

airspace at Burlington, VT (76 FR 38584) Docket No. FAA–2011–0243. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that the Burlington VORTAC is now recognized as the Burlington VOR/DME. This rule notes the change. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace areas at Burlington, VT, to support new Standard Instrument Approach Procedures at Burlington International Airport. The existing Class E surface area airspace and Class E airspace designated as an extension are being modified for the safety and management of IFR operations at the airport. The geographic coordinates for Burlington International Airport in all Class E airspace areas are being adjusted to be in concert with the FAA's aeronautical database. This action also changes the name of the navigation aid from Burlington VORTAC to Burlington VOR/DME. This action enhances the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Burlington International Airport, Burlington, VT.

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

*Paragraph 6002 Class E airspace designated as surface areas.*

\* \* \* \* \*

#### ANE VT E2 Burlington, VT [Amended]

Burlington International Airport, VT  
(Lat. 44°28'19" N., long. 73°09'12" W.)  
Burlington, VOR/DME  
(Lat. 44°23'50" N., long. 73°10'57" W.)

That airspace extending upward from the surface within a 5-mile radius of Burlington International Airport, and within 2.4 miles each side of the Burlington VOR/DME 201° radial extending from the 5-mile radius of the airport to 7 miles southwest of the Burlington VOR/DME, and within 1.8 miles each side of the Burlington International Airport 302° bearing extending from the 5-mile radius of the airport to 5.4 miles northwest of the airport, and within 4 miles each side of the Burlington International Airport 131° bearing extending from the 5-mile radius to 16 miles southeast of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to

Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6003 Class E airspace areas designated as an extension.*

\* \* \* \* \*

#### ANE VT E3 Burlington, VT [Amended]

Burlington International Airport, VT  
(Lat. 44°28'19" N., long. 73°09'12" W.)  
Burlington, VOR/DME  
(Lat. 44°23'50" N., long. 73°10'57" W.)

That airspace extending upward from the surface within 2.4 miles on each side of the Burlington VOR/DME 201° radial extending from a 5-mile radius of the airport to 7 miles southwest of the Burlington VOR/DME, and within 1.8 miles each side of the Burlington International Airport 302° bearing extending from the 5-mile radius of the airport to 5.4 miles northwest of the airport and within 4 miles each side of the Burlington International Airport 131° bearing extending from the 5-mile radius of the airport to 16 miles southeast of the airport.

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### ANE VT E5 Burlington, VT [Amended]

Burlington International Airport, VT  
(Lat. 44°28'19" N., long. 73°09'12" W.)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of Burlington International Airport; excluding that airspace within the Plattsburgh, NY, Class E airspace area.

Issued in College Park, Georgia, on August 29, 2011.

**Mark D. Ward,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2011–24349 Filed 9–22–11; 8:45 am]

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1632

[CPSC Docket No. CPSC–2010–0105]

### Standard for the Flammability of Mattresses and Mattress Pads; Technical Amendment

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is amending its standard for the flammability of mattresses and mattress pads to revise the ignition source specification in that standard.<sup>1</sup>

<sup>1</sup> The Commission voted 5–0 to approve publication of this final rule. Commissioner Nancy

The ignition source cigarette specified for use in the mattress standard's performance tests is no longer produced. The Commission is requiring a standard reference material cigarette, which was developed by the National Institute of Standards and Technology, as the ignition source for testing to the mattress standard.

**DATES:** The rule will become effective on September 23, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Allyson Tenney, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone (301) 504-7567; [atenney@cpsc.gov](mailto:atenney@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

*1. The Current Standard and the Need To Change the Ignition Source*

The Standard for the Flammability of Mattresses and Mattress Pads ("the Standard"), 16 CFR part 1632, was initially issued by the U.S. Department of Commerce in 1972 under the authority of the Flammable Fabrics Act ("FFA"), 15 U.S.C. 1191 *et seq.* When the Consumer Product Safety Act ("CPSA") created the Consumer Product Safety Commission, it transferred to the Commission the authority to issue flammability standards under the FFA.

The Standard sets forth a test to determine the ignition resistance of a mattress or mattress pad when exposed to a lighted cigarette. Lighted cigarettes are placed at specified locations on the surface of a mattress (or mattress pad). The Standard establishes pass/fail criteria for the tests. Currently, the Standard specifies the ignition source for these tests by its physical properties. These properties were originally selected to represent an unfiltered Pall Mall cigarette, which was identified as the most severe smoldering ignition source.

In January 2008, we learned that the R.J. Reynolds Tobacco Company planned to stop producing unfiltered Pall Mall cigarettes (although it would continue to make a reduced ignition propensity or "RIP" version). CPSC staff, mattress manufacturers, and testing organizations were concerned about testing to the Standard if the specified ignition source cigarettes were unavailable. Under an Interagency Agreement ("IAG") with the CPSC, the

National Institute of Standards and Technology ("NIST") developed a standard reference material ("SRM") cigarette that could be used as the ignition source in the Standard.

*2. NIST's Research*

Currently, the Standard requires that the ignition source for testing mattresses "shall be cigarettes without filter tips made from natural tobacco,  $85 \pm 2$  mm long with a tobacco packing density of  $0.270 \pm 0.02$  g/cm<sup>3</sup> and a total weight of  $1.1 \pm 0.1$  g." 16 CFR 1632.4(a)(2). This specification was intended to describe a conventional unfiltered Pall Mall cigarette that was available when the Standard was developed. According to research conducted by NIST's predecessor, the National Bureau of Standards, in the 1970s, this specification was chosen in order to replicate the most severe smoldering ignition source for testing mattresses and mattress pads. (See Loftus, Joseph J., "Results of Temperature Measurements Made on Burning Cigarettes and Their Use as a Standard Ignition Source for Mattress Testing," NBS Memo Report, National Bureau of Standards, June 18, 1971; and Loftus, Joseph J., "Back-Up Report for the Proposed Standard for the Flammability (Cigarette Ignition Resistance) of Upholstered Furniture," PFF 6-76, NBSIR 78-1438, National Bureau of Standards, Gaithersburg, MD, June 1978.)

In January 2008, when we learned that R.J. Reynolds intended to stop producing the unfiltered Pall Mall cigarettes, we sought an alternate ignition source that would have the same burning characteristics as the ignition source specified in the Standard. Our intention has been to find a replacement ignition source that would replicate the level of safety of the ignition source specified in the Standard and would provide consistency in testing. Under this approach, the Standard would maintain the same level of safety, neither more nor less stringent. In August 2008, we entered into an IAG with NIST to develop a new cigarette ignition source SRM that would fit these parameters.

