

U.S. Consumer Product Safety Commission  
 Log of Meeting

2001 MAY 22 A 11:55

**Subject:** Meeting with Decorative Fabrics Association to discuss CPSC staff draft proposed standard to require upholstered furniture to meet a small open flame test.

**Date of Meeting:** February 1, 2001 (2:30 p.m.)

**Log Entry Source:** Walt Sanders

**Date of Log Entry:** May 15, 2001

**Location:** Room 175, CPSC Headquarters

**CPSC Attendees:** Walt Sanders, Counselor to the Chairman

**Non-CPSC Attendees:** Rosencrans Baldwin, President/CEO Bergamo Fabrics; Cary Kravet, President of Kravet; John Brewer, former President of the Decorative Fabrics Association; Richard S. Taffet, Counsel to the Association; Patty Adair of ATMI; Phil Wakelyn of the National Cotton Counsel.

**Summary of Meeting:** After introductions, Mr. Baldwin presented an overview of the Association. He also described the demographics of customers who purchase high-end decorative fabrics and said that these fabrics are normally purchased through interior decorators. Unlike consumers of traditional upholstered furniture fabrics, Baldwin said that most decorative fabrics customers do not have young children and therefore should be placed in a different risk category.

Mr. Cravet presented cost information (attached) indicating that their decorative fabric would bear disproportionate high costs in meeting the staff draft proposal.

Baldwin, Brewer and Cravet showed fabric examples and talked about how difficult it would be to backcoat these fabrics with FR chemicals.

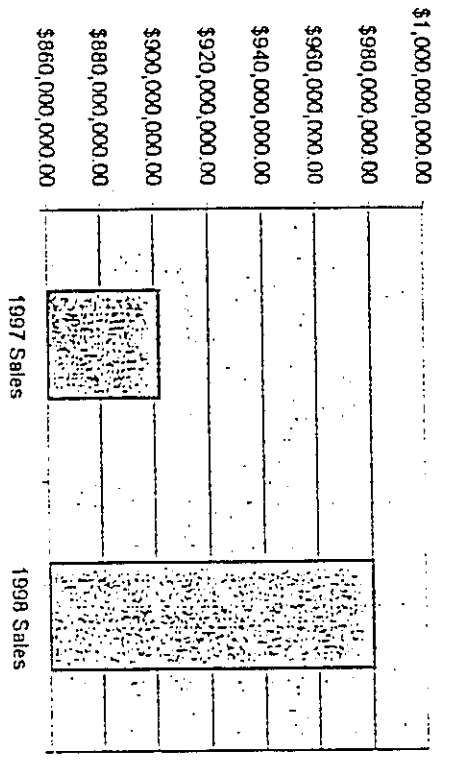
I thanked the Association members for taking the time to meet with me.

Attached are materials provided by the Association.

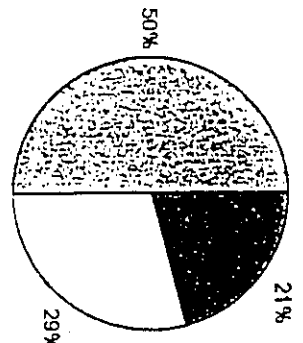


# DFA MEMBERSHIP CHARACTERISTICS

DFA Annual Sales Comparison

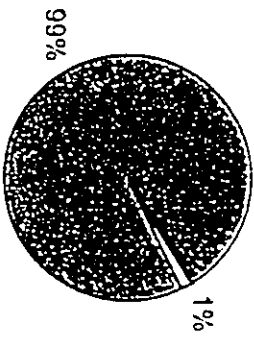


DFA Member's Annual Sales



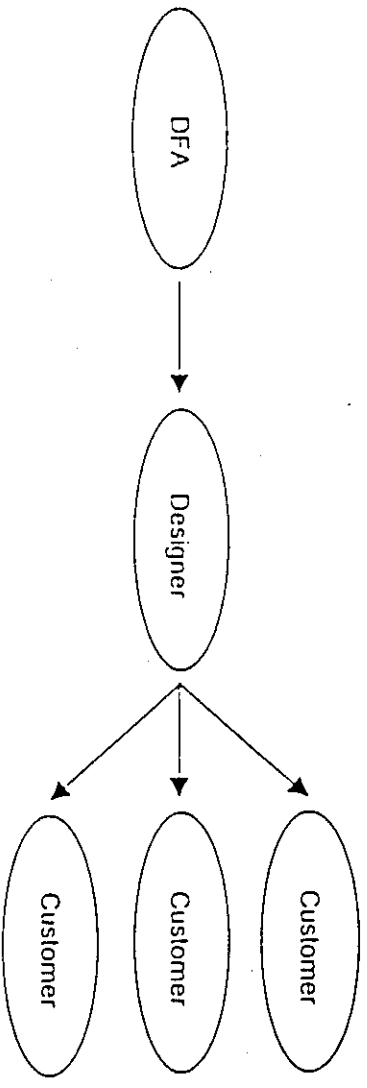
- Less than \$5 million
- Between \$5 and \$10 million
- Over \$10 million

DFA members account for the sale of less than approximately 1.0% to 1.5% of total U.S. upholstery production.



