Replacement Program a reality."

"The time has come to accelerate the culture change needed to improve the health and safety of youth football players," said CPSC Chairman Tenenbaum. "Even with our push for improved safety equipment, it is vital that parents, coaches and players understand that there is no such thing as a concussion-proof helmet. The best answer is safer and smarter play, which is why this game-changing program is aimed at reducing hits to the head and trauma to the brain. I want to thank everyone involved in this initiative for joining together in a common commitment to youth player safety."

Helmets do not prevent concussions. Therefore, the program includes a strong educational campaign that features important safety information from the CDC, the CPSC and USA Football, including materials on concussion awareness, proper helmet fitting, and fundamentally sound football instruction with USA Football's Tackle Progression Model and Levels of Contact module. In addition, leagues that receive helmets through this program will be required to have their coaches complete USA Football's Level 1 coaching course. Elements of the education component are as follows:

- "Start with Safety": Concussion awareness and response information, featuring links to CDC content and resources

- "Perfect Fitting": Helmet fitting information, including links to manufacturer-specific fitting resources
- "Tackle Safety": USA Football's Tackle Progression Model and Levels of Contact information and videos
- "Helmet Condition": Reconditioning and replacement information

Contact:

Clare Graff, NFL/212-450-2435

#

Day, Christopher

From: Day, Christopher
Sent: Friday, May 18, 2012 7:44 PM
To: Jones, Erik (Commerce)
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: RE: Request from the Senate Commerce Committee
Attachments: 120518 NFL E-Mail and Press Summary.pdf

CONFIDENTIAL/
MAY CONTAIN INFORMATION PROTECTED BY 15 U.S.C. 2055(b)

Erik:

As a continuing follow-up to your April 25 request, attached please find a PDF copy of an e-mail and associated attachment (summary of media reports referencing the helmet replacement program) that we received from the NFL this afternoon. Like previous documents, this appears responsive to Chairman Rockefeller's inquiry.

The attached e-mail contains information that may be protected from public release (by the Commission) pursuant to section 6(b) of the Consumer Product Safety Act (CPSA), as amended, (15 U.S.C. 2055(b)). Accordingly, we respectfully request that these documents be used for official committee purposes only.

As always, please let us know if you have any questions.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

From: Jones, Erik (Commerce) [mailto:Erik_Jones@commerce.senate.gov]
Sent: Wednesday, April 25, 2012 11:43 AM
To: Day, Christopher
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: Request from the Senate Commerce Committee

Chris—

On behalf of Senator Rockefeller, and pursuant to Commerce Committee oversight responsibilities, I request, to the extent available, any documents currently in the possession of the Commission detailing the current state of any public/private collaborations on youth player safety. I am requesting this information as a follow up to two recent interactions between the Committee staff and CPSC representatives.

On February 3, 2012, at the request of Chairman Rockefeller's staff, CPSC representatives provided a briefing on CSPC Chairman Tenenbaum's initiatives on sports concussions and football helmets. At that meeting, CPSC representatives discussed initiatives that included various entities in the football community coming together to improve player safety—particularly at the youth level.

On April 12, 2012, CPSC representatives attended Chairman Rockefeller's roundtable at Shepherd University in Shepherdstown, West Virginia, and again mentioned that the CPSC Chairman is continuing to work on this issue.

Please let me know if you have any questions.

Best,

Erik Jones

Erik Jones
Deputy General Counsel
Senate Committee on Commerce, Science & Transportation
202.224.9452

Day, Christopher

From: Kaye, Elliot
Sent: Friday, May 18, 2012 12:55 PM
To: Day, Christopher
Subject: Fw: Helmet Replacement Program update
Attachments: media recap.docx

Chris,

Can you please forward the below to Chairman Rockefeller's staff, pursuant to his request? Thx.

EK

(b)(3):CPSA Section 6(a),(b)(4)

(b)(3):CPSA Section 6(a),(b)(4)

Below is a round-up of key media postings. Coverage below is from the Associated Press, Reuters, Yahoo!, Bleacher Report, CBSSports.com, Education Week and a sampling of local TV coverage. The Associated Press and Reuters stories were picked up in outlets nationwide.

http://www.washingtonpost.com/sports/colleges/nfl-players-union-ncaa-donating-money-to-provide-new-helmets-to-youth-football-players/2012/05/15/gIQAhhL8QU_story.html

NFL, players' union, NCAA donating money to provide new helmets to youth football players

Associated Press – 5/15/12

The NFL, its players' union and the NCAA are donating money to provide new helmets to youth football players in low-income communities.

They've joined with the National Operating Committee on Standards for Athletic Equipment to commit a total of about \$1 million to an initiative started by the U.S. Consumer Product Safety Commission.

The program, announced Tuesday, will remove helmets that are at least 10 years old and replace them with new models while providing safety education to coaches. It is expected to distribute 13,000 new helmets this year starting in July.

