



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

Record of Commission Action
Commission Voting by Ballot

1111 - 18th Street, N.W.
Washington, D.C.

Voting: Chairman King
Commissioner Franklin
Commissioner Pittle
Commissioner Sloan

ITEM

Final Amendment to Safety Standard for Architectural Glazing Materials
Exempting Certain Decorative Glazing Materials (Amendment proposed March 15,
1978.)

(Briefing material transmitted by the Office of the
Secretary on November 14, 1978.)

DECISION

The Commission approved the subject final amendment. Attached is
the Federal Register notice published December 7, 1978.

VOTE

Concurring: Chairman King (11/21/78)

Luan B. King

Commissioner Franklin (11/20/78)

Barbara H. Franklin

Commissioner Pittle (11/16/78)

R. David Pittle

Commissioner Sloan (11/22/78)

Edith Dardesh Sloan

NOT VOTING:

Commissioner Zagoria (11/22/78)

Sam Zagoria

Submitted by the Office of the Secretary

stating its intention to reexamine the rule, and to decide what action, if any, to take.

In a letter dated November 20, 1978, placed in the docket and served on all parties, the attorney for the petitioning carriers asked the Board to continue the stay *pendente lite*, as requested in their original petition. The carriers argue that ER-1078 would involve substantial burdens and competitive harm to them, and that the Court of Appeals will not have acted on their Petition for Review of the rule by expiration of the Board's current stay, expiring December 18, 1978.

The Board intends to reexamine ER-1078 at its public meeting during the week of December 4, 1978. In order to provide the carriers sufficient time to comply, or take any other action, in response to the Board's decision at this meeting, the effectiveness of ER-1078 is extended an additional 30 days.

Accordingly, the effective date of ER-1078 (43 FR 5016, October 27, 1978), amending Part 250 of the Board's Economic Regulations (14 CFR Part 250), is changed to January 18, 1979.

(Sec. 20 (a), Federal Aviation Act of 1958, as amended, 72 Stat. 743, (49 U.S.C. 1324(a).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYDOR,
Secretary.

(FR Doc. 78-34193 Filed 12-6-78; 8:45 am)

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER G—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE MAGNUSON-MOSS WARRANTY ACT

SERVICE CONTRACTS AND IMPLIED WARRANTIES

Section 108 of the Act; Advisory Opinion

AGENCY: Federal Trade Commission.

ACTION: Advisory opinion.

SUMMARY: The Federal Trade Commission issues an advisory opinion that relates to service contracts and implied warranties. The Commission states that Section 108 of the Magnuson-Moss Warranty Act prohibits a proposed course of action whereby automobile dealers entering into service contracts with vehicle purchasers at the time of sale seek to limit the duration of implied warranties therein.

Air Canada, et al v. C.A.B. (CADC Case Nos. 78-2073, 78-2143).

DATE: Effective December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Karp, Attorney, Division of Product Reliability, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, 202-523-1753.

SUPPLEMENTARY INFORMATION:

By letter of October 4th and 18th, 1978, the firm of Rain, Harrell, Emery, Young and Duke requested on behalf of their clients, automobile dealers who enter into service contracts with vehicle purchasers at the time of sale, an opinion as to whether Section 108 of the Magnuson-Moss Warranty Act would prohibit limiting the duration of implied warranties to the duration of the service contract.

The Commission responded to the request as follows:

CATHLEEN CHANDLER STEVENSON, Esq.
Rain, Harrell, Emery, Young and Duke,
Republic National Bank Tower, Dallas, Texas 75201

DEAR MRS. STEVENSON: This is in response to your letters of October 4th and 18th, 1978 requesting an advisory opinion as to whether Section 108 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2308, would prohibit a proposed course of action for your clients. Your clients, automobile dealers who enter into service contracts with vehicle purchasers at the time of sale, propose to limit the duration of implied warranties to the duration of the service contract.

