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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

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February 13, 2006

The Honorable Hal Stratton
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, M.D. 20814

Dear Chairman Stratton:

The Senate Committee on Commerce, Science, and Transportation has been keenly interested in the development of improved home product flammability standards for several years. Senator Ernest F. Hollings led the Committee's efforts before his retirement and introduced S. 1798, the American Home Fire Safety Act on October 30, 2003. You testified before this Committee on July 14, 2004, and asked that this Committee forestall action on this bill and promised that the Consumer Product Safety Commission (CPSC) would move aggressively to complete the rule on mattresses and then take on promulgating rules for other bedding components. It is my understanding that the CPSC stands ready to vote on the final rule for mattress flammability on Thursday, February 16, 2006. I commend you on your stewardship for getting this important rule up for a vote.

I have serious concerns about the language in the preamble of the rule that would foreclose statutory and common law tort claims applied to mattress fire safety. The preemption language was not included in the draft rule that was released to the public for the Notice and Comment period. The language was inserted after that period closed, and gave constituents no opportunity to comment on this significant change. Changing the draft rule after the period for public review is contrary to goals of administrative procedure and calls the integrity of the process into question.

In addition, I would like to know whether the Commission has followed the dictates of Executive Order 13132 (August 4, 1999). Under Executive Order No. 13132, the CPSC is required to consult with local and state governments before enacting a rule that would substantially impact them. While the Commission has the authority to preempt conflicting state product standard regulations, the Commission has never extinguished common law actions in tort as part of a rule regulating product safety. The Executive Order states, "National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the

national activity . . . [and] agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.” I would like to know how the CPSC carried out the consultation with all fifty states, and the time they had to respond. I would ask that the Commission provide all comments from the consultation about the preemption language to my staff as soon as possible.

In reviewing the hearing record of July 14, 2004, you made several statements about the goals you hoped to achieve by finalizing the mattress rule. You never mentioned to the Committee your intent to abrogate a consumer’s ability to obtain redress if manufacturers meet the minimum standards of the rule. It took the CPSC more than 30 years to address the safety of upholstered furniture and mattresses. Safety advances and state of the art moved steadily, due in part, to the accountability provided by the civil justice system and state courts. I would hazard to guess that after this rule is finalized, the issue of home fire safety may not be addressed for several more decades, while science and the ability to make mattresses even safer will continue to evolve. Removing a significant incentive for industries to improve outside of meeting the federal standard may have a chilling effect on industries integrating new safety technology into their products. Safety standards are baseline starting points. They should not be ceilings.

In light of the issues regarding the preemption inserted in the draft rule after the Notice and Comment period, I respectfully request that the language in question be set aside and the vote proceed on the draft rule that was reviewed by the public and the Congress. I look forward to hearing from you on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alamy", with a long vertical flourish extending downwards from the end of the signature.

Co-Chairman
U.S. Senate Committee on Commerce,
Science, and Transportation