The pilot program will take place in four communities: the Bay Area, the Gulf Coast region, northern Ohio and greater New York City.

As of this year, National Athletic Equipment Reconditioners Association members will no longer recondition or recertify any helmet that is at least 10 years old. CPSC Chair Inez Tenenbaum says research shows older helmets may not offer the same protection.

NOCSAE will use the old helmets for research.

USA Football will administer the program, which is also supported by NAERA, Centers for Disease Control and Prevention, and Sporting Goods Manufacturers Association. Rawlings, Riddell, Schutt and Xenith are providing discounted helmets.

Head injuries have become a major issue at all levels of football. The NFL, which has cracked down on illegal hits in recent years, faces lawsuits from hundreds of former players about its past practices on safety and concussions. The announcement of the youth helmet program includes the acknowledgement that "helmets do not prevent concussions" and emphasizes the importance of the coach education portion.

"This program is part of our focus on player safety at all levels of the game," NFL Commissioner Roger Goodell said in the announcement.

http://www.chicagotribune.com/sports/sns-rt-fbn-newssxe4e24a1-20120515.0.5016326_story

NFL, NFLPA and NCAA announce youth football initiative

Reuters– 5/15/12

More than 13,000 new helmets will be distributed to youth football programs in four markets as the pilot program in a player safety initiative launched by the NFL and several partners.

The NCAA and NFL Players' Association are vital in the joint commitment to educate thousands of youth football coaches and remove helmets that are 10 years or older at no cost to the program or league.

"We are pleased to be part of this initiative, which will give children in underserved communities access to new helmets, and to reach coaches and parents with educational information to help protect young athletes from head injuries," said NFL Commissioner Roger Goodell. "This program is part of our focus on player safety at all levels of

the game. We are proud to join with these well-respected organizations to make the Helmet Replacement Program a reality."

Introduced by U.S. Consumer Product Safety Commission chairman Inez Tenenbaum, distribution and education to communities in the California Bay area, Northern Ohio, Gulf Coast and New York City tri-state region will begin in July.

Any coach in those regions will be required to complete USA Football's Level 1 coaching course, which details tackling safety, concussion awareness, fitting of helmets and evaluating equipment for replacement or reconditioning. One of the key topics is educated coaches that helmets do not prevent concussions.

"Even with our push for improved safety equipment, it is vital that parents, coaches and players understand that there is no such thing as a concussion-proof helmet," Tenenbaum said. "The best answer is safer and smarter play, which is why this game-changing program is aimed at reducing hits to the head and trauma to the brain."

<http://bleacherreport.com/articles/1183855-nfl-players-union-brilliant-to-embark-on-youth-helmet-initiative>

NFL, Players Union Brilliant to Embark on Youth Helmet Initiative

Bleacher Report – 5/15/12

By Ryan Phillips

The NFL and the NFL Players Association have announced that they will embark on the largest youth helmet replacement program in history, as tweeted by league spokesman Brian McCarthy. The league and its players association are brilliant to make this move.

According to an Associated Press report from ESPN, the NFL, NFLPA and NCAA have committed roughly \$1 million to a program that will replace helmets that are 10 years old or older at no cost to the beneficiary leagues. The program will also educate coaches in the latest information to help keep their athletes safer. It will be tested in four markets initially, with an eye towards expansion.

The program will also provide approximately 13,000 new helmets to low-income communities beginning in July.

With all the negative attention the league has been getting thanks to its handling of head injuries and the long-term effects of concussions, this is exactly the kind of move it had to make. The fact that the players are on board is just as important. Even symbolically, this shows that the NFL takes this issue seriously. The move to replace helmets in order to better protect young players is absolutely the right idea.

The NFL has made an effort to crack down on illegal hits in recent years, but that's simply not enough. The league is facing lawsuits from hundreds of former players because of its past practices regarding concussions and overall safety. Obviously, something needs to change, and working to fix things at the youth level is a great step to take.

The tragic suicide of Junior Seau seems to have woken up the football world to the serious long-term problems that football's violence can cause its players. This is hopefully the first in a long line of steps designed to help make the game safer.

<http://www.cbssports.com/nfl/blog/eye-on-football/19053163/nfl-nflpa-announce-largest-youth-helmet-replacement-program-ever>

NFL, NFLPA announce largest youth helmet replacement program ever

CBS Sports – 5/15/12

By Will Brinson

On Tuesday the NFL and NFLPA announced a pretty fantastic new initiative: a Helmet Replacement Program to benefit youth football safety.

Yes, it's exactly what you'd expect: the league and players union, along with USA Football, the CDC, the NCAA and a number of different organizations are going into "underserved communities" and replacing football helmets that are 10 years or older.

The organizations involved will be doing this at no cost to the leagues who will receive the new helmets.