Section 108(a) of the Act flatly prohibits any modification of implied warranties by a supplier when a full warranty is offered or a service contract is entered into. This section states:

No supplier may disclaim or modify (except as provided in subsection (b)) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

Section 108(b) of the Act creates an exception to the general rule in Section 108(a) in the following manner:

For purposes of the title (other than section 108(a)(2)), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conspicuous and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

The exception in Section 108(b) does not refer, however, to service contracts or provide for the limitation of implied warranties in service contracts. In fact, the provision specifically requires that any permitted limitation of implied

warranties be "prominently displayed on the face of the warranty" (emphasis added). Had Congress intended the exception to apply to service contracts as well, Section 108(b) would read "... prominently displayed on the face of the warranty or service contract." Further, there is no other section of the Act that could be interpreted to allow the course of action you have proposed.

Section 108(b) would thus not except the proposed course of action from the general prohibition against disclaimer or limitation of implied warranties in Section 108(a) of the Act.

By direction of the Commission dated November 17, 1978.

CAROL M. THOMAS,
Secretary.

(FR Doc. 78-34144 Filed 12-6-78; 8:45 am)

[6355-01-M]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1201—SAFETY STANDARD FOR ARCHITECTURAL GLAZING MATERIALS

Amendment to Standard Exempting Certain Decorative Glazing Materials

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendment to rule.

SUMMARY: In this document, the Commission amends the Safety Standard For Architectural Glazing Materials to exempt from its coverage carved glass, dalle glass, and leaded glass, if those materials are incorporated into doors or glazed panels covered by the standard for decorative or artistic purposes. The exemption is issued because these glazing materials have an aesthetic and artistic value but are unable to meet the requirements of the standard; acceptable substitute glazing is not available; and any risk of injury is mitigated by the visibility of the glass. The Commission in this document also lifts the stay of the standard it issued for faceted, patinaed, and leaded glass which has been ineffect pending action on this amendment.

DATES: The exemption for carved glass, dalle glass, and leaded glass incorporated into doors or glazed panels covered by the standard for decorative or artistic purposes is effective on December 7, 1978. The stay of the standard for faceted glass and leaded glass is lifted effective December 7, 1978. The stay of the standard for "patinaed

glass" is lifted effective January 3, 1979.

FOR FURTHER INFORMATION CONTACT:

Allen Brauminger, Directorate of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6629.

SUPPLEMENTARY INFORMATION:

On January 6, 1977, the Consumer Product Safety Commission issued the Safety Standard for Architectural Glazing Materials to eliminate or reduce unreasonable risks of injury associated with architectural glazing materials and products incorporating those materials (42 FR 1428 (16 CFR 1201)). The standard prescribes tests to insure that glazing materials used in certain architectural products either do not break when impacted with a specified energy, or break with such characteristics that they are less likely to present an unreasonable risk of injury. The standard became effective on July 6, 1977.

Provisions of § 1201.1(c) of the standard, as issued on January 6, 1977, exempted six items of glazing materials from its requirements. The only decorative glazing materials exempted by § 1201.1(c) were:

"Leaded glass panels where no individual piece of glass has an area greater than 30 square inches."

The term "leaded glass" is defined in the standard at § 1201.2(a)(14) to mean:

"... a decorative composite glazing material made of individual pieces of glass whose circumference is enclosed by lengths of durable metal such as lead or zinc and the pieces of glass are completely held together and supported by such metal."

On April 20, 1977, the Stained Glass Association of America (SGAA), petitioned the Commission under section 10 of the Consumer Product Safety Act (15 U.S.C. 2059) to amend the standard to exempt other decorative glazing materials. The petition was designated CP 77-12.

