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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

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Honorable Christopher J. Dodd
House of Representatives
Washington, D.C. 20515

Dear Mr. Dodd:

This is in response to your letter of August 10, 1976, co-signed by Representative McKinney, requesting an opinion from this office on issues raised by certain provisions of the Consumer Product Safety Act (CPSA, copy enclosed) and the Flammable Fabrics Act (FFA, copy also enclosed), which are administered by the Commission. You have asked (1) whether the term "consumer" as used in the CPSA is meant to include institutional populations such as those in prisons or mental health facilities, and (2) whether the Commission can issue safety standards under the CPSA and/or the FFA applicable only to sub-groups of the general public.

With regard to your first question, the term "consumer" is not defined in the CPSA. However, the term "consumer product" is defined in section 3(a)(1) of the Act to include products that are produced or distributed "for the personal use, consumption, or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise ...." In addition, one of the general purposes of the Act as set forth in section 2(b)(1) is "to protect the public against unreasonable risks of injury associated with consumer products" (emphasis added). We believe that Congress' intent in providing such broad jurisdictional wording was that the Commission should protect individuals from unsafe consumer products regardless of where the products are used, consumed, or enjoyed. We therefore believe that residents of prisons and mental health facilities are intended to be protected by the CPSA to the extent that they personally use, consume, or enjoy consumer products in those institutions.

ADVISORY OPINION

Your second question focuses on the scope of particular safety standards that the Commission may issue under the CPSA or FFA. Section 7(a) of the CPSA authorizes the Commission to issue mandatory safety standards that are "reasonably necessary to prevent or reduce an unreasonable risk of injury associated with [a consumer product]." These standards may set performance, design and other requirements for consumer products. We know of no legal prohibition against defining a category of consumer products subject to a standard so that only consumer products used by a particular "sub-group of the general public" would be included in the category and be covered by that standard. The Commission must of course be able to support its issuance of such a standard by making the findings required by section 9(c) of the CPSA concerning the nature of the risk of injury, the necessity for and appropriateness of the standard, and economic and public interest considerations.

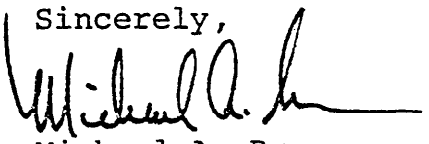
The Commission has authority under the FFA to issue mandatory safety standards for wearing apparel and interior furnishings. As was the case under the CPSA, we see no legal prohibition against issuing a standard limited to products used by a certain "sub-group(s)" of consumers. This conclusion assumes that all requirements for issuing FFA standards are met, including the requirement of section 4(b) of the Act that the Commission find that the standard is needed to adequately protect the public against the occurrence of fire leading to death, injury, and significant property damage.

Action taken by the Commission to set mandatory federal safety standards is controlled by the relative priority each product has within the Commission's finite resources. You may be interested in the enclosed statement of Commission policy on establishing priorities for action, including regulatory action published in the Federal Register on July 8, 1976. In the policy, the Commission states that in establishing its priorities it will apply seven general criteria, such as frequency and severity of injuries, causality of injuries, the cost and benefit of Commission action, and any additional criteria that may arise. The public may submit comments on the policy until September 7, 1976.

While the statements in this letter represent the current interpretation of the law by the Office of the General Counsel, they could subsequently be changed or superseded.

We hope that this letter responds adequately to your questions.

Sincerely,



Michael A. Brown
General Counsel

Enclosures

cc:
Honorable Stewart B. McKinney

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 10, 1976

Mr. Michael Brown
General Counsel
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Dear Mr. Brown:

In accordance with the conversation between a member of the staff of U.S. Rep. Dodd and Margaret Freeston of your office, we formally request an advisory opinion on the following:

(1) Whether the term "consumer", as used in Sec. 2051, Title 15, U.S.C., is meant to include institutional populations, such as those in prisons or mental health facilities.

(2) Whether the Consumer Product Safety Commission has the legal authority, pursuant to the Flammable Fabrics Act or the Consumer Product Safety Act, to promulgate a consumer product safety standard applicable only to sub-groups of the general public.

We would appreciate it if your office would expedite this request. Thank you for your cooperation.

Sincerely,

STEWART B. MCKINNEY
Member of Congress

CHRISTOPHER J. DODD
Member of Congress