There are no cigarette ignition test data to characterize the ignition propensity of cigarettes from 1972, when the Standard was promulgated. In the absence of such data, and consistent with the intent of the original Standard, NIST sought to identify the highest ignition strength cigarette. NIST evaluated Pall Mall cigarettes of different vintages (1992 through 2008) to determine the ignition strengths of the cigarettes that had been used to test

soft furnishings, such as mattresses. The NIST research strongly indicated that the SRM is equivalent in ignition strength to the previous highest known strength unfiltered Pall Mall cigarette.

In June 2009, NIST provided us with a report on its research, "*NIST Technical Note 1627: Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes*" (Ref. 1). We used NIST's research as the basis to establish specific parameters for a new ignition source to be specified in the Standard.

After developing a standard procedure for determining the ignition strength of cigarettes and assessing different vintage cigarettes, NIST recommended that the new SRM cigarette meet the following specification:

- Nominal length: 83 mm  $\pm$  2mm;
- Tobacco packing density:  $0.270$  g/cm<sup>3</sup>  $\pm$   $0.020$ g/cm<sup>3</sup>;
- Mass:  $1.1$  g  $\pm$   $0.1$  g;
- Ignition Strength: 70 Percent Full Length Burn (PFLB) to 95 PFLB using ASTM E 2187, as modified in Section 4.2 of NIST Technical Note 1627; and
- Non-"Fire-Safe Cigarette" (FSC)

The first three descriptors are consistent with the physical requirements listed in the Standard for the ignition source. The recommended ignition strength range reflects the three oldest vintages of the Pall Mall cigarette tested by NIST. These vintages reflect the intent of the Standard to represent a worst-case ignition source.

**B. Statutory Provisions**

The FFA sets forth the process by which we can issue or amend a flammability standard. In accordance with those provisions, we are revising the ignition source specification in the Standard to require that the SRM cigarette developed by NIST be used as the ignition source for testing under the Standard. As required by the FFA, we published a proposed rule containing the text of the ignition source revision, alternatives considered, and a preliminary regulatory analysis. 15 U.S.C. 1193(i). 75 FR 67047 (Nov. 1, 2010). To issue a final rule, the Commission must prepare a final regulatory analysis and make certain findings concerning any relevant voluntary standard, the relationship of costs and benefits of the rule (in this case, the ignition source revision), and the burden imposed by the rule. *Id.* 1193(j). In addition, the Commission must find that the rule: (1) Is needed to adequately protect the public against the risk of the occurrence of fire leading to death, injury, or significant property damage; (2) is reasonable,

A. Nord filed a statement concerning this action which may be viewed on the Commission's Web site at <http://www.cpsc.gov/pr/nord09132011.pdf> or obtained from the Commission's Office of the Secretary.

technologically practicable, and appropriate; (3) is limited to fabrics, related materials, or products which present unreasonable risks; and (4) is stated in objective terms. *Id.* 1193(b).

The Commission also must provide an opportunity for interested persons to make an oral presentation concerning the rulemaking before the Commission may issue a final rule. *Id.* 1193(d). In the preamble to the proposed rule (75 FR at 67048), we requested that anyone who wanted to make an oral presentation concerning this rulemaking contact the Commission's Office of the Secretary within 45 days of publication of this notice. We did not receive any requests to make an oral presentation.

### C. Response to Comments on the Proposed Rule

We published a notice of proposed rulemaking in the **Federal Register** on November 1, 2010. 75 FR 67047. We received five comments in response to the proposal. Two comments were from industry trade associations: the International Sleep Products Association ("ISPA") and the National Textile Association ("NTA"). Two comments were from individuals, and one comment was from the National Association of State Fire Marshals ("NASFM").

A summary of each of the commenter's topics is presented, and each topic is followed by our response. For ease of reading, each topic will be prefaced with a numbered "Comment"; and each response will be prefaced by a corresponding numbered "Response." Each "Comment" is numbered to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value or importance or the order in which it was received. Comments on similar topics are grouped together.

#### 1. The Use of SRM 1196

(*Comment 1*) One commenter agreed that we should specify SRM 1196 and maintain the level of safety established by the original Standard, noting that "lowering the strength of the ignition source would be tantamount to a policy decision by CPSC to make the standard less effective, as it would reduce the level of resistance to smoldering ignition sources currently required of mattresses and mattress pads."

(*Response 1*) We agree that it is appropriate to specify SRM 1196 as the new ignition source for 16 CFR part 1632. Incorporation of this SRM would be "safety-neutral" and would not affect the stringency of the Standard.

(*Comment 2*) Two commenters stated that we should consider the 2007–08 non-RIP Pall Mall as the target for a "safety neutral" SRM cigarette because in NIST testing, it exhibited a 30 percent to 50 percent full-length burn (PFLB). They argued that we are effectively increasing the stringency of the Standard by using an SRM cigarette with a 90 percent PFLB.

(*Response 2*) The use of SRM 1196, which mimics the highest PFLB measured by NIST among commercial cigarettes (the 1992 Pall Mall), does not alter the intent of the Standard; rather, SRM usage ensures continuity of a reliably high PFLB with low variability in the ignition source. This approach is consistent with the intent of the Standard, and it means that the level of safety that the Standard has provided over the years will remain the same.

The consistently high PFLB of SRM 1196 (70 percent to 90 percent PFLB) is key to successful completion of the test to determine compliance with the Standard. To test the smoldering ignition of mattresses and mattress pads under 16 CFR part 1632, cigarettes are expected to burn their entire length. If a cigarette self-extinguishes during testing, it must be replaced with a cigarette in another location of the same type of construction feature. Tests using lower PFLB cigarettes would yield misleading results that do not reflect the performance of the mattress being tested. Further, using an SRM cigarette with a lower PFLB, such as the 2007–08 non-RIP Pall Mall, to meet the testing requirements of 16 CFR part 1632, would require using more cigarettes to complete the test, to the extent that self-extinguishing cigarettes would need to be replaced during the test. In some cases, it may be impossible to complete a test if the cigarettes self-extinguish consistently.

(*Comment 3*) Three commenters stated that we should allow unfiltered RIP Pall Malls or other lower heat-producing cigarettes that are commercially available on the market to be used for testing to 16 CFR part 1632.

(*Response 3*) The Standard does not require that a commercial cigarette be used; however, cigarettes that burn their full length are needed to complete the test. In 1972, the unfiltered, 85 mm Pall Mall was identified as the most severe ignition source among commercial cigarettes. SRM cigarettes, which are designed to exhibit consistent burning behavior, did not exist at that time. NIST's research demonstrates that the PFLB performance of commercial cigarettes is subject to significant variability that can lead to inconsistent test results. The use of SRM 1196,

which mimics the highest PFLB measured by NIST among commercial cigarettes (the 1992 Pall Mall), does not alter the intent of the Standard; rather, SRM usage ensures continuity of a reliable ignition source with a high enough PFLB to allow for completion of the test.