On June 21, 1977, SGAA requested the Commission to stay the standard as it applied to the products described in the petition i.e. patinaed, leaded and faceted glass. SGAA stated that decorative glazing materials of the types described in its petition could not be manufactured to conform to the standard, were used for decorative and artistic purposes, and were produced in extremely limited quantities. SGAA also argued that the standard effectively eliminated all of its products from use in glazed panels and decorative glass as an art form. After considering SGAA's arguments and reviewing information obtained by its staff, the Commission on June 30, 1977

issued an order to stay the standard, pending action on the petition, for "faceted glass", "patinaed glass" and "leaded glass", as those terms were defined in the order when those materials are used in doors, storm doors, and glazed panels having no individual piece of glazing material greater than nine square feet in area, provided certain specified criteria were met. Notice of the stay of the standard was published in the FEDERAL REGISTER on August 9, 1977 (42 FR 40188).

Discussion between the Commission staff and SGAA on the petition, after the Commission issued its stay of enforcement, disclosed that although the stay of enforcement did not include carved or etched glass, the same considerations which led to the stay of enforcement would support an exemption for carved or etched glass. Those discussions also indicated that "patinaed glass" was almost always used as a component of leaded glass panels, and generally did not constitute a separate category of decorative glazing material.

In the FEDERAL REGISTER of March 15, 1978, the Commission proposed an amendment to the standard. The proposal applied to "carved glass", "faceted glass" and "leaded glass" that met the following criteria:

1. The coloring, texturing, or other design qualities or components of the glazing material cannot be removed without destroying the material; and
2. The primary purpose of such glazing is decorative or artistic; and
3. The glazing material is conspicuously colored or textured so as to be plainly visible and plainly identifiable as aesthetic or decorative rather than functional (other than for the purpose of admitting or controlling admission of light components or heat and cold); and
4. The glazing material, or assembly into which it is incorporated, is divided into segments by conspicuous and plainly visible lines.

After consideration of the injury information associated with these products, the aesthetic characteristics of the decorative glazing materials, and technical problems of producing decorative glazing materials which comply with the standard, the Commission proposed an exemption for carved, faceted, and leaded glass used in doors and glazed panels without regard to their size. The amendment, as proposed, would not exempt any decorative materials used in any storm door, sliding glass door (patio type), bathtub door and enclosure, or shower door and enclosure from the requirements of the standard.

"Because 'patinaed glass' is used as a component of leaded glass panels, the March 15, 1978 proposal did not refer to 'patinaed glass' as a separate category of glazing material.

The basis for the proposed amendment was that only small quantities of glazing were covered by the amendment, any risk of injury was mitigated by the visibility of decorative glass, substitute glazing that complied with the standard generally was not available, and not granting an exemption would reduce aesthetic qualities of the products with a resulting loss of consumer utility. These reasons are discussed in more detail in the proposal.

COMMENTS RECEIVED

Nine comments were received in response to the proposed amendment. All commenters expressed general approval of the proposal to remove certain decorative glazing materials from the requirements of the standard.

A comment from a manufacturer of decorative glazing materials stated that the exemption for "leaded glass" should be broadened to include copper-foil panels. This comment states that copper-foil panels have the same physical properties as panels of leaded glass. The petitioner has informed the Commission that "copper-foil panels" consist of individual pieces of glass which are edged with copper-foil and soldered together so that each piece of glass is completely surrounded and supported by metal.

The proposed amendment defined the term "leaded glass" as "a decorative composite glazing material made of individual pieces of glass * * * enclosed by lengths of durable metal such as lead or zinc * * *." Lead and zinc are only examples of durable metal that must enclose the glazing. Thus, "copper-foil" panels meet the definition of "leaded glass" contained in proposed § 1201.2(a)(14). However, to express the intent of the Commission more clearly and to respond to the comment under consideration, the definition of leaded glass in § 1201.2(a)(14) of the amendments issued below has been revised to state that "leaded glass" means a decorative material consisting of individual pieces of glass "enclosed by lengths of durable metal such as lead, zinc, copper, or solder * * *."

The same comment states that dalle glass, or dalle de verre, should be added to the types of decorative glazing materials exempted from the standard because it consists of pieces of glass approximately one-half inch thick or thicker which are embedded in epoxy cement, and are therefore unlikely to break on human impact.