- DFA Members
- Rest of US Upholstery Production

Approximately 80% of total sales by DFA members is of COM fabrics through professional designers.



Economic Comparisons  
and occurrence of open flame upholstery furniture fires

AVERAGE budget for residential projects specified by interior designers <b>\$186,300</b>	AVERAGE annual income of people hiring interior designers <b>\$269,400</b>	AVERAGE value of homes where interiors specified by interior designers <b>\$784,900</b>
---------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------

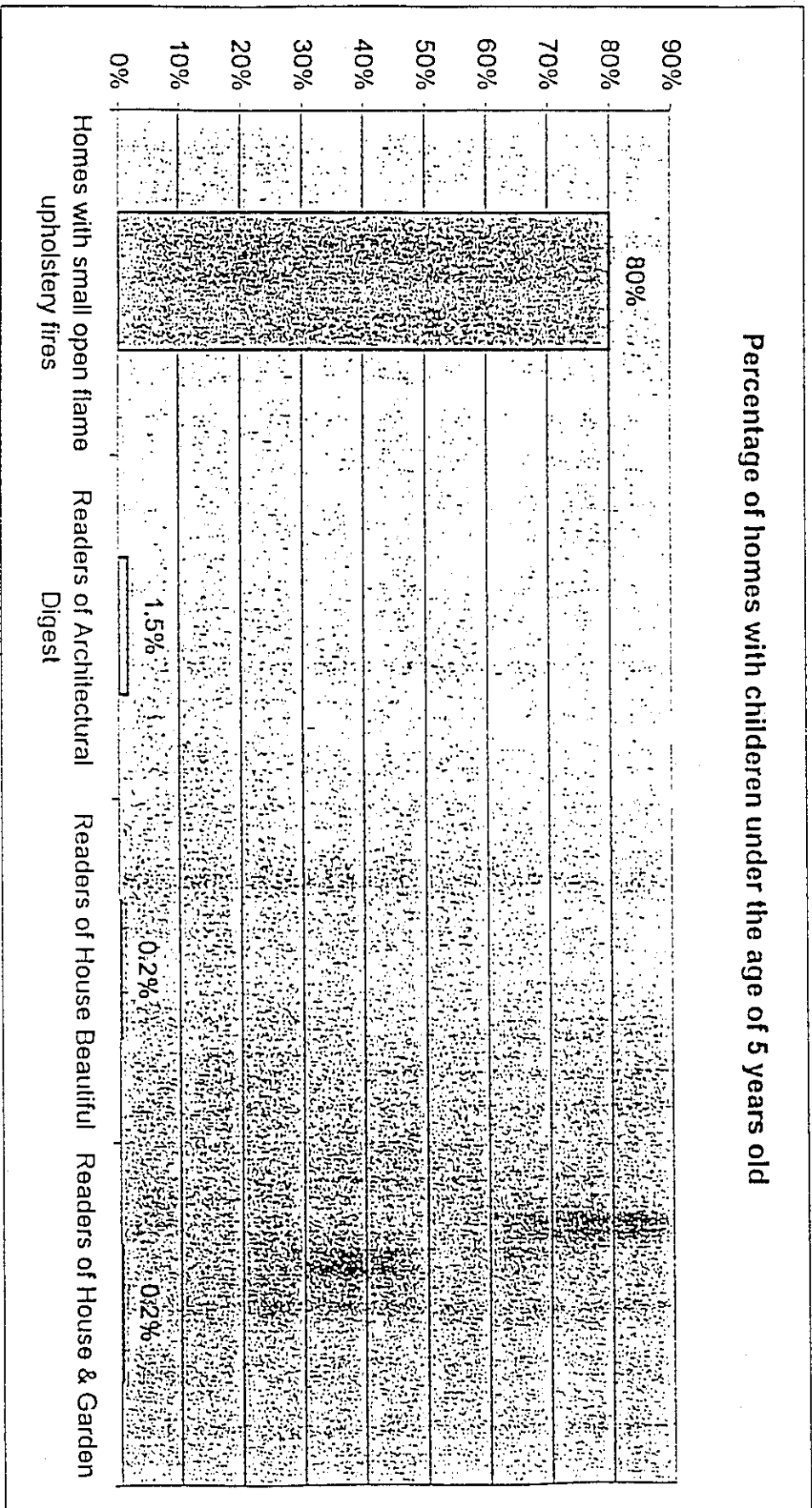
TOP annual household income for 80% of reported upholstery fire cases. <b>\$35,000</b>
-------------------------------------------------------------------------------------------

