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UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

**Memorandum**

Date: December 20, 2005

TO : Margaret Neily, Director, Division of Combustion and Fire Sciences,  
Directorate for Engineering Sciences

THROUGH: Gib Mullan, Director, Office of Compliance *JEM*  
Mary Toro, Associate Director, Office of Compliance *M. Toro*

FROM : Jason Hartman, Compliance Officer, Office of Compliance *JH*

SUBJECT : Changes to the Labeling Provision of the Proposed Open Flame Mattress  
Standard

This memo addresses changes to the labeling provision of the proposed standard that will better convey intended usage information to retailers and consumers at the point of purchase. All required information must appear on a dedicated label and in a prescribed format. The intended usage information is added to notify consumers that the mattresses they intend to purchase meet the requirements of standard when used alone, with one or more specific foundations, or both. Due to the nature and quantity of the required information, and to ensure that such information is not detracted from or otherwise minimized, staff deems it necessary that it appear on a separate and distinct label. A dedicated label has the added benefit of preventing potential conflict or confusion with state labeling requirements. Likewise, the prescribed format is included to guarantee that the intended usage information is highlighted and that all required information is presented in a consistent manner. The attached memorandum from Sarah Brown, Human Factors Division Engineering Psychologist, provides further justification for the labeling format.



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

**Memorandum**

Date: 12/13/2005

TO : Margaret L. Neily, Mattress Flammability Project Manager

THROUGH: Hugh McLaurin, Associate Executive Director, Directorate for Engineering Sciences *Hum*  
Robert B. Ochsman, Ph.D., Director, Division of Human Factors (ESHF) *PBO*

FROM : Sarah B. Brown, Engineering Psychologist, ESHF

SUBJECT : Mattress Label Format and Layout Justification

This memo addresses the format and layout of the information contained on the mattress label for the U.S. Consumer Product Safety Commission (CPSC) staff's draft mattress standard for flammability. The Engineering Sciences Human Factors (ESHF) staff used the CPSC document "Manufacturer's Guide to Developing Consumer Product Instructions" (Singer, Balliro, and Lerner, 2003) as a reference for making format decisions. This guide is a compilation of resources that is used for several different materials including manuals, instructions, recall information, and storage information.

The mattress label can be considered a quick reference guide containing intended usage information for the retailer and consumer. The mattress and foundation label includes information on the manufacturer location, manufactured date, model number, prototype identification, and importer/US records location if applicable. The mattress label includes a statement of compliance with 16 CFR §1633 and a statement indicating with which foundations compliance occurs, or if the mattress complies without a foundation. The foundation label includes the foundation identification, which is also located on the corresponding complying mattress(es).

The primary objective when presenting this information is to enable the consumer to effectively match the mattress to the corresponding foundation in the mattress set. The mattress label shall contain information stating if it is intended to be used with or without foundations; and if with foundations, which ones. The foundation label shall include the foundation identification so it can be matched with the corresponding mattresses by the labels.

The guide for instructions recommends using consistent formatting to help users locate "information and understand the structure of the instructions." The labels on both the mattress and foundation as specified in the staff's draft standard should use consistent layouts and fonts. White space should be used on the mattress and foundation labels to break up the different elements. A text box on the mattress label should be used to highlight the key information needed by the consumer.

In addition, as specified with other CPSC mandated labeling, such as that for children's sleepwear, the font shall be either Arial or Helvetica. For extra emphasis, the text pertinent to the consumer shall be in all uppercase letters; the recommended 10- and 12-point font should be used for the consumer statement and the foundation identification, respectively. The foundation identification on the foundation label should be 10-point font and bold. The remaining information on the mattress and foundation labels used by the manufacturers and the CPSC for record keeping shall be 8-point font to allow the label to be more compact. For maximum contrast, the label should be black text on white background.

Human Factors staff believes that the labels specified in the staff's draft mattress standard are consistent with existing guidelines for developing consumer product instructions. The mattress and foundation labels are also consistent with current labels mandated by the CPSC.

