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UNITED STATES GOVERNMENT

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

Memorandum

Robert G. Poth, Director, CARM
Through: David Schmeltzer, AEDCA

DATE: April 30, 1987

TO

James V. Lacy, General Counsel *JV*
Stephen Lemberg, Assistant General Counsel *SL*
Allen F. Brauninger, Attorney, OGC *AB*

FROM

SUBJECT:

Flammability Requirements Applicable to Products of
"Interior Furnishing."

The Division of **Regulatory** Management has asked two questions about flammability requirements applicable to products of "interior furnishing," as that term is defined in section 2(e) of the **Flammable** Fabrics Act.

The first question posed by the Division of Regulatory Management is whether a product which meets the definition of "interior furnishing" set forth in section 2(e) of the **Flammable** Fabrics Act, but which is not subject to any standard of flammability or labeling requirements issued under the FFA, is subject to labeling and other requirements of the Federal **Hazardous Substances Act** for "extremely **flammable**" hazardous substances if it meets the definition of "extremely flammable **solid**" set forth in 16 C.F.R. § 1500.3(c)(6)(v); or is subject to labeling and other **requirements** of the **FHSA** for "**flammable**" hazardous substances if it meets the definition of "**flammable solid**" in § 1500.3(c)(6)(vi) when tested in accordance with § 1500.44.

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After consideration of the provisions of the FFA and the FHSA, the legislative histories of those acts, and **principles** of statutory interpretation, the Office of the General **Counsel** concludes that such a product is not subject to labeling or other requirements for extremely flammable or flammable hazardous substances. The product may be subject to the reporting requirements of section 15(b) of the Consumer Product Safety Act and the Commission's **rules** if its flammability results from a defect which could create a substantial **product** hazard. The **Commission** may issue labeling requirements or a flammability standard for such a product by a proceeding conducted in accordance with section 4 of the FFA. Alternatively, in appropriate cases, the **Commission** may transfer regulation of the risk of injury associated with the product to the Consumer Product Safety Act by issuing a rule in accordance with provisions of section 30(d) of the **CPSA**.

At the outset, this **office** observes that no product which is intended or packaged in a form suitable for household use is subject to labeling requirements imposed by the Federal Hazardous Substances Act solely because it meets the definition of

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No other copies or
Products identified
Exempted by
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"extremely flammable solid" set forth at 16 C.F.R. § 1500.3(c)(6)(v), or the definition of **"flammable solid"** set forth at 16 C.F.R. § 1500.3(c)(6)(vi) when tested in accordance with 16 C.F.R. § 1500.44.

Before the labeling requirements of the FHSA are applicable to such a product, it not only must meet the definition of **"extremely flammable solid"** or **"flammable solid"** in the regulations cited above, but also must meet the definition of the term **"hazardous substance"** set forth in section 2(f)1(A) of the FHSA. That section defines the term **"hazardous substance"** as **"any substance or mixture of substances which . . . (v) is flammable or combustible . . . if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use . . ."**

The definitions of **"extremely flammable solid"**, **"flammable solid,"** and the method for testing-flammable solids in the regulations implementing the FHSA measure the ease with which a solid material will ignite, and the rate of burning after ignition.

However, in order to determine whether a household product is a flammable hazardous substance, one must have some information about:

(1) the likelihood that the product would be exposed to an ignition source during its reasonably foreseeable handling or use: and

(2) whether substantial personal injury may result if the product did ignite and burn during such handling or: use.

Information of this kind may be available from investigations of fire incidents, consumer complaints, and reports from manufacturers, distributors, or retailers.

Nevertheless, examination of the provisions and legislative histories of the FHSA and the FFA discloses that a product of interior furnishing which is not subject to a flammability standard or labeling regulation issued under the FFA but which may present a risk of **substantial** injury in its customary or reasonably foreseeable use in the home because of flammability is not a **"flammable hazardous substance"** subject to labeling or other requirements under the FHSA.