"We are pleased to be part of this initiative, which will give children in underserved communities access to new helmets, and to reach coaches and parents with educational information to help protect young athletes from head injuries," NFL commissioner Roger Goodell said. "This program is part of our focus on player safety at all levels of the game. We are proud to join with these well-respected organizations to make the Helmet Replacement Program a reality."

The NFL, NFLPA, NCAA, along with the National Operating Committee on Standards for Athletic Equipment (NOCSAE), have committed a combined total of approximately \$1 million to the program in its first year. And beginning in July, the HRP plans to distribute almost 13,000 new helmets in "low-income communities" during 2012.

As indicated in the release, new helmets don't mean "unlimited safety" for young football players. But new helmets do mean safer helmets and it also means an opportunity to reach out to young football players and educate them on the importance of long-term health and player safety in football -- any leagues that receive the new helmets will be required "to have their coaches complete USA Football's Level 1 coaching course" which involves a heavy dosage of "Tackle Safety."

<http://sports.yahoo.com/blogs/nfl-shutdown-corner/nfl-nflpa-launch-helmet-initiative-youth-football-players-154011169.html>

NFL, NFLPA help launch new helmet initiative for youth football players

Yahoo! Sports – 5/15/12

By Doug Farrer

One of the more far-reaching ramifications of America's increasing concern with football safety is the increasing percentage of parents – including former NFL players – who would hesitate to let their sons play football. As we discussed in February, the fact that there could be millions of young men suffering from concussions at the sub-college level may erode the sport by providing a diminishing talent base as more potential young stars are driven to other sports by the inherent risks of the game.

Though the NFL has been reactionary at best on this subject, a new initiative put forth by the league, the Players' Association, and other organizations provides a source of reason and hope. As the NFL Communications press release states:

The initiative will remove helmets that are 10 years old or older and replace them with new helmets at no cost to the beneficiary leagues and will provide coaches with the latest educational information to help keep their young athletes safer and healthier.

In its first year, the program is being piloted in four markets: the California Bay Area, Gulf Coast region, Northern Ohio, and the tri-state region around New York City. The NFL, NFLPA, NCAA and NOCSAE have committed a combined total of approximately \$1 million to the program in its first year. The pilot program is designed to provide valuable information on the state of youth football helmets, including the number of helmets 10 years old or older in use. As of 2012, NAERA members will no longer recondition or recertify any helmet that is 10 years of age or older. NOCSAE will collect the helmets when removed and use them for ongoing research programs.

The program, initiated by Centers for Disease Control and Prevention Chairman Inez Tenenbaum, will educate thousands of coaches on concussion awareness, and distribute more than 13,000 helmets to low-income areas.

"The time has come to accelerate the culture change needed to improve the health and safety of youth football players," Tenenbaum said. "Even with our push for improved safety equipment, it is vital that parents, coaches and players understand that there is no such thing as a concussion-proof helmet. The best answer is safer and smarter play, which is why this game-changing program is aimed at reducing hits to the head and trauma to the brain. I want to thank everyone involved in this initiative for joining together in a common commitment to youth player safety."

In addition to the NFL, NFLPA, and CDCPC, involvement comes from USA Football, the National Athletic Equipment Reconditioners Association, the NCAA, the National Operating Committee on Standards for Athletic Equipment (NOCSAE), the Sporting Goods Manufacturers Association (SGMA), and equipment manufacturers Rawlings, Riddell, Schutt, and Xenith.

"We are pleased to be part of this initiative, which will give children in underserved communities access to new helmets, and to reach coaches and parents with educational information to help protect young athletes from head injuries," NFL Commissioner Roger Goodell said. "This program is part of our focus on player safety at all levels of the game. We are proud to join with these well-respected organizations to make the Helmet Replacement Program a reality."

As the press release states, helmets do not prevent concussions -- but better helmets and better awareness can certainly help. In addition to the more advanced equipment provided, the Helmet Replacement Program will educate coaches on the following points:

- "Start with Safety": Concussion awareness and response information, featuring links to CDC content and resources
- "Perfect Fitting": Helmet fitting information, including links to manufacturer-specific fitting resources
- "Tackle Safety": USA Football's Tackle Progression Model and Levels of Contact information and videos
- "Helmet Condition": Reconditioning and replacement information

The Helmet Replacement Program is not a final solution, but it's a good move forward on a subject that has been hidden and ignored for far too long.

http://blogs.edweek.org/edweek/schooled_in_sports/2012/05/nfl_usa_football_soft-launch_youth_helmet_replacement_program.html

NFL, USA Football Soft-Launch Youth Helmet Replacement Program (Updated)

Education Week -- 5/11/12

By Bryan Toporek

The NFL and USA Football unofficially launched a joint initiative this week that aims to replace youth football helmets that are 10 years old or older for the sake of youth-athlete safety.