(*Comment 4*) One commenter suggested that we had insufficient information to reject another existing SRM cigarette—NIST SRM 1082—which is a RIP cigarette) as the ignition source in the Standard. The commenter argued that we should allow NIST SRM 1082 to be used in 16 CFR part 1632 instead of SRM 1196.

(*Response 4*) The purpose of specifying an SRM cigarette, which has been certified by NIST to meet specifications, is to enhance repeatability of smoldering ignition test results without changing the level of fire safety provided by the Standard.

State laws requiring "fire safe" cigarettes stipulate that such cigarettes meet an established cigarette fire safety performance standard, based on ASTM E2187, *Standard Test Method for Measuring the Ignition Strength of Cigarettes*. NIST SRM 1082 has a  $12.6 \pm 3.3$  percent PFLB and is intended for use by test laboratories to assess and control their test method and apparatus to evaluate cigarette ignition propensity of RIP cigarettes in accordance with ASTM E2187.

A cigarette with a low PFLB, like SRM 1082, would yield fewer successfully completed tests for purposes of part 1632, resulting in the use of more cigarettes to complete the test to determine compliance with the Standard. In addition, use of SRM 1082 would not represent a severe cigarette ignition source, and as such, would not be consistent with the original Standard.

(*Comment 5*) One commenter suggested that we move ahead with development of a surrogate smoldering ignition source that is not a cigarette.

(*Response 5*) SRM 1196 is a short-term solution to a longer-term issue. Anticipating the need for a longer-term solution, we have entered into a new Interagency Agreement with NIST to develop a surrogate ignition source. This project began in FY 2010.

(*Comment 6*) One commenter stated that SRM 1196 is an inappropriate ignition source for upholstery fabric.

(*Response 6*) This regulatory proceeding pertains only to 16 CFR part 1632, *Standard for the Flammability of Mattresses and Mattress Pads*. It does not apply to the Commission's upholstered furniture rulemaking (73 FR 11702 (March 4, 2008)).

## 2. The Effectiveness of Reduced Ignition Propensity (RIP) Cigarettes

(Comment 7) Two commenters asserted that we did not properly consider the potential of RIP cigarettes in reducing cigarette-ignited fires.

(Response 7) We are very interested in evaluating the potential of RIP cigarettes to reduce cigarette-ignited fires when mattresses and mattress pads are the first item ignited. In FY 2007, we began work on a Cigarette Ignition Risk (CIR) project. The goal of the CIR project is to evaluate the change in the cigarette-ignited fire hazard presented by RIP cigarettes. This project was deferred in FY 2009 and FY 2010, due to resource constraints. We resumed the study in FY 2011. Results from the CIR study may inform the agency's development of a surrogate ignition source.

Although RIP cigarettes are designed to self-extinguish if left unattended, claims that RIP cigarettes actually reduce cigarette-ignited fires have not been substantiated by empirical state or national data. We have begun investigating the effect of RIP cigarettes but have no test data or epidemiological evidence demonstrating that RIP cigarettes decrease the number of reported incidences of smoldering ignitions of mattresses or mattress pads. We are not aware of any published studies on the effectiveness of RIP cigarettes that included testing of RIP and non-RIP cigarettes on commercially available mattresses, mattress pads, or mattress mock-ups. If the mattress industry has sufficient test data to support the hypothesis that RIP cigarettes consistently self-extinguish on 16 CFR part 1632- and part 1633-compliant mattresses, we would welcome the opportunity to review that information.

All 50 states and Canada have adopted pass/fail criteria that will allow no more than 25 percent of 40 tested cigarettes to burn their full length when tested in accordance with ASTM E2187; this means that 10 out of every 40 tested RIP cigarettes are allowed to burn their full length (*i.e.*, not self-extinguish). Although this does not mean that 25 percent of commercial RIP cigarettes would be expected to fail the test, it suggests that zero PFLB is unlikely. The "worst-case" RIP cigarette would be one that burns its full length exactly like a non-RIP cigarette. Further, commercial RIP cigarettes could exhibit the same variability as observed among non-RIP cigarettes, thereby reducing reliability of test results.

(Comment 8) One commenter noted that the report from the National Fire Protection Association ("NFPA"), "The

Smoking Material Fire Problem" (Hall, J.R. *The Smoking Material Fire Problem*, National Fire Protection Association, Sept. 2010. <http://www.nfpa.org>) stated that RIP cigarettes have the potential to reduce deaths and injuries from cigarette-caused fires by 56 to 77 percent, compared to 2003 levels. The commenter noted that this was not accounted for in the proposed rule.

(Response 8) The NFPA estimate is preliminary and will likely change when 2010 data are available. The NFPA report cited estimates that when fully effective, the RIP cigarette laws should result in a 56 percent to 77 percent reduction in smoking material fire deaths relative to 2003. NFPA produced this estimated range by comparing the National Fire Incident Reporting System ("NFIRS") smoking material fire deaths estimate from 2003 (the last full year before the first state implemented a RIP cigarette law), to the estimate for 2008 (which is the most recent year for which it has estimates). NFPA's estimate incorporates a factor to adjust for the fact that only an estimated 21 percent to 29 percent of the population was under the RIP cigarette law in 2008. This method adjustment adds uncertainty to the estimate. Measuring the reduction in fire losses from 2003 to 2010 is more appropriate because in 2010, virtually 100 percent of the population was effectively covered by the law, and no mathematical projection would be necessary. Commission staff will use the 2010 estimate when it becomes available.

## 3. The Cost of SRM 1196

(Comment 9) Two commenters stated that specifying SRM 1196 as the new ignition source is not a modest change, and it may result in significant substantive changes to 16 CFR part 1632 that could impose major new costs on mattress manufacturers.

(Response 9) The purpose of SRM 1196 is to enhance repeatability and reproducibility of test results, without changing the level of fire safety. Since the time we issued the proposal, NIST has reduced the price of SRM 1196 from \$239 for one carton to \$239 for two cartons, and this price reduction should help alleviate some cost concerns. The total estimated annual cost of the technical amendment is approximately \$24,000, or less than one cent per mattress produced under those tests. This does not represent a significant new cost to manufacturers. A discussion of the costs and benefits is found in the Directorate for Economic Analysis Report: *Final Regulatory Analysis: Smoldering Ignition Source Draft Proposed Technical Amendment to the*

*Flammability Standard for Mattresses and Mattress Pads* (16 CFR part 1632).

(Comment 10) One commenter noted that the testing and certification requirements of the Consumer Product Safety Improvement Act (CPSIA) would impose additional testing cost burdens on mattress manufacturers and that these additional CPSIA burdens would compound any cost increase related to revising the ignition source provision in the Standard.

(Response 10) Although the CPSIA may impose testing and certification costs on industry, both related and unrelated to the Standard, the revision to the ignition source provision would have a negligible effect on such costs. The revision will increase aggregate estimated testing costs by about 3.5 percent, or about \$24,000 per year; average increased testing costs for individual firms would range from about \$45 to \$162 per year. This assumes that testing would be performed largely by third party laboratories, as required under the CPSIA for regulated children's products only.