Section 4 of the FFA sets forth the procedure which the Commission must follow to issue or amend a **"flammability standard or other regulation, including labeling for a fabric, related material or product"** which may be necessary **"to protect the**

public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage." Section 2(h) of the FFA defines the term "**product**" to include any article of "**interior furnishing.**" Section 2(e) of the FFA defines the term "**interior furnishing**" to mean "**any** type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or **accommodation.**"

Section 18(a) of the **FHSA** provides that "[n]othing in this Act shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended . . . or any regulations promulgated thereunder" or the provisions of several other statutes listed in that section. The language of section 18(a) of the **FHSA** **states that** provisions of the FFA for issuing standards and labeling requirements to address flammability hazards of products of interior furnishing remain in effect and unaltered by any provision of the **FHSA**.

However, the **FHSA** contains no provision specifically excluding products of "interior furnishing" as that term is defined in the FFA from regulation under provisions of the **FHSA**.

For that **reason, one** might argue that the "**plain language**" of the definition of flammable "**hazardous substance**" in section 2(f)1 (A) of the **FHSA** could (at least theoretically) encompass an article which is a product of "interior furnishing" as defined in section 2(e) of the FFA.

The following portion of the U.S. Supreme Court's decision in Watt v. Alaska, 451 U.S.-259, 101 S. Ct. 1673 (1981) offers some guidance in the way that a court might approach the issue under consideration:

We agree with the Secretary that "[t]he starting point in every **case** involving construction of a statute is the language itself." Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756, 95 S. Ct. 1917, 1935, 44 L. Ed. 2d 539 (1975) (POWELL, J., concurring). See Rubin v. United States, 449 U.S., 424, 101 S. Ct. 698, 66 L. Ed 2d 633 (1981). But ascertainment of the meaning apparent on the face of a **single** statute need not end the inquiry. Train v. Colorado Public Interest Research Group, 426 U.S. 1, 10, 96 S. Ct. 1938, 1942, 48 L. Ed. 2d 434 (1976); United States v. American Trucking Assns., Inc., 310 U.S. 534, 543-544, 60 S. Ct. 1059, 1063-1064, 84 L. Ed. 1345 (1940). *** The circumstances of the enactment of particular legislation **may** persuade a court that Congress did

not intend words of common meaning to have their literal effect. E.g., Church of the Holy Trinity v. United States, 43 U.S. 457, 284 U.S. L. Ed. 226 (1892); United States v. Ryan, 360 U.S. 457, 167, 175, 52 S. Ct. 65, 68, 76 L. Ed. 224 (1931).

451 U.S. 265-266, 101 S. Ct. 1677-1678

Additionally, judicial authority exists for considering not only the legislative history of the FHSA, but also that of the FFA to resolve the issue of whether products of interior **furnishing** are subject to the FHSA.

Ordinarily, courts seeking to determine implicit legislative intent confine themselves to the language and legislative history of the statute in question ***. Authority exists, however, for looking at the entire federal statutory scheme relative to a particular subject matter, **especially** when that subject matter is dealt with under a number of separate enactments, some of which were enacted contemporaneously *** [citing Morton v. Mancari 417 U.S. 535, 94 S. Ct. 2474 (1974) and Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 104 S. Ct. 615 (1984)]

Particularly where two federal statutes have overlapping areas of regulation *** it is permissible and helpful to examine the history and context under which they were enacted.

Chevron U.S.A. v. Hammond, 726 F.2d 483, 491 (9th Cir. 1984), cert. denied, ___ U.S. ___, 105 S. Ct. 2686 (1985).

As enacted in 1953, and amended in 1954, the Flammable Fabrics Act applied only to articles of wearing apparel and to fabrics, film, and **similar** materials sold or intended for use in wearing apparel. The original Flammable Fabrics Act established a mandatory flammability standard for the products subject to its **coverage**. See section 3 of Public Law 83-88; 67 Stat. 111, June 30, 1953; as amended by Public Law 83-629; 68 Stat. 770, August 23, 1954.

