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UNITED STATES GOVERNMENT

Memorandum

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

TO : Roland W. Atley, Director
Cleveland Area Office

DATE: AUG 3 1 1976

FROM : Margaret A. Freeston, Asst. General Counsel

SUBJECT: Clarification of Advisory Opinion No. 105

The Office of the General Counsel on April 17, 1974 issued an Advisory Opinion (No. 105) to the Honorable Jack Faxon, Michigan State Senate, concerning the standard for the Flammability of Mattresses (FF 4-72, 16 CFR 1632). The Advisory Opinion includes a paragraph concerning the interchanging of mattress tickings without the necessity of prototype requalification (page 3, first full paragraph). In response to a request from your Office for a clarification of when mattress tickings may be interchanged without the need for additional testing, the Office of the General Counsel, in conjunction with the Commission's Bureau of Compliance and Bureau of Engineering Sciences offers the following advice:

An alternate sampling plan, issued under the provisions of the standard for the Flammability of Mattresses (16 CFR 1632.4(b)(1)) and described in the Notice of Approval of Alternate Sampling Plan No. 4, for Mattress Ticking (16 CFR 1632.13) provides for the substitution of different tickings without prototype requalification. This plan permits the substitution of mattress tickings on a mattress prototype without retesting provided: (a) the mattress prototype has been accepted in prototype qualification; (b) both ticking prototypes (the one on the original mattress prototype and the new substitute ticking) are of the same ticking category; and (c) both ticking prototypes have met the ticking prototype qualification requirements of this alternate plan. Thus, a manufacturer wishing to interchange only the tickings on an existing prototype may do so without retesting provided he follows the aforementioned three requirements.

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Honorable Jack Faxon
Michigan State Senate
Lansing, Michigan 48902

Dear Mr. Faxon:

We are in receipt of your letter of December 20, 1973, to Mr. Ed Finch, Director, Bureau of Compliance, requesting an exemption from FF 4-72, the Standard for the Flammability of Mattresses, as amended, (38 F.R. 15095) for the [redacted] on the grounds that their product is not sold in interstate commerce.

Your letter raises the question of whether a mattress manufacturer who receives a small percentage of components from out of state for the manufacture of mattresses sold only within the state of manufacture, is subject to the requirements of the Flammable Fabrics Act. Section 3 of that Act prohibits:

> "The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued..." under the Act.

It is a well established principle that remedial legislation is to be given a liberal construction consistent with its overriding purpose to protect the public (see United States v. An Article of Drug...Bacto-Unidisk... 394 U.S. 785 (1969)). In accordance with this principle, it is the Commission's view that as soon as a finished product subject to the Flammable Fabrics Act leaves the manufacturer's place of business, it is in interstate commerce even though that particular product is eventually shipped or sold only within the state of manufacture. Further, it is our view that while that particular

product is in the manufacturer's plant it is being manufactured for sale in commerce and it must comply with all applicable provisions of the Flammable Fabrics Act and regulations or standards issued thereunder.

In addition, we believe that the fact that a manufacturer receives, from out of state, components used in the manufacture of mattresses is sufficient in itself to establish a basis of jurisdiction under the Flammable Fabrics Act although sales and shipments of the finished products are only within the state of manufacture.

On November 30, 1973, a regulation was published in the Federal Register (38 F.R. 33069) (copy enclosed) describing the recordkeeping requirements necessary to comply with the mattress standard. The Commission is of the opinion that any additional costs a manufacturer will incur as a result of these requirements are minimal. In addition, we wish to clarify the standard's requirements for testing which may help [redacted] in reducing the costs of testing. The standard requires a mattress manufacturer to conduct two types of tests on his mattresses. The first test is conducted on prototype mattresses; the second on mattresses which were manufactured during later production, and which have passed previous prototype testing.

Prototype testing, which requires six mattress surfaces to be tested (three mattresses if both sides can be tested), qualifies a mattress design for production. Mattress prototypes differ in components which may affect cigarette ignition resistance. Mattresses which differ only in size and shape, or other factors which do not affect cigarette ignition, can be grouped together and treated as the same prototype. The standard allows independent manufacturers to group together to conduct prototype testing in common. However, this pooling arrangement still requires that each individual manufacturer test two surfaces of his own product, in addition to the pool tests. These two surfaces can be on one mattress provided it is of a reversible style.

After the prototype testing is successfully completed, mattresses are qualified for production. A production unit is defined as consisting of not more than 500 mattresses of a mattress type or the quantity produced in three consecutive calendar months, whichever is smaller. It is required that all production units of mattresses (after the first) be subjected to production testing as specified in section 4 of the standard.

For purposes of production testing, mattresses can be grouped together into "types," as specified in section 1(i) of the standard, as long as they share the same method of assembly.

Thus more than one mattress prototype may be included in a single mattress "type." It is unlikely that small manufacturers will produce more than three or four mattress "types." Therefore, small manufacturers may need to test only three or four mattresses every three months, providing that these test mattresses represent production units of less than 500 mattresses, and are of a single type. The specific requirements for production testing are set forth in section 4 of the standard. The standard requires that for production testing, two surfaces of a mattress type (one mattress if it is reversible) must be tested. If a mattress fails production testing, as specified in the standard, all mattress prototypes included in that production unit must then undergo requalification (prototype) testing.

For both prototype and production testing, mattresses in which only the ticking is changed can be considered the same prototype, or type, provided the ticking passes a separate cigarette ignition test, described in the Notice of Approval of Alternate Sampling Plan for Mattress Ticking, which was published in the June 19, 1973 Federal Register (38 F.R. 15990) (copy enclosed).

As you are probably aware, the standard requires that finished mattresses be tested, but does not specify the testing of components. The Component approach to testing has been considered and rejected because the flammability characteristics of a mattress have been found to depend upon both the components of the mattress and its method of construction. To date, no way is known to predict the flammability performance of mattresses from component testing alone. Since we are presently unable to correlate the results from component testing with the real-life hazards sought to be eliminated by the standard, it was concluded that testing of the finished mattress must still be required.

In view of the foregoing, your request for an exemption from the Standard for the Flammability of Mattresses for the [redacted] is denied.

Sincerely,

by

Michael A. Brown

Michael A. Brown
General Counsel

Enclosure

R.Smith/A.H. Schoem:jh 4-15-74

cc: Commissioners
Sadye Dunn
F. Barrett
B. Ludden
J. Sharman/R.Early
R. Smith
A. Schoem
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