## **Reference**

Singer, J. P., Balliro, G. M., & Lerner, N. D. (2003). *Manufacturer's guide to developing consumer product instructions* (T. P. Smith, Ed.). Washington, DC: U.S. Consumer Product Safety Commission.



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, DC 20207

**Memorandum**

Date: December 14, 2005

TO : Margaret Neily, Director, Division of Combustion and Fire Sciences,  
Directorate for Engineering Sciences

THROUGH: Gib Mullan, Director, Office of Compliance *Gib Mullan*  
Mary Toro, Associate Director, Office of Compliance *Mary Toro*

FROM : Jason Hartman, Compliance Officer, Office of Compliance *JH*

SUBJECT : Staff Response to Compliance-Related Comments on NPR for Open Flame  
Mattress Standard

Attached are the Office of Compliance's responses to compliance-related comments on the Open Flame Mattress Standard NPR.

## 1) IMPORTS

### a) Testing and Record Keeping

#### Comment.

- Two commenters suggested making importer testing/recordkeeping responsibilities explicit. They proposed including language specifying that testing needs to be conducted (either qualification or confirmation) and records maintained for each foreign manufacturer if importing from more than one.

#### Response

- CPSC staff intends for the requirements under the draft standard to be the same for domestic manufacturers and importers: each is responsible for maintaining the appropriate qualification and confirmation test records for mattress sets they produce and/or import. If, for example, an importer sells mattress sets from three different foreign manufacturers (A, B, and C) who do not pool prototypes, the importer must have prototype qualification records from manufacturers A, B, and C. On the other hand, if manufacturers E and F pool a qualified prototype made by D, then the importer must have qualification test records for the mattress set produced by D and confirmation test records for the mattress sets produced by E and F. Similarly, if a domestic manufacturer qualified a mattress set that is pooled by another firm and also pools an already qualified prototype design, then that manufacturer must maintain qualification test records for the first set and confirmation test records for the second set.

### b) Labeling

#### Comment

- One commenter urged the Commission to require the labels of imported mattresses to bear the foreign manufacturer's name and full address, including country, as well as the importer's name and full address.

#### Response

- CPSC staff agrees that such information should be present on the mattress set label and has revised § 1633.12 (a) to read:  
“(a)Each mattress set subject to the standard shall bear a permanent, conspicuous, and legible label containing the following information:  
(1) Name of the manufacturer, or for imported mattress sets, the name of the foreign manufacturer and importer;  
(2) (i) For mattress sets produced in the United States, the complete physical address of the manufacturer.  
(ii) For imported mattress sets, the complete address of the foreign manufacturer, including country, and the complete physical address of the importer or the United States location where the required records are maintained if different from the importer . . . .”

b) Direct Shipping

Comment

- One commenter expressed concern that foreign manufacturers may circumvent testing requirements by drop-shipping directly to consumers. The commenter recommended adding a definition of “importer” that identifies domestic agents involved with selling or marketing the product to be drop-shipped as the responsible party.

Response

- While CPSC staff does agree that the commenter’s concern about the drop-ship scenario is warranted, we do not believe that adding a definition of importer will suitably address the issue. Section 3 (a) of the Flammable Fabrics Act already prohibits “[t]he manufacture for 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 for the purpose of sale or delivery after sale in commerce . . .” of any product violating a standard issued under its authority. This means that any party – including importers and other agents initially introducing goods regulated under the FFA into commerce – engaged in the foregoing actions with respect to non-complying products would be liable for those products. Section 3 of the FFA does not, however, give CPSC the authority to regulate firms who only engage in the marketing of goods and not in the aforementioned conduct. CPSC staff maintains that all parties potentially responsible for compliance are adequately identified by the FFA and that a definition of importer is not necessary.

CPSC staff believes a more effective approach to making certain that imported mattresses comply with the proposed standard is to explicitly require that a copy of the records demonstrating compliance be maintained at a U.S. location. Additionally, this location would be required to appear on the mattress label. Consequently, § 1633.11 (e) has been revised to read:

*“Record retention requirements.* The records under this section shall be maintained by the manufacturer (including importers) for as long as mattress sets based on the prototype in question are in production and shall be retained for 3 years thereafter. Records shall be available upon the request of Commission staff.