As enacted in 1960, the Federal Hazardous Substances Labeling Act established labeling requirements for packages of hazardous substances in containers intended or suitable for household use. See sections 2(p) and 4 of Public Law 86-613; 74 Stat. 372, July 12, 1960. The original act also authorized the Secretary of Health, Education and Welfare to make modifications of and exemptions from the statutory labeling requirements in appropriate **cases**,

The principal purpose of the 1960 labeling act was to broaden the range of household chemical products subject to cautionary labeling requirements beyond the twelve chemical substances covered by the Federal Caustic Poison Act. H.R. REP. NO. 1861, 86th Cong., 2d Sess. 3 (1960); S.REP. NO. 1158, 86th Cong., 2d Sess. 2-3 (1960).

Section 18 of ~~the~~ 1960 labeling act repealed the Federal Caustic Poison Act. The language of present section 18(a) of the FHSA has its origins in section 17 of the 1960 labeling act.

According to the House of Representatives Committee report on S. 1283, the bill which led to the 1960 labeling act, section 17 **"makes** explicit the legislative intent not to modify other acts of **Congress,**" except- for the repeal of the Federal Caustic Poison Act. H.R. REP. NO. 1861, 86th Cong., 2d Sess. 12 (1960).

As originally introduced, S. 1283 defined the terms "flammable" and **"extremely flammable"** with reference to flash point temperature **as** determined by the Tagliabue Open Cup Tester. The original bill did not include the Flammable Fabrics Act in its listing of other acts not affected by its provisions, which appeared in section 14 of that bill.

A comment on S. 1283 from the Federal Trade Commission contained the following language:

Section 2(1) of the bill contains definitions of **"extremely flammable"** and **"flammable,"** which are applicable to liquids. Section 4(a) of the Flammable Fabrics Act (15 U.S.C. Sec. 1193), which the Commission administers, contains a standard of flammability **for** fabrics and articles of wearing apparel. Although the Flammable Fabrics Act standard of flammability and the definitions contained in section 2(1) of the bill do not apply to the same subject matter, in order to avoid any possibility of confusion, you may wish to include a reference to the Flammable Fabrics Act in the section 14 listing of laws not affected by **the** bill.

S. Rep. No. 1158, 86th Cong., 2d Sess. 19
(1960)

The **change** recommended by this comment **was** included in the bill ultimately enacted as the Federal Hazardous Substances Labeling Act.

The provisions of section 2(1) of S. 1283, as originally introduced, were also the subject of a comment from the

Department of Health, Education and Welfare. That agency recommended the addition of provisions to allow the Secretary "to determine the flammability of solids, such as pastes, by equipment more suitable than the Tagliabue Open Cup Tester." S. REP. NO. 1158, 86th Cong., 2d Sess. 26 (1960).

This comment from the Department of Health, Education and Welfare contains the only explanation in the legislative history of the 1960 labeling act of the types of products which were contemplated by the **provisions** of section 2(1) relating to extremely flammable and flammable solids.

The portions of the text and legislative history of the Federal Hazardous Substances Labeling Act discussed above demonstrate that the term "**flammable hazardous substance**" as used in labeling act of 1960 **was** not intended to apply to any product subject to the Flammable Fabrics Act as it existed at that time. --

In 1961, the Food and Drug Administration issued regulations to define the terms "extremely flammable solid" and "**flammable solid.**" Neither the notice of **proposal** (26 F.R. 3705; April 29, 1961), nor the notice issuing the regulations on a final basis (26 F.R. 7333; August 12, 1961) gives any explanation or examples of the types of products intended to be covered by the regulations. ..

In 1966, Congress extensively amended the 1960 hazardous substances labeling act. Among the changes made by the 1966 amendments **was** the addition of provisions to make the labeling -- requirements imposed by the FHSA applicable to any unpackaged household product which is or contains a hazardous substance. The 1966 amendments also **authorized** the Secretary of Health, Education and Welfare to issue regulations to ban from interstate commerce any household product which is or contains a hazardous substance if the Secretary finds that requirements for cautionary labeling would not adequately protect the public. See sections 2(f) and 3 of Public Law 89-756; 80 Stat. 1303, Nov. 3, 1966.