(Comment 11) Three commenters expressed concern that mattress manufacturers would incur unwarranted or excessive production costs. One commenter indicated that revising the ignition source provision could impose "major new costs" on firms whose products previously complied but had to be redesigned to pass the Standard when tested with SRM 1196.

(Response 11) Because the revision to the ignition source provision is intended to be "safety neutral," it would likely have no effect on the pass/fail performance of articles subject to the Standard. Design and production costs would increase only if mattresses previously thought to comply failed the test with SRM cigarettes. There is no evidence from CPSC experience or data provided by industry that this would result, so long as the tests were conducted correctly with cigarettes that burn their full length. The approximately \$24,000 aggregate annual testing cost of the SRM cigarettes represents a small increase in total testing costs, ranging from about one-third to one cent per mattress produced under those tests.

(Comment 12) One commenter suggested that under a 90 PFLB SRM, manufacturers would incur costs in order to produce mattresses that complied with tests using 100 PFLB cigarettes, so that the finished products would incorporate a reasonable "margin of safety" beyond the minimum requirements of the Standard. The

commenter stated that this was analogous to doubling the flame exposure time in the 16 CFR part 1633 open-flame test from 30 to 60 minutes.

(*Response 12*) Specifying SRM 1196 as the ignition source would more likely have the opposite result; that is, a more repeatable ignition source in the test should improve the reliability of the test results and lessen the need for manufacturers to build in a “margin of safety” to account for test variability. The commenter may be confusing the relationship between test material specifications and the stringency of the Standard itself. The “margin of safety” built into the production of mattresses ordinarily would be related to the performance requirements prescribed in the Standard for tested mattress samples. If, however, test results were unreliable due to the variability of the test cigarettes, manufacturers might build mattresses that, for example, pass the test in more than the minimum number of locations or that exhibit shorter-than-required char length results. The SRM cigarette ignition source increases the likelihood of a successful test and enhances the repeatability of test results, and it decreases the number of retests necessary to determine compliance. A test cigarette that burns its full length would be acceptable for the test, whether it was a 90 PFLB SRM or a 50 PFLB SRM cigarette. Differences in the PFLB of test cigarettes are independent of the performance requirements of either of the two mattress standards.

#### 4. The FFA, Regulatory Alternatives, and Other FFA Rulemakings

(*Comment 13*) One commenter argued that we failed to meet requirements of the FFA in proposing this amendment to 16 CFR part 1632. The commenter stated that section 4 of the FFA requires us to base our decision to amend our regulations on research and investigation, and the commenter felt that the proposal had failed to do this.

(*Response 13*) The proposed amendment is based on substantial research and investigation conducted by NIST. In August 2008, we entered into an IAG with NIST to develop a new cigarette smoldering ignition source. In June 2009, NIST provided a report on its research, “*NIST Technical Note 1627: Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes*.” The research described in this report was used to help develop SRM 1196. In July 2009, we posted NIST Technical Note 1627 on our Web site to keep stakeholders informed of the progress of this research and invite comments. We addressed the

comments received on NIST Technical Note 1627 in CPSC staff’s October 13, 2010, NPR Briefing Package, and the preamble to the proposed rule also discussed the comments (75 FR at 67049). In addition, the staff prepared initial and final regulatory analyses as required by section 4 of the FFA.

(*Comment 14*) The same commenter argued that we failed to consider all regulatory alternatives and other standards relevant to amending 16 CFR part 1632. Specifically, the commenter argued that we did not consider the extent to which 16 CFR part 1633 renders part 1632 redundant, despite the fact that we have issued an Advance Notice of Proposed Rulemaking (ANPR) to consider whether to revoke 1632 for this reason.

(*Response 14*) We have a separate proceeding (70 FR 36357 (June 23, 2005)) to consider whether to revoke 16 CFR part 1632. Issues related to the need for 16 CFR part 1632, in light of the existence of a separate mattress standard (16 CFR part 1633), are appropriate for that proceeding and therefore, are outside the scope of this rulemaking. This rulemaking is limited to revising the provision in 16 CFR part 1632 specifying the ignition source for the flammability test required in the Standard.

The Standard requiring mattresses to be resistant to cigarette ignition, 16 CFR part 1632, took effect in 1973. Although smoldering ignition of mattresses (*i.e.*, ignition from cigarettes) has declined since that time, mattress fires ignited by small open flames (such as lighters and candles) have continued to cause a significant number of deaths and injuries. In 2006, we published a flammability standard directed at the hazard of open-flame ignition of mattresses, 16 CFR part 1633, which took effect on July 1, 2007. In the course of the rulemaking to develop 16 CFR part 1633, industry questioned whether there would be overlap between the two mattress flammability standards, making continuation of 16 CFR part 1632 unnecessary. To examine the issue of possible overlap between the two standards, we published an ANPR for the possible revocation or amendment of 16 CFR part 1632, *Standard for the Flammability of Mattresses and Mattress Pads* in June 2005, and invited public comments (70 FR 36357 (June 23, 2005)). Some commenters supported revoking the Standard, while others recommended careful review of the risks, incident data, and benefits of the Standard before revocation is considered.

On October 20, 2005, the Sleep Product Safety Council (“SPSC”), which

is a safety division of the ISPA, met with CPSC staff to discuss issues associated with the possible revocation or amendment of the Standard. At that meeting, ISPA/SPSC told us of its plans to work with NIST on a research project to determine whether 16 CFR part 1632 was needed once 16 CFR part 1633 became effective. In addition, ISPA and the SPSC discussed plans for a research project with NIST to develop a predictive, small-scale test for 1632. (The meeting log is at <http://www.cpsc.gov/library/foia/meetings/mtg06/MattressOct20.pdf>). In 2009, ISPA ended the research project at NIST due to problems with controlling standard test materials; the research was not completed, and no data were provided to CPSC from this project. At this time, we are not aware of data indicating that 16 CFR part 1633 eliminates or sufficiently reduces the risk of injury from cigarette ignition of mattresses, such that we could revoke 16 CFR part 1632.

(*Comment 15*) One commenter asserted that we misunderstand the purpose of 16 CFR part 1632 and that the rule should provide for an ignition source that represents cigarettes that are commercially available today.

(*Response 15*) The commenter misunderstands the limited nature of this rulemaking. Although we have authority to conduct the rulemaking that the commenter suggests, the FFA does not require it, and it would be a different proceeding altogether. In essence, the commenter wants us to reopen and reexamine the entire purpose of the Standard to see whether a different Standard or different level of protection should be in place than was established when the Standard was created in 1972. This approach would require reevaluation of the level of risk that exists from cigarette ignition of mattresses.