The NFL is expected to officially announce the Helmet Replacement Program within the next week or so, according to a representative from the organization, but the timing of the launch is still subject to change. A pilot of the program will be kicking off this spring in New York City, Cleveland, New Orleans, and San Francisco.

Youth football leagues in those four cities can apply between now and May 23, according to an NFL representative.

USA Football, the official youth football development partner of the NFL, will select leagues based on economic need and federal poverty indices, in an attempt to target underrepresented and underserved populations of players.

Leagues determined to be eligible for the Helmet Replacement Program will receive replacement helmet offers from four major manufacturers—Rawlings, Riddell, Schutt, and Xenith—and will be allowed to choose their preferred manufacturer, according to an FAQ posted on the initiative's website. The program will also send a licensed helmet reconditioner to each participating league to verify the number of helmets 10 years or older that they have.

Once the reconditioner determines the number of helmets that each league needs to replace, each league will receive an e-mail with a voucher for the money to replace those helmets. Those leagues participating in the pilot program will receive their helmets before the start of the fall 2012 football season.

The initiative stemmed from the fact that starting this fall, the National Athletic Equipment Reconditioners Association will stop reconditioning football helmets that are 10 years or older. Since economically-challenged leagues may struggle to keep their equipment as current as necessary, the NFL and USA Football will specifically target those types of leagues with this initiative first.

In the FAQ, they say, "Given this new guideline and advances in helmet technology during the last decade, we feel strongly that these old helmets should be removed from play and replaced with newer helmets.

Both organizations are quick to point out, however, that no helmet will ever fully prevent concussions. Last fall, lawmakers on Capitol Hill took helmet manufacturers to task for suggesting that certain helmets could reduce the risk of concussion, despite no scientific evidence proving such.

UPDATE (May 15, 2:00 p.m.): The NFL and USA Football officially launched their youth helmet-replacement initiative today, announcing that roughly \$1 million has already been contributed for the first year of the program.

The initiative is expected to replace nearly 13,000 youth-football helmets in its first year, according to a press release.

"We are pleased to be part of this initiative, which will give children in underserved communities access to new helmets, and to reach coaches and parents with educational information to help protect young athletes from head injuries," said NFL Commissioner Roger Goodell in a statement. "This program is part of our focus on player safety at all levels of the game. We are proud to join with these well-respected organizations to make the Helmet Replacement Program a reality."

Sampling of local TV coverage:

<http://ctv4.criticalmention.com/playerpage/player?params=Y29sbGVjdGlvbkIkPTEzODY5NyZwYXJ0bmV yVG9rZW49OGE4MDgzNjkzNzA1NTBhOTAxMzc1NWY2ODk4YTViYTY=>

Day, Christopher

From: Day, Christopher
Sent: Thursday, May 24, 2012 10:21 PM
To: Jones, Erik (Commerce)
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: RE: Request from the Senate Commerce Committee
Attachments: 120523 NFL Helmet Replacement Program Update E-mail.pdf

CONFIDENTIAL/
MAY CONTAIN INFORMATION PROTECTED BY 15 U.S.C. 2055(b)

Erik:

As a continuing follow-up to your April 25 request, attached please find a PDF copy of an e-mail that we received yesterday (5/23) from the NFL. Like previous documents, this appears responsive to Chairman Rockefeller's inquiry.

The attached e-mail contains information that may be protected from public release (by the Commission) pursuant to section 6(b) of the Consumer Product Safety Act (CPSA), as amended, (15 U.S.C. 2055(b)). Accordingly, we respectfully request that these documents be used for official committee purposes only.

As always, please let us know if you have any questions.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

From: Jones, Erik (Commerce) [mailto:Erik_Jones@commerce.senate.gov]
Sent: Wednesday, April 25, 2012 11:43 AM
To: Day, Christopher
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: Request from the Senate Commerce Committee

Chris—

On behalf of Senator Rockefeller, and pursuant to Commerce Committee oversight responsibilities, I request, to the extent available, any documents currently in the possession of the Commission detailing the current state of any public/private collaborations on youth player safety. I am requesting this information as a follow up to two recent interactions between the Committee staff and CPSC representatives.

On February 3, 2012, at the request of Chairman Rockefeller's staff, CPSC representatives provided a briefing on CPSC Chairman Tenenbaum's initiatives on sports concussions and football helmets. At that meeting,

CPSC representatives discussed initiatives that included various entities in the football community coming together to improve player safety—particularly at the youth level.

On April 12, 2012, CPSC representatives attended Chairman Rockefeller’s roundtable at Shepherd University in Shepherdstown, West Virginia, and again mentioned that the CPSC Chairman is continuing to work on this issue.

Please let me know if you have any questions.