In comments on S. 3298, one of the bills which resulted in the 1966 amendments of the **FHSA**, the Department of Health, Education and Welfare cited an extremely volatile compound used to waterproof basements **as an** example of the type of flammable hazardous substance for which no labeling requirements would be adequate to protect the public safety. See H.R. REP. NO. 2166, 89th Cong., 2d Sess. 2 (1966); S. REP. NO. 1551, 89th Cong., 2d Sess. 16 (1966).

The Federal Trade Commission also commented on S. 3298, and expressed support for its objectives **and** purposes. However, in a concurring statement, Commissioner **Elman** expressed concern about limitations **on the coverage** of the bill and made the following observations:

While I concur in the Commission's endorsement of this bill, I believe that broader and more comprehensive legislation dealing with the subject matter is necessary. The bill concerns a specific problem affecting the public safety. While its enactment would undoubtedly be in the public **interest**, I am concerned by the large gaps of coverage in the field of safety legislation in general. ,

An example of such a gap in existing legislation is provided by the Flammable Fabrics Act. In its present form, the Flammable Fabrics Act applies only to articles of wearing apparel. *** The Commission **has** recommended that the coverage of the act be expanded to include blankets. But if blankets are to be included, why not all bed linen? Should not the act **apply** to all home furnishings that may be dangerously flammable? What about upholstered furniture, carpets, curtains, draperies and other household articles containing "**fabrics**" that may be ignited? ***

The obvious result of the patchwork nature of existing safety legislation is that the public is amply protected in some areas, but wholly unprotected in others. *** Many people may rely on "**the Government**" for adequate protection when, in fact, existing legislation affords no such protection.

S. REP. NO. **1515**, 89th Cong., 2d Sess. 8
(1966).

No change was made to S. 3298 to address the problem which was the subject of Commissioner **Elman's** concern: neither the Flammable Fabrics Act nor the bill under consideration contained provisions to address flammability hazards which may be presented by products made of fabric such as upholstered furniture, carpets, curtains, or draperies.

In 1967, Congress amended the Flammable Fabrics Act to extend its coverage to include products of interior furnishing made of fabric and related materials. The 1967 amendments also authorized the Secretary of Commerce to issue flammability standards and labeling rules needed to address flammability hazards presented by products of wearing apparel and interior furnishing made of fabric and related materials. See sections 1 and 3 of Public Law **90-189**; 81 Stat. 568, December 14, 1967.

As noted above, in 1966 Congress had amended the FHSA to extend the labeling requirements of the FHSA to include, among other things, unpackaged household products containing or consisting of a flammable hazardous substance. The 1966 amendments of the FHSA **also** authorized the Secretary of HEW to ban any household product containing or consisting of a flammable hazardous substance if labeling requirements could not **adequately** protect the public.

Nevertheless, in 1967, J. Herbert Hollomon, Acting Under Secretary of Commerce, **testifying** in support of S. 1003, one of the bills which led to the amendments of the FFA stated that "the public does not have legal protection for such things as blankets, bedding, drapes, carpets, upholstery, and other products and materials even when they are unreasonably flammable." Flammable 'Fabrics Act Amendments of 1967: Hearings on S. 1003 Before the Consumer Subcomm. of the Comm. on Commerce, United States Senate, 90th Cong., 1st Sess. 10 (1967) (Statement of Mr. Holloway).

Dr. **Phillip** R. Lee, Assistant Secretary for Health and Scientific Affairs, Department of HEW, also testified in favor of S. 1003. In his testimony he stated "Acting Under Secretary Holloman has described the major problems in the existing **law.**" Id., 25 (Statement of Dr. Lee).

In addition to reviewing the relevant **provisions** of the FHSA and the FFA and their legislative histories to determine whether Congress intended the FHSA to apply to products of "interior **furnishing**" as that term is used in the FFA, this office has also considered the principle of statutory interpretation that when two statutes are concerned with the same subject matter, the one with the more specific provisions takes precedence. This principle has been stated in many judicial decisions including Busic v. United States, 446 U.S. 398, 406, 100 S. Ct. 1747, **1753** (1980); Simpson v. United States, 435 U.S. 6, **15**, 98 S. Ct. 909, 914 (1978); and Preiser v. Rodriguez, 411 U.S. 475, **489-490**, 93 S. Ct. 1827, 1836 (1973).