(1) For mattress sets produced in the United States, the records under this section must be maintained at the plant or factory at which the mattress sets are manufactured or assembled.

(2) For mattress sets produced outside of the United States, the records under this section shall be available in English and maintained at a U.S. location, which must be identified on the mattress set label as specified in § 1633.12 (a).”

c) Production Lots

Comment

- One commenter suggested that importers be required to define a “production lot” as mattresses imported from the same manufacturer during the same time interval.

Response

- The staff’s draft final standard affords both domestic manufacturers and importers the flexibility to define the production interval for each production lot for a specified prototype. The commenter’s suggestion would unnecessarily impose a more restrictive requirement on importers.

2) DEFINITIONS

a) Subordinate Prototype

Comment

- Two commenters stated that the distinction between prototypes that need to be tested and those that do not is unclear. They suggest using a different term, such as “Model,” for prototypes that do not need to be tested

Response

- CPSC staff agrees that using a different term to refer to prototypes that are not required to be tested would prevent confusion. However, instead of “model,” the term “subordinate prototype” will be used and defined at § 1633.2(p) and will read as follows:

“*Subordinate prototype* means a mattress set that is based on a qualified or confirmed prototype and is the same as the qualified or confirmed prototype, except as permitted by § 1633.4(b). A subordinate prototype is considered to be represented by a qualified or confirmed prototype and need not be tested in accordance with § 1633.4(a) or § 1633.5(b).”

b) Mattress Set

Comment

- One commenter noted inconsistency in use of the terms “mattress” and “mattress set,” which could lead to confusion. The commenter suggested using and defining “mattress set” to clarify mattresses to be tested with and without a foundation.

Response

- CPSC staff agrees that defining “mattress set” to include mattresses intended to be sold alone and mattresses intended to be sold with a foundation, depending upon the manufacturer’s intentions, will resolve the problem of inconsistency, as well as reduce wordiness. The revised definition also makes clear that foundations alone do not need to meet the test requirements. “Mattress set” is now defined at § 1633.2 (c) as:

“*Mattress set* means either a mattress and foundation offered by the manufacturer and intended for sale as a set, or a mattress alone offered by the manufacturer and intended for sale without a corresponding foundation.”

c) Foundation

Comment

- One commenter noted that the definition of “foundation” includes only support structures covered by ticking. The commenter is concerned that manufacturers may try to sidestep the requirement to test a mattress together with its intended foundation by covering the foundation with a material other than ticking. The commenter recommends modifying the definition of the term “foundation” to omit reference to ticking, thus broadening the scope to include all resilient support structures.

Response

- The term “ticking” is defined at § 1633.2 (e) as “the outermost layer of fabric or related material . . . .” The term “fabric” is defined under Section 2 (e) of the FFA as “. . . any material (except fiber filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from a combination with any natural or synthetic fiber, film, or substitute therefore which is intended for use or which may reasonably be expected to be used, in any product [of interior furnishing].” And the term “related material” is defined under Section 2 (g) of the FFA as “. . . paper, plastic, rubber, synthetic film, or synthetic foam . . . .” Based on these definitions, all resilient support structures intended for use as a mattress foundation will be covered by the standard.

d) Prototype Developers

Comment

- One commenter recommended that the term “prototype developer” be defined to permit third parties, such as component suppliers, to design and test prototypes that can be used by mattress manufacturers. The commenter believes that, in its proposed form, the draft standard does not allow for such arrangements.

Response

- CPSC staff agrees that including a definition of the term “prototype developer” will make clear that third parties may design and test a prototype for use by manufacturers. Thus, § 1633.1(m) now reads:  
“*Prototype developer* means a third party that develops a prototype for use by a manufacturer. Such prototypes may be qualified by either the prototype developer or by the manufacturer.”

e) Renovation

Comment

- One commenter asked that the policy provision on renovated mattresses be made part of the rule to avoid any confusion over its legal status.