The types of decorative glazing materials which were to be exempted from the requirements of the standard by the proposed amendment included "faceted glass." That material was defined by proposed § 1201.2(a)(37) to mean:

a decorative composition glazing material made of individual pieces of glass which are imbedded in a cast matrix of concrete or epoxy.

The definition of "faceted glass" set forth in the proposed amendment appears to encompass dalle glass as described by the comment under consideration. However, the petitioner has informed the Commission that "faceted glass" is a particular kind of "dalle glass" consisting of individual pieces of glass from which the edges have been chipped to create facets in the glass.

When the Commission proposed the amendment to broaden the categories of decorative glazing materials exempted from the standard, it intended to include any composite decorative glazing material described in proposed § 1201.2(a)(37). To express this intent more clearly and to respond to the comment under consideration, in the final amendment the term "dalle glass" has been substituted for the term "faceted glass" in § 1201.1(c)(4) as proposed; and § 1201.2(a)(37) of the amendment as proposed has been revised to read as follows:

(37) "Dalle glass" or dalle de verre (including faceted glass) means a decorative composite glazing material made of individual pieces of glass which are imbedded in a cast matrix of concrete or epoxy.

Two comments urge elimination of language in the proposal that requires decorative glazing material to be divided into segments by conspicuous lines in order to be exempted from the standard.

The Commission proposed the amendment to broaden the categories of decorative glazing material exempted from the requirements of the standard because of recognition that certain decorative glazing materials not falling within the definition of leaded glass are sufficiently similar to leaded glass such that the absence of an exemption for these other decorative glazing materials might be unfair. For example, certain panels of faceted glass were not exempted from the standard as issued on January 6, 1977, only because the individual pieces of glass were held together by cement or epoxy rather than by metal. Aside from this difference, faceted glass and carved glass, like leaded glass, require large amounts of highly skilled labor in their production, are produced in relatively small quantities, and are used principally for aesthetic purposes, thereby limiting consumer exposure to the glazing material and the resultant risk of injury from breakage by accidental impact.

Eliminating the requirement that the glazing material be divided into segments by conspicuous lines in order to come under the exemption, as urged by the comments under considera-

tion, would broaden the categories of exempted materials and products to include some which do not share the characteristics described above, and would significantly increase the quantities of noncomplying materials to which consumers would be exposed. Further, it has not been shown that manufacture of this broader category of glazing material (i.e., materials not divided into segments by conspicuous lines) would be eliminated or otherwise seriously affected by a requirement to comply with the standard. Therefore, the Commission declines to expand the scope of the exemption as requested by these comments.

Two comments suggest a further expansion of the proposal to include opalescent glass, used as a separate category of glazing materials, within the category of material exempt from the requirements of the standard. The proposed amendment to the standard exempting decorative glass applied to three specified types of decorative glass. Opalescent glass used as a separate category of glazing material was not included in the proposal and therefore, interested persons were not given an opportunity to comment on the question of an exemption. Expanding the final amendment to include opalescent glass, as suggested by the comments under consideration, would significantly alter the scope of the amendment without giving interested persons an opportunity to comment, as is required by the Administrative Procedure Act. For this reason, the Commission declines to expand the scope of the exemption.

ENVIRONMENTAL CONSIDERATIONS

The CPSC's interim environmental review procedures, 16 CFR 1021.5 provide that an environmental review is generally not required for amendments to an existing standard that do not alter the principal purpose or effect of the standard. The amendments below would not alter the principal purpose or effect of the standard for architectural glazing materials. Rather, they allow manufacturers to use additional types of glazing materials in specified architectural products. The Commission does not foresee any environmental effects from the issuance of the amendments which would necessitate an environmental review. Consequently, preparation of a draft environmental impact statement is unnecessary.