In this proceeding, we are simply specifying a substitute ignition source for the one that currently is specified but is no longer available; we are not changing the level of protection or reevaluating the current level of risk. As discussed in the previous response, the larger questions of the need for 16 CFR part 1632 and evaluation of the current level of risk posed by cigarette ignition of mattresses are outside the scope of this rulemaking.

(*Comment 16*) The same commenter suggested that we halt this proceeding and act on industry’s request to revoke part 1632, issuing an interim rule to suspend part 1632.

(*Response 16*) The question of revocation or revision of 16 CFR part 1632 in light of 16 CFR part 1633 is the

subject of a different rulemaking proceeding, and these issues are outside of the scope of this rulemaking. If commenters have any data relevant to that issue, they should provide it in connection with that rulemaking. In the meantime, 16 CFR part 1632 continues to be in effect. The ignition source specified in the Standard is no longer available. The purpose of this proceeding is to amend the Standard to specify a comparable ignition source so that reliable and representative testing can continue under the current Standard.

(*Comment 17*) One commenter stated that we did not consider the potential impact of our pending ANPR regarding the flammability of bedclothes.

(*Response 17*) On January 13, 2005, we published an ANPR (70 FR 2514) for a possible standard to address open-flame ignition of bedclothes. Because only an ANPR exists, there is no CPSC standard for the flammability of bedclothes. Therefore, there is no basis for us to consider the impact that such a standard might have on this rule.

#### D. Description of the Revised Ignition Source Provision

We are revising the ignition source provision in the Standard, 16 CFR 1632.4(a)(2), to specify a standard reference material based on research conducted by NIST. The new SRM cigarette is designated SRM 1196. As discussed in section A.2 of this preamble, based on NIST's research, the new SRM cigarette meets the following specification:

- Nominal length: 83 mm  $\pm$  2mm;
- Tobacco packing density: 0.270 g/cm<sup>3</sup>  $\pm$  0.020g/cm<sup>3</sup>;
- Mass: 1.1 g  $\pm$  0.1 g;
- Ignition Strength: 70 Percent Full Length Burn (PFLB) to 95 PFLB, using ASTM E 2187, as modified in Section 4.2 of NIST Technical Note 1627; and
- Non-"Fire-Safe Cigarette" (FSC).

Section 1632.4(a)(2) states that SRM 1196 is available for purchase from the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

#### E. Final Regulatory Analysis

Section 4(j) of the FFA requires that the Commission prepare a final regulatory analysis when it issues a regulation under section 4 of the FFA and that the analysis be published with the rule. 15 U.S.C. 1193(j). The following discussion extracted from the staff's memorandum titled, "Final Regulatory Analysis: Smoldering Ignition Source Technical Amendment to the Flammability Standard for Mattresses and Mattress Pads (16 CFR

part 1632)" (Ref. 2), addresses this requirement.

##### 1. Market/Industry Information

Available U.S. Economic Census data in recent years show an estimated total value of shipments of about \$5 billion of mattresses and related sleep products (e.g., mattress pads, box springs, innerspring cushions, and air-flotation sleep systems). Domestic employment for this category is estimated at about 20,000 workers. Industry estimates indicate that the number of mattresses (including unconventional items, such as futons, crib and juvenile mattresses, and sleep sofa inserts) shipped in the United States residential market is roughly 25 million units annually. About 5 to 10 percent of this total is comprised of imported products, including some imports marketed by the domestic manufacturers. The proportion of imports for mattress pads is higher.

An estimated 150 to 200 domestic firms produce new mattresses or mattress pads in manufacturing facilities in the United States. An unknown, but potentially similar, number of firms in the United States sell renovated mattresses, which may account for 2.5 million to 5 million units, or between 10 and 20 percent of mattresses sold. Thus, there may be as many as approximately 400 manufacturing firms subject to 16 CFR part 1632. These firms comprise more than 600 production establishments. Larger manufacturers may offer dozens of models, not counting different size designations (e.g., twin, full, queen, king) at any given time; new models may be introduced once or twice per year. Many smaller firms market only a few models and make few, if any, construction changes in a year.

##### 2. Potential Benefits and Costs

The SRM cigarette described in the revised ignition source provision would have approximately the same ignition strength characteristics as originally intended by the Standard. The use of SRM cigarettes would not alter the stringency of the flammability performance tests in the Standard, so the revised provision will not alter the test method itself.

##### a. Potential Benefits

Because the revised ignition source provision is "safety-neutral," mattresses that pass or fail under the existing Standard would be expected to generate similar results when the NIST-developed SRM is used. The level of protection provided by the Standard would neither increase nor decrease as a result. Thus, there would be no impact

on the level or value of fire safety benefits derived from the 16 CFR part 1632 Standard.

However, there would be potential benefits that are not readily quantifiable. Currently, manufacturers and testing laboratories do not have access to continued supplies of test cigarettes other than RIP Pall Mall cigarettes. Existing inventories of conventional Pall Mall cigarettes have been depleted or exhausted. Many industry representatives have requested guidance on the issue of which cigarette to use in testing.

Even if continuing supplies of conventional test cigarettes were available, the variability in cigarette performance described in the NIST research may lead to an unacceptably low level of test outcome reproducibility. This is causing uncertainty among testing firms, and among manufacturers and importers certifying compliance with the Standard. These firms have expressed concern that tests conducted by the CPSC and by industry may not be comparable. This inconsistency could lead to unnecessary additional testing. Specifying the SRM cigarette would reduce inconsistency and uncertainty for industry, testing laboratories, and the CPSC.

##### b. Potential Costs

Currently, manufacturers incur testing costs related to 16 CFR part 1632 whenever new mattress models are introduced that either: (1) Are of new construction, or (2) have new tickings that may influence cigarette ignition resistance. Larger manufacturers may introduce 20 or more new constructions or ticking substitutions each year. Smaller producers and renovators probably introduce fewer items or rely on prototype developers for multiple models. Assuming that qualified prototypes are developed for all new constructions and ticking substitutions to demonstrate compliance, a range of estimates for annual prototypes and ticking substitutions can be used to project potential costs associated with the proposed amendment to incorporate SRM cigarettes into the Standard.

*Pre-Amendment Testing Costs.* For most mattress models that require some kind of testing, the testing cost per model to manufacturers is comprised chiefly of: (1) The resource costs of producing the mattresses used for destructive testing, including shipping to a test laboratory; and (2) the laboratory's fee for the testing service, which includes photographic and other records prepared by the test laboratory,

as well as the cigarettes consumed in testing.

The cost of mattresses consumed in prototype testing may amount to approximately \$400 for a typical two-mattress test series (although the range can go much higher, to more than \$1,000 per mattress for low-volume, specialty items). Prototype test charges reported by third party testing laboratories can vary widely, especially by location. For example, charges for tests performed in China tend to be significantly lower than charges for tests performed in the United States. Overall, these charges, which include the cost of the test cigarettes, may average about \$250 per prototype (labor and material costs for manufacturers to perform their own tests may be similar). Thus, the current average total cost per mattress prototype may be roughly  $\$400 + \$250 = \$650$ . A ticking substitution test is simpler and much less expensive, requiring only small samples of ticking material, a reusable small-scale test apparatus, and a smaller number of cigarettes; the average total cost may be around \$50.