## CHILD'S PLAY

The CSPC determined that a significant majority of reported small open flame upholstery furniture fires were the result of child play, especially under the age of 5 years old.

Readers of home shelter magazines who use home decorating services is an accurate profile of the ultimate consumer for DFA member's fabrics.

Percentage of homes with children under the age of 5 years old



FR BACKCOATING WILL RESULT  
 IN DISPROPORTIONALLY HIGHER WHOLESALe PRICES  
 FOR DEA FABRICS

Avg. Wholesale Price per yard	\$75.00	\$35.00
Per Yard Increase For Added Yardage Used For Testing & Machine Operability	\$16.67	\$ 7.78
Per Yard Increase For Finisher Minimums	\$22.00	\$22.00
Increased Per Yard Wholesale Price	\$113.67	\$64.78
% Increase <i>on a 1 year/mile</i> →	51%	85%

This per yard wholesale price was calculated by multiplying the average per yard wholesale price by 2 (the assumed average additional yards required) and dividing by the average "cut order" yardage (9).

This per yard wholesale price was calculated by dividing the average finisher minimum (\$95) by the average "cut order" yardage (9), and dividing by .48 (to reflect a standard margin and cost of goods sold).

Survey of U.S. Flame Retardant Treatment Houses

Finisher	House	Minimum	Test	Operability	Yard	Cost
		Yardage	Yardage	Yardage		
#1	S	95.00	1	1	S	2.25
#2	S	63.00	1.5	1	S	2.05
#3	S	75.00	1.5	1	S	2.50
#4	S	150.00	1	1	S	2.00
#5	-	-	1.5	1	S	8.00

OUTLINE OF COMMENTS BY  
THE DECORATIVE FABRIC ASSOCIATION  
TO THE  
CONSUMER PRODUCT SAFETY COMMISSION STAFF  
CONCERNING A POSSIBLE  
SMALL OPEN FLAME UPHOLSTERY FURNITURE REGULATION

JUNE 28, 2000

I. Introduction

- A small open flame upholstery furniture regulation applicable to fabrics sold by DFA members will not effectively mitigate the risks sought to be addressed, or provide the benefits sought to be achieved, by such a regulation.<sup>1</sup>
- A small open flame upholstery furniture regulation applicable to all residential fabrics would have a disproportionate and potentially crippling impact on the ability of DFA type companies to remain as viable businesses.

II. A Regulation Applicable To DFA Members' Fabrics  
Will Not Benefit Consumers Or Reduce Risks Of Small  
Open Flame Upholstery Furniture Fires

- Total sales by DFA's 55 members in 1998 were approximately \$980 million, an 8% increase over 1997 results, which were in turn greater than results in 1996.
- 50% of DFA's membership is comprised of companies with annual sales of less than \$5 million; 21% with annual sales of between \$5 million and \$10 million; and 29% with annual sales in excess of \$10 million.
- DFA members account for the sale of less than approximately 1.0% to 1.5% of total U.S. upholstery production.<sup>2</sup>

---

<sup>1</sup> The DFA does not suggest that a small open flame upholstery furniture regulation would be either appropriate or justifiable under applicable standards as respects any segment of the home furnishings industry.

