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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

OFFICE OF THE SECRETARY
JAN 12 11 00 AM '76
CONSUMER PRODUCT SAFETY COMMISSION

TO : Charles C. Chancellor
Director of Operations, Denver Area Office

THRU : Margaret A. Freeston, AGC
FROM : Alan H. Schoem, OGC
AHS

DATE

#230

SUBJECT: Jurisdiction Over Insulation

This memorandum is in response to your inquiry concerning in part the Commission's jurisdiction over household insulation under the Consumer Product Safety Act. We apologize for the delay in responding, but your questions concern several unresolved legal issues.

Household insulation would fall within the Commission's authority under the Consumer Product Safety Act (CPSA) if it is determined to be an article produced or distributed for sale to or for the personal use, consumption, or enjoyment of consumers in or around a household, or residence, a school, in recreation, or otherwise. It seems clear that insulation sold to a consumer at a do-it-yourself establishment is a consumer product. It would also appear that "blown in" insulation is a consumer product since it is for sale to or for the personal use or enjoyment of consumers in or around a household or residence.

Household insulation may also be regulatable by the Commission under the Federal Hazardous Substances Act (FHSA) depending on the factual issues involved. For example, household insulation would fall within the Commission's jurisdiction under the FHSA if it is found to be a substance that (1) is intended or packaged in a form suitable for use in the household, (2) is flammable, and (3) may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

We are forwarding your memorandum and accompanying attachments to the Bureau of Compliance and requesting that they investigate whether the insulation that is the subject of your memorandum could be regulated under the FHSA, and if so, whether that product is in compliance with the applicable requirements of that act. If the Commission concludes that it has the authority to regulate the insulation in question under the FHSA, and that a risk of injury associated with the insulation could be eliminated or reduced to a sufficient extent under that act, then the Commission must regulate it under the FHSA. (Section 30(d), CPSA).

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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TO : Mr. Michael Brown, General Counsel

DATE: June 18, 1975

FROM : Charles L. Chancellor, Director of Operations

SUBJECT: Request for Advisory Opinion on Insulation for Private Homes

The attached investigation was initiated after numerous complaints from a consumer. The individual's complaint was that an insulation firm in Denver was selling insulation which purported to be flame proof, but did, in fact, burn in at least one documented case.

The consumer had pursued his complaint with the Denver District Attorney, the building code authorities, and to whomever else would listen. The building inspector indicated that they could take action only if they observed the actual installation of the insulation which, in fact, was not flame proof.

The District Attorney's investigation was not provided to us in total, but the inference is that they could not find any wrongdoing on the part of the firm. Would you please review this investigation report and answer several questions which concern the Denver Area Office and, we believe, the total Commission.

1. Does household insulation fall under the purview of the Consumer Product Safety Act?

2. If it is determined that household insulation does not fall under the CPSA, would the act of claiming an insulation to be fireproof which consequently was not, fall under the Federal Trade Commission responsibility?

3. If it is decided that the Consumer Product Safety Commission does indeed have authority over household insulation, then would a failure of insulation to be fireproof constitute a reportable defect under Section 15 (b)?

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We are aware of previous advisory opinions concerning the fact that HSA and FFA regulations do not cover installers of insulation. The major question concerned with this request is; after complete installation of the insulation and then the failure of this product to be flame resistant, does this, in fact, bring the product under the purview of the Consumer Product Safety Act.

We are also sending a copy of your memorandum and report to OPDI for any follow-up they deem appropriate.

In regard to your inquiry concerning the extent of the Commission's authority to regulate claims that insulation is fireproof when it is not, if insulation is a "hazardous substance" under the FHSA, 16 CFR 1500.122 prohibits its labeling in a manner that negates or disclaims any of the label statements required by Section 2(p) of the FHSA. If insulation is regulated under the CPSA, the Commission could require as part of a consumer product safety standard under Section 7(a)(2) of the CPSA that the insulation be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions. The Commission may also have the authority under section 7(a)(2) to specify that a disclaimer or negation of the labeling or warning requirements would render the product in violation of the labeling requirements. Except for such requirements, the Commission does not have the authority under the CPSA or FHSA to regulate advertising. This would be a function of the FTC.

In regard to your inquiry concerning regulatory action under Section 15 of the CPSA, the Commission has previously determined that manufacturers of all consumer products subject to regulation by the Commission, regardless of the act under which the product may be regulated, must comply with the notification requirements of Section 15 of the CPSA. (39 FR 6062). Thus, reports are required for defects in a consumer product which could create a substantial product hazard. The failure of insulation to be "fireproof" would constitute a reportable defect under Section 15 only if such a failure could create a substantial hazard. We are requesting OPDI to consider whether the insulation in question necessitates a report by the manufacturer, distributor or retailer under Section 15 of the CPSA.

We are sending a copy of this investigation and cover letter to Mr. Dennis Treitch, Denver Area contact in the Office of Product Defect Identification, for information purposes only.

If there are any questions concerning this request or investigation, please feel free to contact Charles L. Chancellor, Director of Operations, Denver, Colorado. Thank you for your consideration of our request.

Charles L. Chancellor
Charles L. Chancellor
Director of Operations
Denver Area Office

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