Testing costs incurred for prototypes and ticking substitutions can be allocated over a production run of mattresses. The cost per unit may vary with production volume, the mix of tests performed, and other factors. The examples below incorporate assumptions based on discussions with industry representatives. These examples illustrate some possible baseline cost differences for larger versus smaller firms:

*Typical example for a medium-to-large producer:*

- 20 new models: 5 new constructions + 15 new tickings
- 5 prototype tests @ \$650 each = \$3,250
- 15 ticking substitution classification tests @ \$50 each = \$750
- Total base year cost = \$3,250 + \$750 = \$4,000
- Baseline testing cost for production run of 50,000 units = \$0.08 per unit

*Typical example for a smaller producer:*

- 5 new models: 2 new constructions + 3 new tickings
- 2 prototype tests @ \$650 each = \$1,300
- 3 ticking substitution classification tests @ \$50 each = \$150
- Total base year cost = \$1,300 + \$150 = \$1,450
- Baseline testing cost for production run of 5,000 units = \$0.29 per unit

These examples reflect the likely average annual testing costs to industry, assuming reasonably full compliance with 16 CFR part 1632. Thus,

approximate baseline testing costs for the largest 50 mattress manufacturers combined would be about  $50 \times \$4,000 = \$200,000$  annually; testing costs for the remaining 350 firms would be about  $350 \times \$1,450 = \$507,500$ . Thus, total estimated baseline testing costs may be about  $\$200,000 + \$507,500 = \$707,500$  per year.

*Costs per Firm Associated with the Revised Ignition Source Provision.* The only cost increase associated with revising the ignition source provision to specify SRM 1196 is related to the SRM cigarettes. The list price of SRM cigarettes from NIST is \$239 for a two-carton minimum order, or about \$120 per carton, plus shipping. A carton contains 200 cigarettes, or 10 packs of 20. Shipping charges range from \$10 to \$55 per order, or about \$1 to \$5 per carton for a typical 10-carton order. Thus, the estimated total average cost of the SRM cigarettes would be up to about \$125 per carton. After we proposed the amendment to the Standard, NIST reduced the price of SRM 1196 by about half, to reduce the potential cost burden on industry. Testing laboratories and others can obtain (RIP) Pall Mall cigarettes currently on the market for regionally varying prices of \$60 to \$100 per carton. Thus, the cost of cigarettes to parties performing tests may rise from a level of approximately \$6 to \$10 per pack, to approximately \$12.50 per pack, representing an increase of about \$2.50 to \$6.50 per pack.

Under the protocol in 16 CFR part 1632, new packs of cigarettes are opened for each test sequence. A new prototype or confirmatory test consumes about two packs, and a ticking substitution test consumes about one pack. Assuming an increased cost per pack of  $\$12.50 - \$6 = \$6.50$ , the average cost of performing the tests could increase by  $2 \times \$6.50 = \$13$  per prototype and \$6.50 per ticking substitution. This represents a 2 percent increase ( $\$13/\$650$ ) in average total resource costs per prototype, and a 12 percent increase ( $\$6.50/\$50$ ) in average resource costs per ticking substitution.

In the above "typical producer" examples, the larger firm with 20 new models would incur increased prototype costs of  $5 \times \$13 = \$65$ , plus increased ticking substitution costs of  $15 \times \$6.50 = \$97.50$ , for a total annual increase of  $\$65 + \$97.50 = \$162.50$  (about 4 percent of the firm's overall \$4,000 annual testing cost). Over a 50,000 unit production run, the cost would be \$0.003 (*i.e.*, about one-third of one cent) per unit. The smaller firm with five new models would incur increased prototype costs of  $2 \times \$13 = \$26$  and increased ticking substitution costs of  $3 \times \$6.50 =$

\$19.50, for a total annual increase of  $\$26 + \$19.50 = \$45.50$  (about 3 percent of the firm's overall \$1,450 annual testing cost). Over a 5,000 unit production run, the increased testing cost would be \$0.009 (*i.e.*, about one cent) per mattress.

In summary, the expected additional cost of testing related to the revised ignition source provision may range from about \$45.50 to \$162.50 per firm. The cost over a production run could range from about one-third to one cent per mattress produced under those tests. The distribution of this projected cost among manufacturers and testing laboratories is uncertain because some test laboratories may choose to pass on their increased costs—in the form of higher test fees—to manufacturers, while others may not. Even if all such costs were passed on to manufacturers, it is unlikely that there would be a noticeable effect on wholesale or retail mattress prices.

*Aggregate Costs Associated with Revising the Ignition Source Provision.* There may be as many as 200 new product manufacturers and 200 renovators, for a total of about 400 firms. The largest 50 firms are assumed to have 20 new models ( $50 \times 20 = 1,000$  models to be tested), and the remaining 350 firms to have five new models ( $350 \times 5 = 1,750$  models to be tested), for a total of  $1,000 + 1,750 = 2,750$  models to be tested. The aggregate annual cost of specifying SRM 1196 as the ignition source in the Standard will vary with the number of new prototypes and ticking substitutions. A point estimate can be developed using the pre-amendment baseline examples above and the best available information on these variables.

Using the baseline assumptions for new prototypes versus ticking substitutions, the 50 largest firms would have an average of five prototypes each (for a total of  $5 \times 50 = 250$ ) and the remaining 350 smaller firms would have two prototypes each (for a total of  $2 \times 350 = 700$ ); thus, the overall number of prototypes to be performed would be  $250 + 700 = 950$ . The number of ticking substitutions would be 15 each for the larger firms (for a total of  $15 \times 50 = 750$ ) and three each for the smaller firms (for a total of  $3 \times 350 = 1,050$ ); the overall number of ticking substitutions would be  $750 + 1,050 = 1,800$ .

At two packs of cigarettes per prototype and one pack per ticking substitution, the estimated quantity consumed in testing would be  $2 \times 950 = 1,900$  for prototypes and 1,800 for ticking substitutions, for a total of  $1,900 + 1,800 = 3,700$  packs. At an increase of \$6.50 per pack, the estimated total



resource cost would be  $3,700 \times \$6.50 = \$24,050$ . This point estimate represents an unweighted average increase of about 3.5 percent of the estimated \$707,500 aggregate annual industry testing costs related to 16 CFR part 1632. For annual production of about 25 million mattresses sold in the U.S., the estimated overall average cost is less than one-tenth of one cent per production unit. The recent reduction in the price of SRM 1196 cigarettes by about half reduces the estimated total cost from what was calculated for the proposed amendment by about two-thirds.