Response

- CPSC staff agrees with this comment and has added language to the definition of “mattress” stating that renovated mattresses are subject to the standard.

3) PRODUCTION LOT

a) Comment

- One commenter stated that all references to “production lots” in the draft final standard should be removed because the term, which implies long runs of discrete product, is not consistent with the industry’s practice of “just-in-time” production of a small number of mattresses. The commenter also asserts that maintaining records for each production lot would be overly burdensome and unnecessary since the mattress label could be used to determine the scope of a possible recall.

Response

- The staff’s draft final standard allows manufacturers to define the production interval for each production lot. This gives manufacturers the flexibility to include in a production lot one or more small runs of mattresses of the same prototype produced over a period of time determined by the manufacture. While the information on the mattress label will assist consumers in determining whether their mattress is involved in a recall, it will not necessarily define the full range of non-complying product. Well-defined production lots, on the other hand, will enable manufacturers to effectively identify and isolate mattresses that have been found to fail the open flame standard.

b) Comment

- One commenter proposed modifying the definition of “production lot” to allow manufacturers the option to define production intervals either in terms of quantity or time.

Response

- Quality assurance records must include both the quantity of mattresses in and duration of each production lot of a given prototype. CPSC staff believes that defining production intervals in terms of *both* quantity and time will better enable manufacturers to narrow the scope of affected product in the event of a recall.

4) QUALITY ASSURANCE

a) Comment

- A few commenters endorsed the need for both material suppliers and mattress manufacturers to implement sound quality assurance procedures to ensure product consistency and successful flammability performance. One

commenter reported that certain voluntary standards have been developed to evaluate the consistency and performance of tape edge and barrier materials. The commenter also noted that there are established quality assurance programs available to manufacturers.

Response

- CPSC staff agrees that it is essential for manufacturers to develop and implement internal systems designed to control incoming materials and their assembly since it has been shown that small variations in materials and/or construction can affect mattress flammability performance.

b) Comment

- One commenter suggested limiting the scope of the components and materials required to be controlled for quality assurance to only those that are critical to the flammability performance of the finished product.

Response

- CPSC staff believes that it is premature to limit the scope of the quality control on incoming components and materials. The staff could revisit this issue once significant experience with the standard is gained.

5) RECORDKEEPING

a) Comment

- One commenter recommended that the test and manufacturing records require the “name and full address” of the testing laboratory, as opposed to just the “location.” The same commenter likewise suggested substituting “full address” for “location” for both the manufacturer of the qualified prototype in the pooling confirmation test records and the suppliers in the prototype records.

Response

- CPSC staff agrees that the name and complete address of the testing laboratory, as well as the complete addresses of the qualified prototype manufacturer and each material and component supplier, should appear in the respective records. Thus, the following changes have been made:
  - § 1633.11 (a)(1) now states: “. . . Details shall include: Name and complete physical address of test facility . . . .”
  - § 1633.11 (b)(2) now states: “. . . Such description shall include at a minimum, the specifications of all materials and components, name and complete physical address of each material and component supplier . . . .”
  - § 1633.11 (c)(2) now states: “Name and complete physical address of the qualified prototype manufacturer.”

b) Comment

- One commenter supported the requirements for manufacturers to maintain records relating to prototype, confirmation, and production testing, but suggested modifying § 1633.11 (a)(1) to make clear that, under this section, manufacturers do not have to maintain records of any other types of tests that it performs.

Response

- CPSC staff believes § 1633.11 (a)(1) is clear in requiring only records that pertain to testing conducted in accordance with the test method given in § 1633.7, which is limited to prototype, confirmation, and production testing. As drafted, § 1633.11 (a)(1) reads: “Test results and details of each test performed by or for that manufacturer (including failures), whether for prototype, confirmation, or production, in accordance with § 1633.7.” Therefore, CPSC staff will not revise this section.

c) Comment

- One commenter urged the Commission to limit the records required under § 1633.11 (d)(5) of the standard to only those relating to the testing and evaluations of components, materials, and assembly methods critical to flammability performance of the qualified prototype.

