ADVISORY OPINION 267

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

4/13/78

6(b) CLEARED:

____ No Mfrs Identified

✓ Excepted proceeding

____ Mfrs Notified

____ Comments Processed

APR 14 12 15 PM '78

Mr. Gerald K. Anderson
Vice President
Harmon Glass & Glazing
2400 Minnehaha Avenue
Minneapolis, Minnesota 55406

Dear Mr. Anderson:

This letter is in response to your "follow up" correspondence of January 25, 1978, concerning the Commission's Standard for Architectural Glazing Materials (16 CFR 1201). You ask whether a glazing product that is not covered by the Commission's standard is nevertheless subject to the preemption provision of section 26(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2075(a)) or whether it may be regulated by a state building code. The specific example you give is that of a glazed product that is greater than 9 square feet in area, less than 18 inches above a walking surface, more than 48 inches from the nearest door, and with a walking surface only on one side of the glass. If there were a walking surface on both sides of the glass the product would be a "glazed panel" under section 1201.2(a)(10)(iii) of the glazing standard. Since the product you describe has a walking surface only on one side of the glass it is not subject to the standard.

You ask whether this particular piece of glass must comply with any state glazing requirements or whether the preemption provisions of section 26(a) of the CPSA apply.

Section 26(a) of the CPSA provides:

> Whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either

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> to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard. (Emphasis added).

We believe this language makes clear that the preemption provisions apply only to products subject to the standard. Under the glazing standard, the Commission regulates architectural glazing material used in six products, including certain glazed panels. Glazing material used in any other products are not subject to the standard. It is the view of the Office of the General Counsel based on the language of section 26(a) that, the preemption provisions of the CPSA apply only to the specific glazed products subject to the standard and do not apply to glazed products not covered by the standard. The product described in your letter, therefore, would not be covered by the preemption provisions of the CPSA since that product is not covered by the standard. Thus, in our view, section 26 of the CPSA does not prohibit a state or subdivision from establishing safety standards or regulations regarding the product.

This Advisory Opinion has been approved by the Commission.

Please do not hesitate to contact the Commission if we can be of further assistance.

Sincerely,

Theodore J. Garrish
General Counsel

HARMON GLASS & GLAZING

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Telephone (612) 721-6393

September 23, 1977

Follow up 1/25/78

Office of the General Counsel
Consumer Products Safety Commission
Washington, D.C. 20207

RE: CPSC ARCHITECTURAL GLAZING MATERIAL STANDARDS

Gentlemen:

I request an official interpretation of the following example. I have discussed this with Mr. Norvin Allen of your Minneapolis Office, and he suggested that I request your assistance.

We have a glazed panel greater than nine square feet, less than 18 inches above the walking surface, more than 48 inches from the nearest door. There is a walking surface only on one side of the glass. According to the CPSC Standard, this glazed panel would not require approved safety glazing material.

If state building codes require this glazed panel to be glazed with safety glazing material, which takes precedence: Section 26(a) of the CPSC Act or the state code? Your early reply will be appreciated.

Sincerely,

Gerald K. Anderson
Vice President

GKA:pl

Please Answer

Thank you
GK Anderson

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JAN 30 1978
Consumer Product Safety Commission
Office of the General Counsel