In addition to the projected costs to industry, the CPSC and other government agencies (e.g., the California Bureau of Home Furnishings & Thermal Insulation and the Canadian Ministry of Health) would likely purchase small quantities of SRM cigarettes from NIST for compliance testing and related research. Thus, these Federal and other government agencies may incur minor costs, depending on the numbers of tests these organizations may perform in any given year.

The effective date of the rule is one year from the date of publication in the **Federal Register**. Typically, new mattress models are introduced once or twice per year. The effective date would allow this product cycle to proceed without potential disruption or additional testing costs.

In summary, revising the ignition source provision in the Standard to specify the SRM cigarette is not expected to have a significant impact on expected benefits or costs of the Standard in 16 CFR part 1632. Resource costs may amount to roughly \$24,000 per year. The revision would, however, reduce test variability and uncertainty among manufacturers subject to the Standard and among testing organizations. Both the expected benefits and likely economic costs are small, and the likely effect on testing costs per new prototype mattress or ticking substitution would be minor, especially when the projected cost is allocated over a production run of complying mattresses.

### 3. Regulatory Alternatives

The Commission considered two basic alternatives: (1) Specify a different SRM cigarette, with the approximate lower ignition strength of an RIP cigarette; or (2) take no action on the smoldering ignition source issue.

Neither of these two alternatives would likely have a substantial economic impact. There would, however, be some relative differences in terms of resource costs and potential

effects on the level of benefits the Standard affords. The advantages and disadvantages of these two basic alternatives are discussed immediately below.

#### a. Alternate SRM

Under this first alternative, the Commission could amend the Standard to specify a different, lower ignition propensity SRM cigarette. Such an SRM would presumably be closer in ignition strength to the “worst-case” RIP cigarettes currently on the market.

There are three possible advantages to specifying an alternative SRM: (1) The problem of test repeatability and reproducibility would be addressed, as it is by specifying SRM 1196; (2) an alternative SRM might better approximate average ignition propensity of commercial cigarettes; and (3) currently, there is a low-ignition propensity SRM (SRM 1082) developed by NIST for use by state regulators in assessing the compliance of RIP cigarettes.

There are three possible disadvantages to specifying an alternative SRM. First, there are no data to establish that a low-ignition propensity SRM would be equivalent or “safety neutral.” Moreover, the reliability of mattress test results may not be improved if, for example, only 50 percent of SRM cigarettes burned their full length. It is unknown whether more mattress construction prototypes would pass the test using a lower ignition propensity SRM than they do now with commercial cigarettes. Thus, the impact on mattress production costs is uncertain.

The second possible disadvantage is that the two known technical approaches to developing a lower ignition propensity SRM appear to be incompatible with the test in 16 CFR part 1632. Under existing state regulations, all known commercial RIP cigarettes incorporate banded paper that is designed to impede full-length burns. The test in 16 CFR part 1632 measures mattress ignitions resulting from full-length cigarette burns and allows up to three relights per cigarette to achieve a full length burn. It is likely that either: (1) Many low-ignition propensity cigarettes would be wasted in completing the test; or (2) the test could not be reliably completed using banded-paper, self-extinguishing cigarettes. Additionally, although the existing SRM 1082 (which represents a RIP cigarette) does not use banded-paper technology, it would have the same impracticalities as the banded-paper cigarette under the current Standard. The low ignition propensity design of the existing SRM

1082 is intended to yield a 12 to 15 percent full length burn rate (*i.e.*, the cigarettes are made to self-extinguish 85 to 88 percent of the time). Because this SRM is intended to be used as a calibration tool for cigarette manufacturers subject to state regulations, it is purposely designed to represent a minimal-ignition propensity target, rather than a typical or representative RIP-ignition propensity. Clearly, it would not represent a “worst-case” RIP cigarette. Further, SRM 1082 does not meet the specified physical criteria for cigarette length and density; so these cigarettes are physically unlike the current test cigarette or current RIP cigarettes.

The third possible disadvantage is that the properties of a new SRM that would mimic the ignition behavior of “worst case” RIP cigarettes have not been characterized. The “worst case” RIP cigarette would be one that burns its full length and may, therefore, be similar to its non-RIP counterpart. Insufficient research exists to support a new and different, low-ignition propensity SRM; and a variety of as-yet-unknown modifications to the test method in 16 CFR part 1632 would likely be needed to incorporate such an SRM. The time and cost to develop a new SRM is undetermined, but the existing concern about the short-term availability of a consistent ignition source would not be resolved.

Thus, while a lower ignition strength SRM cigarette may be technically feasible, there is no readily available SRM alternative that would address the need for a consistent, “safety-neutral” ignition source.

#### b. No Action

Under the second alternative, the ignition source specifications in the Standard would remain unchanged. Manufacturers and testers would remain free to conduct tests with any available cigarettes, including RIP Pall Malls, which meet the existing physical parameters.

The possible advantage of the Commission taking no action is that the projected minor increase in resource costs of testing would not be incurred.

The possible disadvantage of the Commission taking no action would be that the basic issue of test result variability due to differences in cigarettes would not be addressed, and the uncertainty and confusion surrounding the reliability of tests for compliance with 16 CFR part 1632 would not be reduced. Manufacturers and testing firms may continue to conduct tests that are either wasteful (in terms of extra RIP cigarettes required to



complete a test) or have irreproducible results.

In summary, there are no readily available, and/or technically feasible, alternatives that would have lower estimated costs and still address the need for a consistent ignition source that retains the “safety-neutral” approach of the proposed amendment.

#### **F. Regulatory Flexibility Act Certification**

Under the Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601 *et seq.*, an agency that engages in rulemaking generally must prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As discussed in the preamble to the proposed rule (75 FR at 67052–53), the Commission determined that, although almost all mattress manufacturers would be considered small firms under the U.S. Small Business Administration’s fewer-than-500-employees definition, the proposal would have little or no effect on small producers. The design and construction of existing, compliant mattress products would remain unchanged, and the resource cost increase of using SRM cigarettes would represent a minimal increase in total testing costs. On this basis, the Commission preliminarily concluded that the proposed rule would not have a significant impact on a substantial number of small businesses or other small entities. We received no comments concerning the impact of the proposal on small entities, and we are not aware of any other information that would change the conclusion that the rule will not have a significant impact on a substantial number of small businesses or other small entities. In fact, after we published the proposed rule, NIST lowered the cost of SRM 1196.

This revision of the ignition source provision in the Standard would keep the current mattress test procedure in place but would require that entities performing cigarette ignition tests purchase and use SRM cigarettes at a higher cost than commercial, non-SRM cigarettes. No additional actions would be required of small entities. As discussed in the cost analysis section above, the costs would be borne by mattress manufacturers and importers that perform (or pay fees for) compliance testing. The estimated

average increase in testing and certification costs is about \$63 per small firm, or less than one cent per production unit. This represents less than one-hundredth of one percent of small firms’ average gross revenues. Thus, while almost all mattress manufacturers would be considered small firms, the ignition source revision would not have significant impacts on small firms.

