



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

CPSC EXECUTIVE SESSION
August 5, 1976

1750 K Street, N.W.
Washington, D.C.

Presiding: Chairman Byington
Present : Commissioner Franklin
Commissioner Pittle
Commissioner Kushner

ITEM

Determination of whether to undertake review of initial decision in the matter of Barrett Carpet Mills, Inc., and Roy C. Barrett, CPSC Docket No. 75-5.

DECISION

The Commission approved the attached order placing case on the Commission's docket for review and setting out the issues to be considered and a briefing schedule for the parties.

VOTE

Concurring: Chairman Byington
Commissioner Franklin
Commissioner Kushner
Commissioner Pittle

Handwritten signatures of the four commissioners, each written over a horizontal line.

Submitted by: Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
BARRETT CARPET MILLS INC.,)	
a corporation, and)	
)	
ROY C. BARRETT, individually)	CPSC DOCKET NO. 75-5
and as an officer of the)	
corporation.)	

ORDER

On July 8, 1976 an initial decision in the above entitled proceeding was issued and served on the parties. The Commission's Interim Rules of Practice for Adjudicative Proceedings, section 1025.72(a), permit the parties to file a notice of intention to appeal within ten days after service of the initial decision. The ten day period has expired and no notice of intention to appeal has been filed by any party.

Section 1025.73 of the interim rules permits the Commission to review an initial decision in the absence of an appeal by the parties. Because this case presents important questions concerning the Commission's administration of the Flammable Fabrics Act, 15 U.S.C. 1191 et seq. and the Standard for Surface Flammability of Carpets and Rugs (FF 1-70), 16 CFR 1630, the Commission has decided to place the matter on its

docket for review. The review will encompass the findings, conclusions and order of the Administrative Law Judge and will be directed to the following issues:

1. Whether the Commission possesses the authority to order recall of carpet already installed or otherwise in the possession of the ultimate consumer and if so under what conditions and circumstances should such a recall be ordered.
2. Whether a violation of the flammability test requirements of the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70) may be considered per se to constitute an unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage under the provisions of the Flammable Fabrics Act.
3. Whether evidence extrinsic to compliance with the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70) which might bear on certain flammability characteristics of carpet is relevant or material to a determination of a violation of the standard, the Flammable Fabrics Act or any remedial relief ordered by the Commission.
4. Whether the evidence presented in this proceeding warrants the issuance of a cease and desist order from any further violation of the Flammable Fabrics Act and standards promulgated thereunder.
5. Whether the Administrative Law Judges' interpretation and application on the term "lot" is in conformity with Commission precedent and policy.
6. Whether the findings, conclusions and order of the Administrative Law Judge are in conformity with the evidence presented.
7. Whether the evidence presented in this case warrants relief different or greater than that ordered by the Administrative Law Judge.

The parties to this proceeding will be permitted to file briefs under the following schedule: Opening brief of staff counsel within 30 days after service of this order; answering brief by respondents within 30 days after service of the opening brief; and reply brief of staff counsel within 7 days after receipt of respondents' answering brief. The form and content of all briefs shall conform as close as possible to the requirements of section 1025.72(b) through (e) of the Commission's Interim Rules of Practice. The Commission will by further order notify the parties of any further submissions or oral argument which the Commission may deem necessary and appropriate.

BY THE COMMISSION

DATED: August 5, 1976


SADYE E. DUNN, Secretary