Response

- Since it is too early to know exactly what components, materials, and assembly methods will influence the flammability performance of a mattress, CPSC staff does not want to limit the types of records required under § 1633.11 (d)(5). Moreover, these records will likely be used by manufacturers to demonstrate that a change in component, material, and/or assembly method will not degrade the flammability performance of a prototype, thus allowing the manufacturer to forgo testing and qualifying a new prototype. To that end, it is in the interest of the manufacturer to maintain a broader scope of such records.

d) Comment

- Two commenters remarked that the requirement to keep physical samples of all materials used in each prototype is overly burdensome and impractical. They noted that, as worded, the proposed standard would require manufacturers to keep samples of every material and component that goes into a particular prototype, which could number in the dozens. Further, they asserted that keeping such samples for every prototype would require significant storage space. The commenters suggested that the objective for requiring physical samples could be accomplished through test and quality certificates and other documentation already required in the quality assurance records. They therefore recommended eliminating the requirement.

Response

- The requirement to maintain physical samples of prototype materials and components was included in the staff’s draft proposed standard as an added measure for manufacturers to verify that production mattresses match their representative prototype. Given that the prototype recordkeeping requirements already call for manufacturers to provide a detailed description of and specifications for each material and component used in every prototype, and given that this information may be used to reliably verify material and component consistency, CPSC staff has removed the requirement to keep physical samples from the draft final standard.

6) LABELING

a) Comment

- One commenter expressed concern that requiring a dedicated label might detract from the Sleep Product Safety Council’s safety hangtag program, conflict with the state law labeling program, and negatively affect the aesthetics of the finished product. The commenter suggested allowing manufacturers to display the required information on the Sleep Products Safety Council’s safety hangtag.

Response

- CPSC staff revised the labeling provision in the proposed standard to 1) include intended usage information for the consumer, 2) to require all information specified in § 1633.12 to appear on a dedicated label, and 3) to permit the display of the consumer usage information in any other language on the reverse (blank) side of the label. The intended usage information was added to make consumers aware that the mattresses they intend to purchase meet the performance requirements of the standard when used alone, with one or more specific foundations, or both. Requiring the specified information to appear on a dedicated label has the benefit of 1) ensuring that such information is not detracted from or minimized, 2) avoiding potential conflict or confusion with state labeling requirements, 3) guaranteeing that the intended usage information is highlighted and presented in a consistent manner, and 4) allowing manufacturers the option of providing the intended usage information in any another language on the back of the label. CPSC staff designed the required label to be as small as possible without compromising the clarity and effectiveness of the specified information.

b) Comment

- One commenter referred to the Textile Fiber Products Identification Act, which is administered by the Federal Trade Commission and requires, among other things, that mattresses made with “reused stuffing” be labeled so, and suggested that CPSC staff coordinate with FTC to allow the disclosure to appear on the label with the other information required by the standard.

Response

- The staff’s draft final standard has been revised to now require the information specified in § 1633.12 to be displayed on a dedicated label in a prescribed format. Therefore, no other information apart from that required by the standard may appear on this label. Section 1633.12 now states:

“(a)Each mattress set subject to the standard shall bear a permanent, conspicuous, and legible label containing the following information:

- (1) Name of the manufacturer, or for imported mattress sets, the name of the foreign manufacturer and importer;
- (2) (i) For mattress sets produced in the United States, the complete physical address of the manufacturer.

(ii) For imported mattress sets, the complete address of the foreign manufacturer, including country, and the complete physical address of the importer or the United States location where the required records are maintained if different from the importer.