<sup>2</sup> The CPSC has determined that in 1996 approximately 533.5 million square yards of upholstery fabric was produced in the U.S. See "Economic Considerations of Options for



- Approximately 80% of total sales by DFA members is of COM fabrics through professional interior designers.<sup>3</sup> The CPSC's data reveals that households using the services of designers and purchasing COM fabrics are not households likely to experience small open flame upholstery furniture fires.
- The CPSC reports that in approximately 80% of the reported cases of small open flame upholstery furniture fires reporting such information, household income was less than \$35,000 annually.<sup>4</sup> In contrast:
  - median and average household income for people using interior designers is in the hundreds of thousands of dollars.<sup>5</sup>
  - the average budget for residential projects worked on by interior designers from September 1998 to September 1999 was

---

Addressing Small Open Flame Ignitions of Upholstered Furniture," Charles L. Smith, directorate for Economic Analysis, October 1997 ("Smith Report") at 6. DFA data reveals that in 1996 members sold a total of approximately 7.75 million linear yards of fabric. Of this amount, however, only 47%, or approximately 3.65 million linear yards was produced in the U.S. To convert square yards to linear yards we multiplied by .67 ( $533.5 \times .67 = 357.5$ ), and then calculated the percentage of U.S. production accounted for by DFA members by dividing 3.65 by 357.5. In 1997, it has been reported, 403.3 million linear yards of residential upholstery fabrics were produced. See Ciprus, "The Color of Upholstery," UDM Upholstery Design & Manufacturing, May 1998. DFA data indicates total sales of approximately 14.5 million linear yards of fabric, of which 57% was imported. Accordingly, DFA member's 1997 sales of U.S. produced upholstery fabrics represented approximately 1.5% of the total ( $14.5 \text{ million} \times .43$  divided by 403.3).

<sup>3</sup> See DFA 1998 Membership Census, annexed hereto as Exhibit A.

<sup>4</sup> "Small Open Flame Ignitions of Upholstered Furniture, Final Report," Kimberly Long, Directorate for Epidemiology and Health Sciences - Division of Hazard Analysis, September 1997 ("Long Report"), at 18.

<sup>5</sup> According to the "Survey of Affluent Buyers of Home Furnishings," a Cahners Research Report prepared for Interior Design Magazine, February 1997, at 2, the median household income of people surveyed was \$227,400 and the average household income was \$269,400. A copy of this report is annexed hereto as Exhibit B.

\$186,300, and only 7% of the projects reported had budgets of less than \$10,000.<sup>6</sup>

— the average value of homes worked on by interior designers was \$784,900, with only 2% valued at less than \$100,000.<sup>7</sup>

- The CPSC determined that a significant majority of reported small open flame upholstery furniture fires were the result of child play, especially by children under the age of 5 years old.<sup>8</sup>

— according to House & Garden Magazine, based on data gathered by Mediamark Research Inc. in the Fall of 1999, the percentage of Readers of home shelter magazines who used home decorating services (an accurate profile of the ultimate consumer for DFA members' fabrics) with children under the age of 5 was: 1.5% for Architectural Digest; .2% for House Beautiful; and .2% for House & Garden.<sup>9</sup>

### III. Consumers Will Be Denied DFA Members' Product Offerings

- 75% to 80% of DFA members' products are cotton, linen, silk or rayon, most of which would appear to be difficult to backcoat and have pass the CPSC's draft proposed small open flame regulation.
- Most aesthetic appeal of many fabrics would be lost.
- The most popular products for many years — e.g., cotton and rayon chenilles, boucles, silks, washed fabrics, matelasse, pocket weaves, velvets

---

<sup>6</sup> "A Profile of Interior Designers Who Do Residential Work," Cahners Research, September 1999 (the "Cahners Report"), at 6. A copy of this report is annexed hereto as Exhibit C.

<sup>7</sup> Cahners Report at 5.

<sup>8</sup> Long Report at 14.

<sup>9</sup> See Exhibit D hereto.

— are in the category of products that, we understand, to date cannot be successfully FR backcoated.

#### IV. DFA Members Will Face Disproportionate Increases In Costs

- DFA members do not determine the end uses of particular fabric skus — such decisions are made by consumers through professional interior designers. Accordingly, DFA members will have to either maintain duplicative treated and non-treated inventories of any skus that might be used for an "upholstery" application or have "cut orders" FR treated when ordered for "upholstery" uses. Either alternative would be prohibitively costly.<sup>10</sup>
- Duplicative inventories would result in increased volumes of purchases from mills without, because of mill minimums, a corresponding increase in sales. On average, approximately 48% of DFA members' sales are already attributable to the cost of goods sold.<sup>11</sup>
- Duplicative inventories also would result in higher inventory carrying costs, the need for additional showroom space and additional warehouse facilities. Showroom expense, on average, already account for approximately 14% of DFA members' total revenues,<sup>12</sup> and available showroom space is scarce.
- Having "cut orders" treated would impose significantly higher unit costs on DFA members because "cut orders" can be as small as 1 yard, and are typically not more than 30 yards, with an average of 8 to 9 yards. Finishers charge minimums, irrespective of the number of yards, that currently range from \$65 to \$150.
- DFA members would suffer tremendous yardage losses because treatment of "cut orders" requires additional yardage to be provided to finishers for testing and machine operability purposes. DFA has been advised that an additional 2 to 2½ yard would be required (1 to 1½ yards for testing by the finisher to allow for certification, and 1 yard for machine operability). DFA

---

<sup>10</sup> We note that the CPSC's analysis of costs in the ANPR briefing package assumed that there would not be the need for duplicative inventories, and it was recognized that an increase in the required number of skus would add costs, including as respects non-treated fabrics. See Smith Report at 13 and 16.