Provisions of section 2(f)1(A) of the FHSA addressing flammability hazards of household products are applicable to both packaged and unpackaged articles in a liquid, semi-solid, or solid state, made from a wide variety of materials. Provisions of the flammable **fabrics** act which address flammability hazards of non-apparel products are limited by section 2(e) of the FFA to "**any** type of furnishing made in whole or in **part** of fabric or related material and intended for use or which may reasonably be expected to be used in **homes**, offices, or other places of assembly or accommodation."

Although the definition of the term "interior furnishing" in section 2(e) of the FFA does include some products which are intended for use in offices and other non-residential buildings, the scope of the FFA is more specific with regard to the types of products subject to regulation as interior furnishing than is the FHSA with regard to the types of products subject to regulation as flammable hazardous substances.

Moreover, section 4 of the FFA addresses the single hazard of flammability and **prescribes** a single procedure for issuing standards or labeling rules needed to address that hazard. The FHSA addresses various hazards, including flammability and sets forth several procedures for issuance of rules to address the hazards which are subject to its coverage.

Additionally, provisions of the FHSA impose some labeling requirements for household products and ban certain toys and children's articles without the necessity for issuance of any rule.

Thus, the FFA is the more specific of the two statutes and takes precedence over the more general provisions of the FHSA to address any flammability hazards which may be presented by products of interior furnishing.

Finally, another well-established principle of statutory interpretation is that courts will follow the interpretation of a statute applied by the agency responsible for its interpretation unless there are **compelling** indications that the agency's interpretation is wrong. See NLRB v. Hendricks County, 454 U.S. 170, 177, 102 S. Ct. 216, 222 (1981). A long-standing and consistent interpretation of a statute by the agency charged with its administration is entitled to "considerable weight." Zenith Radio Corp. v. United States, 437 U.S. 443, 450, 98 S. Ct. 2445 (1978).

This office observes that under provisions of the FFA, the Department of Commerce issued flammability standards for carpets and rugs in 1970, and a flammability standard for mattresses in 1972. (The mattress standard was amended by the Consumer Product Safety Commission under provisions of the FFA in 1973 and in 1984.) The Department of Commerce also began a proceeding under the FFA to develop a flammability standard for blankets in 1970 (terminated by the Commission in 1979); and initiated a proceeding for **development** of a flammability standard for upholstered furniture (suspended by the Commission in 1981).

The files maintained by the Division of Regulatory Management include a letter dated March 10, 1967, in which a member of the staff of the Food and Drug Administration expressed

the view that "dangerously flammable blankets and flammable drapes would be subject to the Act [the FHSA]. That letter also states: "We have not, as yet, taken regulatory action against blankets which are flammable...." A memorandum dated July 31, 1967, places the issue of regulating flammability of blankets under the **FHSA** in permanent abeyance in view of proposed amendments to the FFA then under consideration by Congress.

This office is not aware of any regulatory action taken by the FDA under provisions of the **FHSA** to address flammability hazards presented by any product meeting the definition of interior furnishing in section 2(e) of the **FFA**.

After the Commission assumed responsibility for administration of the FFR and the FHSA, the Office of the General Counsel responded to a firm which had asked if rubberized flannel sheets were subject to any standard issued under the FFA. In Advisory Opinion 215, issued on July 18, 1975, this office responded that the item under consideration is a product of "interior furnishing" subject to the Commission's jurisdiction under the FFA, but that no flammability standard issued under that act applied to that product. Advisory Opinion 215 also notes that the product in question is also subject to the Commission's jurisdiction as a "consumer product/* but do-es-no----- discuss the possibility that the product might also be subject to regulation under the **FHSA** as a flammable hazardous substance. A copy of Advisory Opinion 215 is attached.