#### **G. Environmental Considerations**

As noted in the preamble to the proposed rule (75 FR at 67053), the Commission’s regulations state that amendments to rules providing performance requirements for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

#### **H. Executive Orders**

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The rule will revise one provision of a flammability standard issued under the FFA. With certain exceptions that are not applicable in this instance, no state or political subdivision of a state may enact or continue in effect “a flammability standard or other regulation” applicable to the same fabric or product covered by an FFA standard if the state or local flammability standard or other regulations is “designed to protect against the same risk of the occurrence of fire,” unless the state or local flammability standard or regulation “is identical” to the FFA standard. *See* 15 U.S.C. 1476(a). The rule would not alter the preemptive effect of the existing mattress standard.

Thus, the rule would preempt nonidentical state or local flammability standards for mattresses or mattress pads designed to protect against the same risk of the occurrence of fire.

#### **I. Effective Date**

Section 4(b) of the FFA (15 U.S.C. 1193(b)) provides that an amendment of a flammability standard shall become effective one year from the date it is promulgated, unless the Commission finds for good cause that an earlier or later effective date is in the public interest, and the Commission publishes the reason for that finding. Section 4(b) of the FFA also requires that an amendment of a flammability standard

shall exempt products “in inventory or with the trade” on the date the amendment becomes effective, unless the Commission limits or withdraws that exemption because those products are so highly flammable that they are dangerous when used by consumers for the purpose for which they are intended. We conclude that a one-year effective date is appropriate to ensure ample time for the product cycle and continuing availability of SRM cigarettes from NIST. Therefore, the revised ignition source provision of the Standard will become effective one year after publication in the **Federal Register**.

#### **J. Findings**

Section 4(a), (b) and (j)(2) of the FFA require the Commission to make certain findings when it issues or amends a flammability standard. The Commission must find that the standard or amendment: (1) Is needed to adequately protect the public against the risk of the occurrence of fire leading to death, injury, or significant property damage; (2) is reasonable, technologically practicable, and appropriate; (3) is limited to fabrics, related materials, or products which present unreasonable risks; and (4) is stated in objective terms. 15 U.S.C. 1193(b). In addition, the Commission must find that: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury.

The scope of this rulemaking is limited to revising the ignition source provision in the Standard. The Commission is not making any other changes to the Standard. Therefore, the findings relate only to that revision and not to the entire Standard. These findings are discussed below.

*The amendment to the Standard is needed to adequately protect the public against unreasonable risk of the occurrence of fire.* The current Standard specifies as the ignition source cigarettes that are no longer being produced. In order for the Standard to continue to be effective (and for labs to test mattresses and mattress pads to determine whether they comply with the Standard), it is necessary to change the ignition source specification. The revision of this provision is necessary to ensure that testing is reliable and that

results will not vary from one lab or manufacturer to another. Such variation would be likely if labs or manufacturers were able to use different ignition sources that have similar physical properties but different burning characteristics.

*The amendment to the Standard is reasonable, technologically practicable, and appropriate.* The revision to the ignition source provision is based on technical research conducted by NIST, which established that the SRM cigarette is capable of providing reliable and reproducible results in flammability testing of mattresses and mattress pads. SRM 1196 represents an equivalent, safety-neutral ignition source for use in testing to establish compliance with the Standard.

*The amendment to the Standard is limited to fabrics, related materials, and products that present an unreasonable risk.* The revision of the ignition source provision will not make any changes to the products to which the Standard applies.

*Voluntary standards.* There is no applicable voluntary standard for mattresses. We are amending an existing federal mandatory standard.

*Relationship of benefits to costs.* Revising the ignition source provision in the Standard to specify SRM 1196 will allow testing to the Standard to continue without interruption, will maintain the effectiveness of the Standard, and will not significantly increase testing costs to manufacturers and importers of mattresses and mattress pads. Thus, there is a reasonable relationship between benefits and costs of the amendment. Both expected benefits and costs are likely to be small. The likely effect on testing costs would be minor, approximately one-third to one cent per mattress produced under those tests.

*Least burdensome requirement.* No other alternative would allow the Standard's level of safety and effectiveness to continue. Thus, the revision to the ignition source provision specifying SRM 1196 imposes the least burdensome requirement that would adequately reduce the risk of injury.

## K. Conclusion

For the reasons discussed above, the Commission finds that revising the ignition source provision in the Standard (16 CFR part 1632) to specify SRM 1196 as the ignition source is needed to adequately protect the public against the unreasonable risk of the occurrence of fire leading to death, injury, and significant property damage. The Commission also finds that the amendment to the Standard is

reasonable, technologically practicable, and appropriate. The Commission further finds that the amendment is limited to the fabrics, related materials, and products that present such unreasonable risks.

## L. References

1. Gann, R.G., and Hnetkovsky E.J., *Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes*, Technical Note 1627, National Institute of Standards and Technology, Gaithersburg, MD, 20899, 2009.
2. Directorate for Economic Analysis Report, *Final Regulatory Analysis: Smoldering Ignition Source Technical Amendment to the Flammability Standard for Mattresses and Mattress Pads* (16 CFR part 1632).

## List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

For the reasons given above, the Commission amends 16 CFR part 1632 as follows:

## PART 1632—STANDARD FOR THE FLAMMABILITY OF MATTRESSES AND MATTRESS PADS (FF 4-72, AMENDED)

- 1. The authority citation for part 1632 continues to read as follows:

**Authority:** 15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b).

- 2. Section 1632.4(a)(2) is revised to read as follows:

### § 1632.4 Mattress test procedure.

(a) \* \* \*

(2) *Ignition source.* The ignition source shall be a Standard Reference Material cigarette (SRM 1196), available for purchase from the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

\* \* \* \* \*

Dated: September 20, 2011.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2011-24482 Filed 9-22-11; 8:45 am]

**BILLING CODE 6355-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 520

[Docket No. FDA-2011-N-0003]

### Oral Dosage Form New Animal Drugs; Tylosin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group, Ltd. The ANADA provides for use of tylosin tartrate soluble powder in chickens, turkeys, swine, and honey bees.

**DATES:** This rule is effective September 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** John K. Harshman, Center for Veterinary Medicine (HFV-170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8197, e-mail: [john.harshman@fda.hhs.gov](mailto:john.harshman@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed ANADA 200-455 for use of TYLOMED-WS (tylosin tartrate), a water soluble powder, in chickens, turkeys, swine, and honey bees. The abbreviated application is approved as of July 5, 2011, and the regulations are amended in 21 CFR 520.2640 to reflect the approval and to make minor revisions that will improve accuracy of the regulations.

A summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.