<sup>11</sup> See DFA 1998 Membership Census.

<sup>12</sup> Id.

members' fabrics not uncommonly have a wholesale value of upwards of \$75/yard, and not infrequently of hundreds of dollars per yard.

- DFA members would face shortages in finishing capacity, which is otherwise being used for larger orders. DFA has been advised that small "cut order" jobs are not desirable for finishers.
- Finishing of "cut orders" would likely be inconsistent requiring duplicative processes and testing.
- Delivery times and costs would be increased. Transportation costs to and from finishers would most likely be borne by DFA members.
- Whether duplicative purchases are made from mills or treatment of "cut orders" is obtained, duplicative showroom samples and sample books for treated and non-treated fabrics of the same sku would be required, and existing samples would have to be discarded. Approximately 8.5% of DFA members' total sales are already attributable to such expenses.<sup>13</sup>

---

<sup>13</sup> Id.

GOLENBOCK, EISEMAN, ASSOR & BELL

437 MADISON AVENUE  
NEW YORK, NY 10022-7302

(212) 907-7300  
FAX (212) 754-0330

THAN E. ASSOR  
WRENCE M. BELL  
DAVID J. EISEMAN  
JEFFREY T. GOLENBOCK  
ANDREW C. PESKOE  
RICHARD S. TAFFET  
ROBERT B. GOEBEL  
DONALD A. HAMBURG  
STEVEN G. CHILL  
LEONARD EISENBERG  
MARTIN S. HYMAN  
CHARLES D. SCHMERLER  
JEFFREY S. BERGER  
LAWRENCE R. HAUT  
ANDREW M. SINGER  
JANICE B. GRUBIN  
JACQUELINE G. VEIT  
JONATHAN L. FLAXER

ALVIN R. CHIN  
DAVID A. COLLINS  
JOSÉ-MANUEL A. DE CASTRO  
AIELLEEN P. FAJARDO \*  
HILDA B. GILFILLAN  
RUTH G. HIRSHFELD  
ELIZABETH A. JAFFE  
RICHARD S. KAPLAN  
DAVID K. LEITNER  
GIOIA M. LIGOS \*  
ELAINE S. MOSHE  
CHARLES B. RICH  
DEBRA S. SCHACHTEL  
LESLIE J. SHERMAN  
ADAM C. SILVERSTEIN  
JOEL S. TENNENBERG  
THOMAS J. WILSON

WILLIAM G. PEARLSTEIN  
JONATHAN S. HACKER  
COUNSEL

\*NOT ADMITTED IN NY

August 31, 2000

VIA TELECOPIER

Mr. Dale Ray  
Consumer Product Safety Commission  
4330 East/West Highway  
Bethesda, Maryland 20814

Re: Decorative Fabrics Association —  
Proposed Small Open Flame Upholstery Furniture Regulation

Dear Mr. Ray:

Further to the materials and information provided to the CPSC Staff by the Decorative Fabrics Association ("DFA") in connection with the above-referenced regulatory activity, enclosed is a proposed exemption, and rationale therefore, that the DFA believes would be appropriate to address the issues previously raised with you.

The proposed exemption seeks to address the concerns previously raised with you regarding the scope of the CPSC's regulatory efforts. Specifically, we believe that the proposed exemption would allow the CPSC to focus a small open flame regulation, assuming it were to decide one is necessary, to address those risks perceived by the CPSC staff (which do not involve consumers of DFA fabrics), without imposing the significant and disproportionate costs we have previously identified that would have to be borne by DFA-type companies if they were required to comply with what we understand may be the proposed regulation.

Mr. Dale Ray  
August 31, 2000  
Page 2

Once you have had the opportunity to consider the enclosed material, please feel free to contact us to discuss any questions, comments or issues you may have with it. The DFA will make itself available as needed to address this matter with the CPSC staff.

Thank you again for your continued interest in the issues faced by the DFA and its members.