(3) Month and year of manufacture;

(4) Model identification;

(5) Prototype identification number for the mattress set;

(6) A certification that the mattress set complies with this standard

(i) For mattresses intended to be sold without a foundation, a certification stating “This mattress meets the requirements of 16 CFR §1633 (federal flammability (open flame) standard for mattresses) when used without a foundation.”; or

(ii) For mattresses intended to be sold with a foundation, a certification stating “This mattress meets the requirements of 16 CFR §1633 (federal flammability (open flame) standard for mattress sets) when used with foundation <ID>.” Such foundation(s) shall be clearly identified by a simple and distinct name and/or number on the mattress label; or

(iii) For mattresses intended to be sold both alone and with a foundation, a certification stating “This mattress meets the requirements of 16 CFR §1633 (federal flammability (open flame) standard for mattress sets) when used without a foundation or with foundation(s) <ID>.”; and

(7) A statement identifying whether the manufacturer intends the mattress to be sold alone or with a foundation.

(i) For mattresses intended to be sold without a foundation, the label shall state “THIS MATTRESS IS INTENDED TO BE USED ***WITHOUT A FOUNDATION***.” See figures XX and XX; or

(ii) For mattresses intended to be sold with a foundation, the label shall state “THIS MATTRESS IS INTENDED TO BE USED WITH FOUNDATION(S): <**Foundation ID**>.” See figures XX and XX; or

(iii) For mattresses intended to be sold both alone and with a foundation, the label shall state “THIS MATTRESS IS INTENDED TO BE USED ***WITHOUT A FOUNDATION OR WITH FOUNDATION(S): <Foundation ID>***.” See figures XX and XX.

(b) The mattress label required in paragraph a of this section must measure 2 ¾” in width and the length can increase as needed for varying information. The label must be white with black text. The information on the label must be in English.

The label text shall comply with the following format requirements:

(1) All information specified in sections (a)(1) – (6) must be in 6-point font or larger with mixed uppercase and lowercase letters. The text must be left justified and begin ¼” from left edge of label. See figure XX and XX.

(2) The statement specified in section (a)(7)(i) must be in 10-point Arial/Helvetica font or larger, uppercase letters with the words “***WITHOUT A FOUNDATION***” bolded and the word “***WITHOUT***” in italics. The text shall be centered in a text box with the width measuring 2 1/2” and the length increasing as needed. See figures XX and XX.

(3) The statement specified in section (a)(7)(ii) must be in 10-point Arial/Helvetica font or larger in uppercase letters. The foundation identifier should be in 12-point font or larger, bolded, and underlined. The text shall be centered in a text box with the width measuring 2 1/2” and the length increasing as needed. See figures XX and XX.

(4) The statement specified in section (a)(7)(iii) must be in 10-point Arial/Helvetica font or larger, uppercase letters with the words “***WITHOUT A FOUNDATION OR***” bolded and the word “***WITHOUT***” in italics. The foundation identifier should be in 12-point font or larger, bolded, and underlined. The text shall be centered in a text box with the width measuring 2 1/2” and the length increasing as needed. See figures XX and XX.

(c) The foundation label required in paragraph (a) of this section must measure 2 3/4” in width and the length can increase as needed for varying information. The label must be white with black text. The information on the label must be in English. The label shall contain the following:

- (1) The information specified in (a)(1) – (5) of this section; and
- (2) The words “Foundation ID:” followed by a distinct name and/or number that corresponds to the name and/or number used on the mattress. This text must be in 10-point or larger bold Arial/Helvetica font, and the foundation identifier must be underlined. See figures XX and XX.

(d) The statements specified in paragraphs (a)(7)(i), (a)(7)(ii) and (a)(7)(iii) of this section may be translated into any other language and printed on the reverse (blank) side of the label.

(e) No person, other than the ultimate consumer, shall remove or mutilate, or cause or participate in the removal or mutilation of, any label required by this section to be affixed to any item.”

c) Comment

- One commenter proposed requiring renovated mattresses to bear a yellow label that would distinguish them from new mattresses, which traditionally bear white labels. In addition, the commenter recommended that renovated mattress labels be required to contain a statement indicating that compliance with the standard does not imply that the renovated mattress is sanitary or hygienic.

Open Flame Mattress Standard – Office of Compliance Responses to Comments  
12/14/2005

Response

- The draft standard seeks to reduce injuries and deaths due to fires. It is not intended, nor does the FFA provide the Commission with the authority to address, the sanitary condition of mattresses.