Best,

Erik Jones

Erik Jones
Deputy General Counsel
Senate Committee on Commerce, Science & Transportation
202.224.9452

Day, Christopher

From: Kaye, Elliot
Sent: Wednesday, May 23, 2012 12:06 PM
To: Day, Christopher
Subject: Fw: Helmet Replacement Program update

Chris,

Can you please forward the below to Chairman Rockefeller's staff, pursuant to his request? Thanks.

EK

(b)(3):CPSA Section 6(a),(b)(4)

Thanks for all that you have already done and continue to do.

David

Day, Christopher

From: Day, Christopher
Sent: Sunday, June 17, 2012 7:42 PM
To: Jones, Erik (Commerce)
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: RE: Request from the Senate Commerce Committee
Attachments: 120618 NFL Replacement Helmet Program Update.pdf

CONFIDENTIAL/
MAY CONTAIN INFORMATION PROTECTED BY 15 U.S.C. 2055(b)

Erik:

As a follow-up to your April 25 request, attached please find another e-mail and associated attachments (scanned as a PDF document) received on June 13, 2012, from the National Football League (NFL). As with previous submissions, this appears responsive to Chairman Rockefeller's inquiry.

The attached e-mail contains information that may be protected from public release (by the Commission) pursuant to section 6(b) of the Consumer Product Safety Act (CPSA), as amended, (15 U.S.C. 2055(b)). Accordingly, we respectfully request that these documents be used for official committee purposes only.

As always, please let us know if you have any questions.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

From: Jones, Erik (Commerce) [<mailto:Erik.Jones@commerce.senate.gov>]
Sent: Wednesday, April 25, 2012 11:43 AM
To: Day, Christopher
Cc: Kaye, Elliot; Bomberg, Jared (Commerce); Fjeld, Christian (Commerce); Laitin, Anna (Commerce); Tiano, Melanie (Commerce)
Subject: Request from the Senate Commerce Committee

Chris—

On behalf of Senator Rockefeller, and pursuant to Commerce Committee oversight responsibilities, I request, to the extent available, any documents currently in the possession of the Commission detailing the current state of any public/private collaborations on youth player safety. I am requesting this information as a follow up to two recent interactions between the Committee staff and CPSC representatives.

On February 3, 2012, at the request of Chairman Rockefeller's staff, CPSC representatives provided a briefing on CSPC Chairman Tenenbaum's initiatives on sports concussions and football helmets. At that meeting, CPSC representatives discussed initiatives that included various entities in the football community coming together to improve player safety—particularly at the youth level.

On April 12, 2012, CPSC representatives attended Chairman Rockefeller's roundtable at Shepherd University in Shepherdstown, West Virginia, and again mentioned that the CPSC Chairman is continuing to work on this issue.

Please let me know if you have any questions.

Best,

Erik Jones

Erik Jones
Deputy General Counsel
Senate Committee on Commerce, Science & Transportation
202.224.9452

Day, Christopher

From: Kaye, Elliot
Sent: Wednesday, June 13, 2012 12:23 PM
To: Day, Christopher
Subject: Fw: Helmet Replacement Program update
Attachments: Participation Agreement.docx; helmet replacement_FINAL.docx

(b)(3):CPSA Section 6(a),(b)(4)

(b)(3):CPSA Section 6(a),(b)(4)

Day, Christopher

From: Day, Christopher
Sent: Friday, September 14, 2012 4:33 PM
To: Day, Christopher
Cc: Keefe Singer, Jenilee (JKSinger@cpsc.gov); Cusey, William (WCusey@cpsc.gov)
Subject: CPSC Staff Report on Prototype Low Carbon Monoxide Emission Portable Generator
Attachments: 120914 Summary of Low CO Generator Prototype Study for OLA_FINAL.pdf

All:

Attached please find a copy of a Commission press release and Congressional summary of an exciting new report issued by CPSC staff today demonstrating new technology that can significantly reduce the level of poisonous gas emitted from portable generators. As noted below, a test of this new technology showed that it increased predicted escape time by twelve times the current time – from 8 minutes to 96 minutes – in a model scenario where a consumer is in the garage and running their generator there.

If adopted widely, CPSC staff believe that this technology has the potential to prevent injuries and save lives in many scenarios where a generator is used after a storm or power outage.

As always, please let us know if you have any questions about this report –

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Communications

Washington, D.C.

FOR IMMEDIATE RELEASE
September 14, 2012
Release #12-278

CPSC Hotline: (800) 638-2772
CPSC Media Contact: (301) 504-7908

Escaping the Invisible Killer: New CPSC Research Demonstrates Technology That Can Significantly Reduce

Poisonous Carbon Monoxide from a Generator

Consumers' escape time increased from eight minutes to 96 minutes

WASHINGTON, D.C. - A new study released today by the U.S. Consumer Product Safety Commission (CPSC) demonstrates that readily available technology can dramatically reduce deadly carbon monoxide (CO) emission rates from certain common portable gasoline-powered generators. The technology can provide additional critical time for consumers to recognize and escape from the deadly hazard of carbon monoxide poisoning. With the adaptation of existing emission control technology, CO rates can be lowered to levels that would save lives. On average, carbon monoxide from portable gasoline-powered generators kills more than 70 people every year.