Very truly yours,



Richard S. Taffet

cc: Mr. Crans Baldwin  
Mr. Cary Kravet  
Mr. John Brewer

August 31, 2000

The DFA, for the reasons indicated, proposes the following exemption from a small open flame upholstery furniture regulation that may be proposed.

**PROPOSED EXEMPTION**

Residential upholstery furniture upholstered with decorative fabrics:

- sold as "Customers' Own Merchandise" or "Customers' Own Material" ("COM"), as a component of an interior decorating project;
- to an ultimate consumer through an interior design professional, which would be a person (i) whose primary and full-time business is commercially providing decorative interior design services to consumers; and (ii) who acts as an intermediary between the supplier of home furnishing products and the consumer of such goods in making design decisions and purchases. Evidence of such a status would include transactional documentation between the interior designers and fabric and/or furniture suppliers and customers, credit reports concerning the interior designer from organizations such as CreditLink (a commonly used credit reporting agency for the interior design trade) and resale certificates provided by interior designers to suppliers for sales tax purposes; and
- where the decorative fabric either (i) has a published wholesale price of \$20/linear yard or more,<sup>1</sup> or (ii) weighs 10 oz./square yard or less.<sup>2</sup>

---

<sup>1</sup> This would approximate \$40/linear yard at retail.

<sup>2</sup> This would approximate 15 oz./linear yard.

## RATIONALE

The DFA believes that the foregoing exemption would provide the basis for distinguishing the types of fabrics sold by DFA-type companies, which, as previously presented to you, we do not believe present the risks of fire related injuries or deaths that the CPSC staff apparently believes should be addressed through a regulation. As previously established, those households consuming upholstery furniture incorporating DFA-type fabrics are not the households which the CPSC data indicate may be at risk to small open flame upholstery fires.

1. The exemption would require that fabrics be sold as COM through an interior design professional as a component of an interior design project. Accordingly, such fabric would not be consumed by households that the CPSC staff believes are at risk in connection with small open flame upholstery furniture fires.

2. The interior design professional would have to meet certain criteria. Specifically:

— the interior designer would have to be primarily engaged on a full-time basis in commercially providing interior design services. A non-professional partaking in interior design activities as a hobby or as a sideline would not qualify. Evidence that providing design services is a primary occupation could be evidenced as stated above.

— the interior design professional would also have to act as the intermediary between the fabric (and furniture) supplier and the ultimate consumer. As shown by the materials previously supplied to you, acting in such a role provides the ultimate consumer with far greater information and knowledge concerning the product being purchased and its characteristics. Consumers will not be making uninformed choices.

3. The price and weight points provide a basis for encompassing DFA-type companies' product lines.

### A. Price

Exempt goods would be priced, even at the lowest level, above mass marketed fabrics that are most likely to be consumed by those households that are perceived by the CPSC staff to be at risk. A survey of DFA member companies indicates that approximately 87% of all members' patterns have a published



wholesale price of \$20 or more (approximately \$40 or more per linear yard at retail).

B. Weight

Data gathered by DFA from its members indicate that fabrics sold as COM through professional interior designers at published wholesale prices of less than \$20/linear yard are typically lighter-weight cotton prints (or similar fabrics) weighing less than 10 oz./square yard (approximately 15 oz./linear yard). These fabrics, like the more expensive fabrics sold by DFA-type companies through interior designers, are used for multipurposes in interior design projects based upon the decision making of the interior designer and consumer where, for whatever design reasons, it is determined that heavier or more expensive fabric alternatives would not be appropriate. Thus, even if such lighter-weight fabrics are used for a furniture application in connection with a particular project, they would still only be a component of the project, and would likely be used for other applications for that same project (e.g., wallcovering, window treatments, draperies, etc.). As previously discussed with the staff, however, such design decisions could not be made by an interior designer or consumer if the lighter-weight fabrics were required by a CPSC regulation to be treated in some manner. Coloration, aesthetics and other characteristics would not permit the multipurpose uses and would limit an interior designer's, as well as a consumer's, choice in developing an overall project. Moreover, the issues of double inventory and treatment costs previously discussed with the staff would arise and have a disproportionate impact on DFA members. Exempting these types of lighter-weight fabrics would not, though, unnecessarily expand the exemption because such fabrics would still have to be COM and be sold through an interior design professional.

\* \* \*

For these reasons, we believe the proposed exemption is narrowly drawn to cover only that segment of the home furnishings market that is directed toward households other than those that the CPSC may believe to be at risk of small open flame upholstery furniture fires.