EFFECTIVE DATE

5 U.S.C. 553(d) provides that a rule which relieves a restriction or grants an exemption may take effect immediately. Because the amendments would grant an exemption, the Commission believes the amendment should take

effect upon publication of a final amendment in the FEDERAL REGISTER.

In issuing this final amendment to the glazing standard, the Commission also is lifting the stay of the standard issued on June 30, 1977 and published in the FEDERAL REGISTER of August 9, 1977. The lifting of the stay will not affect leaded or faceted glass which will be exempt from the standard under the amendment. Patinaed glass, however, is exempt only to the extent that it is used in leaded glass and would not be exempt from the standard as an individual category of glass as it was under the stay order. Because of this different treatment of patinaed glass, the Commission is providing in the amendment that patinaed glass manufactured during the period of the stay may be sold without restriction; and it may be incorporated into architectural products subject to the standard and those products may be sold without restriction. It is also providing that the stay of the standard for patinaed glass is lifted January 8, 1979, in order to give manufacturers of patinaed glass notice of the Commission's action. It is the Commission's understanding that patinaed glass is used almost exclusively in leaded glass and thus it is unlikely that consumers will be exposed to a greater risk of injury from patinaed glass used as an individual piece of glazing material.

The Commission concludes that the standard should be amended as set forth below. Therefore pursuant to provisions of the Consumer Product Safety Act (sec. 9(e)), Pub. L. 92-583, 86 Stat. 1215; 15 U.S.C. 2058(e); and 5 U.S.C. 553, the Commission amends the Safety Standard for Architectural Glazing Materials by adding new §§ 1201.2(a) (36) and (37), and § 1201.7(h), and by revising § 1201.1(c)(4) and § 1201.2(a)(14), as follows:

§ 1201.1 Scope, application, and findings.

(c) *Exemptions.* The following products, materials, and uses are exempt from this Part 1201:

(4) Carved glass (as defined in § 1201.2(a)(36)), dalle glass (as defined in § 1201.2(a)(37)), or leaded glass (as defined in § 1201.2(a)(14)), which is used in doors and glazed panels (as defined in §§ 1201.2(a)(7) and (a)(10)) if the glazing material meets all of the following criteria:

- (i) The coloring, texturing, or other design qualities or components of the glazing material cannot be removed without destroying the material; and
- (ii) The primary purpose of such glazing is decorative or artistic; and

(iii) The glazing material is conspicuously colored or textured so as to be plainly visible and plainly identifiable as aesthetic or decorative rather than functional (other than for the purpose of admitting or controlling admission of light components or heat and cold); and

(iv) The glazing material, or assembly into which it is incorporated, is divided into segments by conspicuous and plainly visible lines.

§ 1201.2 Definitions.

(a) As used in this Part 1201:

(14) "Leaded glass" means a decorative composite glazing material made of individual pieces of glass whose perimeter is enclosed by lengths of durable metal such as lead, zinc, copper, or solder, and the pieces of glass are completely held together and supported by such metal. Such pieces of glass can be clear, colored, beveled, painted, or flashed and etched.

(36) "Carved glass" means a decorative glazing material in which a permanent visible design has been produced by polishing, grinding, or otherwise removing portions of the surface.

(37) "Dalle glass" or dalle de verre (including faceted glass) means a decorative composite glazing material made of individual pieces of glass which are imbedded in a cast matrix of concrete or epoxy.

§ 1201.7 Effective date.

(h) Patinaed glass manufactured between July 6, 1977 and January 8, 1979, in accordance with the Commission's stay order published in the FEDERAL REGISTER of August 9, 1977 (42 FR 40188), may be sold without restriction. Architectural products incorporating such glazing may also be sold without restriction.

Effective date. The amendments issued herein shall become effective on December 7, 1978.

The lifting of the stay of the standard as it applies to patinaed glass shall become effective on January 8, 1979.

Dated: December 1, 1978.

SADYE E. DUNN,
Secretary, Consumer Product
Safety Commission.

[FR Doc. 78-34177 Filed 12-6-78; 8:45 am]