CPSC staff's study outlined one method to reduce the generator engine's CO emission rate by using closed-loop electronic fuel injection and a small catalyst—the same emission control technology used on motor scooters and small motorcycles. This significantly increased the predicted escape time by twelve times the current time—from eight minutes to 96 minutes—for the deadly scenario when a consumer is in their garage while they are running their generator there.

CPSC's study also showed that the predicted escape time for those consumers inside the house, as opposed to the garage, was even greater. The escape time is the time between onset of obvious symptoms and incapacitation.

The CPSC continues to urge consumers to never run their portable generators in their attached garages, in or even near their houses, including avoiding placement outside near windows or vents. Generators should only be used outside, far away from homes. CPSC cautions that even if portable gasoline-powered generators were to incorporate this technology, they would still need to be used outside, far from the home. The technology does not make them safe for indoor use.

Another important line of defense against CO poisoning is having CO alarms on each level of the home and outside sleeping areas. Based on available alarm data 93 percent of CO-related deaths involving generators take place in homes with no CO alarms. Much like smoke alarms are designed to alert consumers about smoke or fires, CO alarms are designed to alert consumers to dangerous CO levels and give them time to get out of the house before becoming incapacitated.

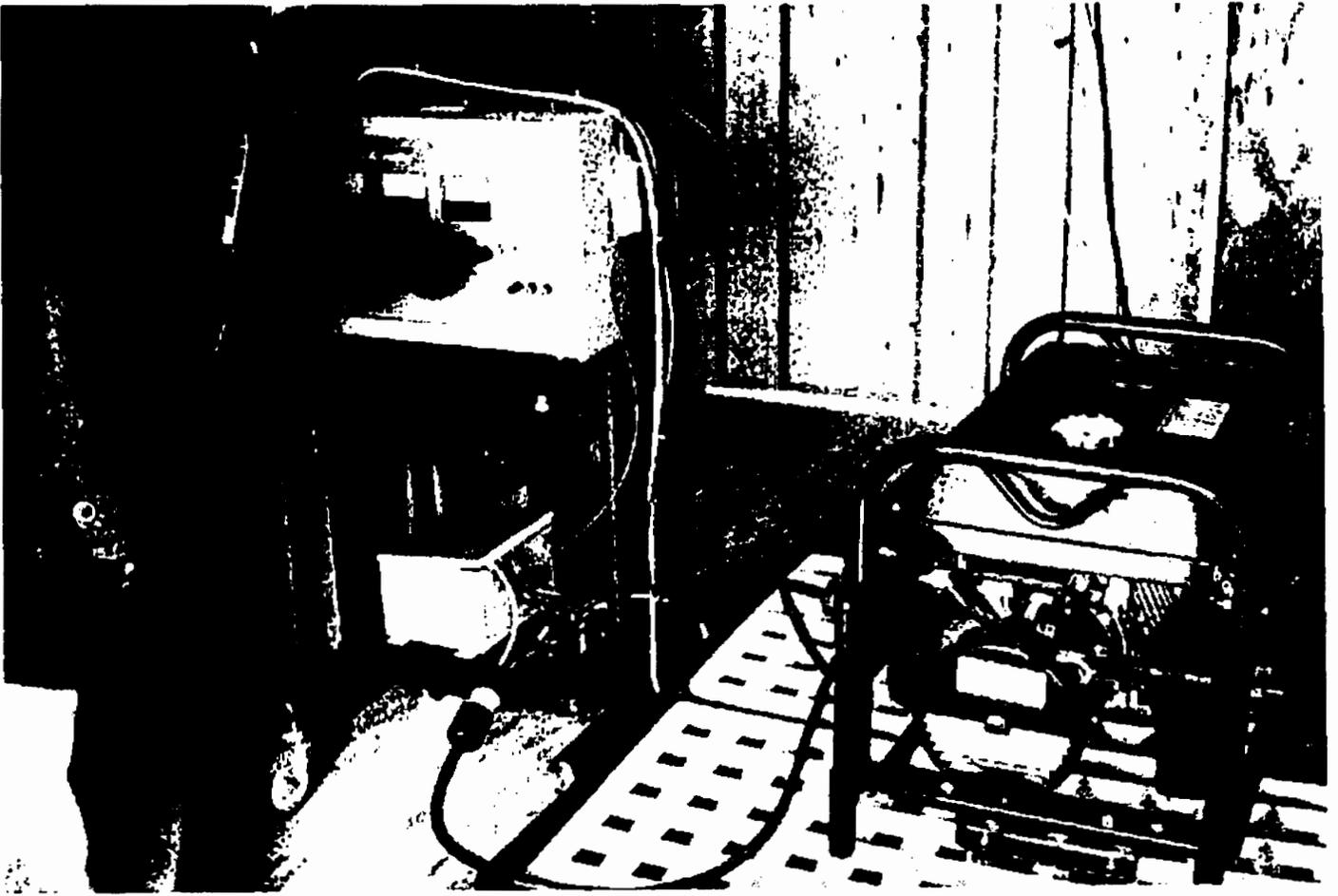
Deaths involving portable generators have been on the rise since 1999 when generators became widely available to consumers. There have been at least 755 CO deaths involving generators from 1999 through 2011. While reporting of incidents for 2011 is ongoing, there were at least 73 CO related deaths involving generators last year.

Generators are responsible for the largest number of estimated non-fire CO deaths associated with consumer products. From 2006 through 2008, generators accounted for 43 percent of CO deaths compared to 33 percent for heating systems, such as furnaces. Furnaces had historically been responsible for the most CO deaths.

Generators are used by consumers to keep lights, electrical appliances or heating and cooling units running in their homes during power outages. Incapacitation or death can occur within minutes if consumers use a generator inside a home, garage, shed or use it outside near windows or vents, because dangerous levels of CO from a generator's fuel-burning engine build up quickly.

With the release of this study, CPSC is urging manufacturers to voluntarily adopt a stringent CO emission standard for engines used in portable gasoline-powered generators with the expectation that it will improve safety and save lives, just as the marine industry did in 2005. That year, manufacturers of small marine generator engines, voluntarily adopted a stringent CO emission standard to address the hazard of acute poisoning that was causing fatal and serious injuries to boaters exposed to marine generator engine exhaust.

For this study, CPSC worked with the National Institute of Standards and Technology (NIST) and the University of Alabama to develop and test the portable gasoline-powered generators.



Generator being tested in an enclosed space. Source: NIST

CPSC Staff Release Report on Prototype Low Carbon Monoxide Emission Portable Generator: Prototype Substantially Reduces Carbon Monoxide Output and Increases Escape Time Interval

September 14, 2012

Prevention of carbon monoxide (CO) deaths and injuries caused by gasoline-powered portable generators is an urgent issue for U.S. Consumer Product Safety Commission (CPSC) staff. In three of the last four years, staff's estimates of CO deaths caused by consumer products, generators have surpassed the entire product category of heating systems to become the consumer product responsible for the largest estimated number of annual non-fire-related CO deaths (*see Figure 1 below*). In addition to making estimates on deaths, CPSC staff has counted at least 755 actual CO deaths involving generators for the 13-year period from 1999 through 2011. Most deaths occurred when the generator was operated in an indoor location; however, deaths and injuries occurred with the generator operating outdoors where the exhaust infiltrated indoors. Two of the main reasons reported for using a generator were to provide electricity to a location during a power outage stemming from a storm, such as a hurricane or ice storm, and to provide electricity after power was shut off to the residence by the utility company due to a bill dispute or nonpayment.

In 2006, the Commission voted to approve an advance notice of proposed rulemaking (ANPR) and directed staff to investigate potential technologies to reduce the hazard.¹ Staff's strategy is to reduce the generator engine's CO emission rate, such that CO poisoning symptom onset is delayed and the rate of progression of worsening symptoms is significantly reduced compared to the relatively quick time to incapacitation and death associated with current generators. This strategy also will help to protect those who are making a conscious effort to use the product properly in an outdoor location. However, this strategy is not intended to make generators safe to run indoors.

Earlier today, CPSC staff released a report² detailing the development and demonstration of a prototype portable generator that dramatically reduces CO emissions over current portable generators available on the market. The prototype generator is a commercially available 5.0 kilowatt (kW) portable generator powered by an 11 horsepower engine that was modified with a closed-loop electronic fuel injection system and a catalyst. After being subjected to a 500-hour durability program, its CO emission rate was 99% below the Environmental Protection Agency's (EPA) CO standard and its hydrocarbons and oxides of nitrogen (HC+NOx) emission rate was approximately 45% below the EPA Phase 2 standard that the unmodified engine was originally certified to and approximately 16% below the more recent Phase 3 standard. It also reduced the average fuel consumption by approximately 20% while maintaining near-rated power.

When the prototype was tested in the common fatal scenario of a generator operating in the attached garage of a single family home, health effects modeling performed on the results showed that the prototype increased the hypothetical garage occupant's escape time interval to 96 minutes from only eight minutes provided by the original, unmodified unit. The increased opportunity to escape applies to individuals already inside the garage and individuals, who, for any reason, enter the garage while the prototype is operating, or in the first few hours after it stops operating. The time interval, between onset of obvious symptoms and incapacitation, is extended even further for hypothetical occupants in the living spaces of the house, relative to the garage location.

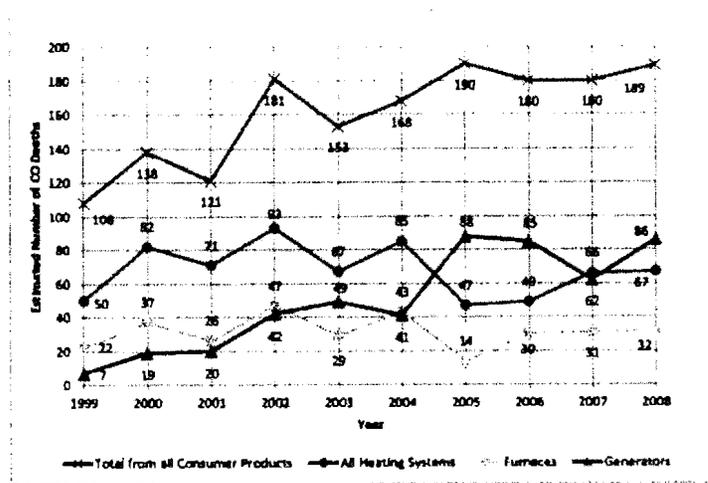
¹ 16 CFR Chapter 11, *Portable Generators; Advance Notice of Proposed Rulemaking; Request for Comments and Information*, Federal Register, 71 FR 74472, December 12, 2006.

² A full copy of the staff report is available at <http://www.cpsc.gov/library/foia/foia12/os/portgen.pdf>.

Based on the data patterns in the incident data, CPSC staff believe that many future fatal and serious CO poisoning incidents involving consumer use of generators can be prevented if industry adopts a stringent CO emission standard for engines installed in generators on the order of that achieved with operation of the CPSC prototype. Staff recognizes that a reduced CO emission rate does not guarantee safety because it depends on individual behavior. However, the additional response time it provides ultimately can prevent a number of serious injuries and deaths.

It is important to note that in 2005, in response to market demand, the marine industry found consensus to adopt voluntarily a stringent CO emission standard to apply only to small, water-cooled spark-ignition (SI) engines used to power marine generators. The marine industry did this specifically to address acute CO exposures that were identified as causing deaths and injuries on and around recreational boats. The EPA set precedent in deciding to adopt this CO level in their Phase 3 regulation as a unique standard that applies specifically to these engines “to prevent backsliding in CO emissions that could occur if new manufacturers were to attempt to enter the market with less expensive, high-CO designs.”³ Further, the EPA did not consider adopting a less stringent standard in their analysis of regulatory alternatives because it “could enable market penetration of new engine offerings which potentially endanger public health.”⁴ The CPSC fatal incident data, which does not include any injury data, clearly shows that CO emissions from small, air-cooled SI engines powering portable generators can endanger consumers’ health.

Figure 1. 1999-2008 Annual Estimates for Non-Fire CO Poisoning Fatalities Associated with Consumer Products and Those Specifically Related to Heating Systems and Generators



³ 40 CFR Parts 90, 60, et al., *Control of Emissions from Nonroad Spark-Ignition Engines and Equipment; Final Rule*. Federal Register, 73 FR 59034, October 8, 2008.

⁴ U.S. EPA. *Control of Emissions from Marine SI and Small SI Engines, Vessels, and Equipment - Final Regulatory Impact Analysis*. EPA420-R-08-014, September 2008.

Day, Christopher

From: Day, Christopher
Sent: Wednesday, December 05, 2012 12:41 PM
To: Laitin, Anna (Commerce) (Anna_Laitin@commerce.senate.gov); Fjeld, Christian (Commerce) (Christian_Fjeld@commerce.senate.gov); Bomberg, Jared (Commerce) (Jared_Bomberg@commerce.senate.gov); No, Brian (Commerce) (Brian_No@commerce.senate.gov)
Cc: Keefe Singer, Jenilee (JKSinger@cpsc.gov); Cusey, William (WCusey@cpsc.gov)
Subject: Nap Nanny Administrative Complaint -- DRAFT Press Statement
Attachments: 121205 Nap Nanny Administrative Complaint Post DRAFT.doc

FOR OFFICIAL/COMMITTEE USE ONLY

Pursuant to your request and for committee oversight responsibilities, attached please find a draft copy of a CPSC press release announcing the filing of an administrative complaint against Baby Matters, LLC. The suit seeks an order from an administrative law judge requiring the company to notify the public of defects in the Nap Nanny Generation One and Two and Chill model baby recliners and provide for a recall and full refund for the product.

I will send a final copy of the press release when it is sent out by our Office of Communications.

Chris

Christopher R. Day
Director
Office of Legislative Affairs
U.S. Consumer Product Safety Commission
4330 East West Highway
Suite 817
Bethesda, MD 20814
Phone: 301-504-7660
Fax: 301-504-0121