The Commission has -not issued any advisory opinion to the effect ~~that~~ a product which meets the definition of interior furnishing in section 2(e) of **the FFA** but which is not subject to a flammability standard issued under that act is subject to labeling. or other requirements of the FHSA to address the flammability of such a product. Additionally, the Commission has taken no regulatory action to address any flammability hazard which may be associated with **such** a product under provisions of the **FHSA**.

Thus the Commission and the agencies previously responsible for administration of the FFA and the **FHSA** have consistently regulated flammability hazards presented by articles which are products of "interior furnishing," as that term is defined in section 2(e) of the FFA, under provisions of the FFA **and** not under the FHSA.

The second question from the Division of Regulatory Management concerns the range of items which are subject to the **FFA's** coverage as products of interior furnishing. Specifically, that division has asked if the term "interior **furnishing**" includes decorative items such as textile-wall hangings and Christmas tree ornaments made of fabric or related material.

Additionally, that division asks if the term "interior furnishing" includes children's articles such as baby blankets and juvenile furniture made in whole or in **part** from fabric or related material.

After consideration of the text of the FFA and its legislative history, this office concludes that the term "interior furnishing" **includes** decorative items such as textile wall hangings and Christmas tree ornaments made of fabric or related material. Additionally, precedent exists for **applying** the term "interior **furnishing**" to some children's products made from fabric or related material and intended for indoor use.

Section 2(e) of the FFA states that the term "interior **furnishing**" includes "**any** type of furnishing made in whole or in part of fabric or **related** material" for use in "homes, offices, and other places of assembly or **accommodation**."

As stated in the 'response to the first question, the starting point of any inquiry into the **meaning of a statute** is the language of the statute. Although the language of section 2(e) of the FFA is somewhat circular in that it defines "interior **furnishing**" as "**any type** of furnishing," it does limit the term "**interior furnishing**" to articles which have some component consisting of fabric or related material and which are intended for use or could be used inside "**homes, offices, or other places of assembly or accommodation**."

As a general rule, courts will give the words in a statute their common and ordinary meanings. Several dictionaries define the term "furnishing." Set forth below are representative entries from several dictionaries for the term "**furnishing**" or "**furnishings**":

"1. the furniture and fixtures for a room, apartment, **etc.**" Webster's New World Dictionary of the American Language, College Edition. The World **Publishing** Company, 1968.

"2. (**pl.**) fittings, appliances, articles of furniture, etc., for a house or room." The American College Dictionary. Random **House**, 1970.

"3. an article of furniture for the interior of a building." Webster's Third New International Dictionary of the English Language Unabridged. G. & G. Merriam Company, 1966.

While all of these definitions state that the term "furnishing" includes furniture and articles of a similar nature used indoors, they do not resolve the specific question of whether that term includes either a textile wall hanging or a Christmas tree ornament.

As noted in the response to **the first** question, section 2(e) was added to the FFA in 1967 when Congress amended that act to expand its coverage.

The legislative history of the 1967 amendments contains some insight about the types of products intended to be covered by the term "interior furnishing."

The report of the Senate Committee on Commerce concerning S. 1003 makes the following statement about the need for the amendments of the FFA then under consideration:

(I) The present law covers only certain articles of wearing apparel and fabrics from which they are made. This means that the public does not have legal protection for such items as blankets, bedding, drapes, carpets, upholstery, and other products and materials even if it were determined that they are unreasonably flammable.

S. REP. NO. 407, 90th Cong., 1st Sess. 2 (1967)

Additionally, Senator Magnuson made the following observations in his opening statement at the beginning of hearings on S. 1003:

The proposed legislation would give the Secretary, if he first makes a separate determination of specific need, the authority to issue and amend flammability standards for interior furnishings, whether used in homes, offices, or places of assembly. Such furnishings would **include--if-specific need were found--** upholstered furniture, draperies, ornaments, bedding (including bed clothes) rugs and carpeting, **and** so forth, and the fabrics and related materials (including paper, plastic, rubber, synthetic films or foams) from which they are made.

Flammable Fabrics Act Amendments of 1967:
Hearings on S. 1003 Before the Consumer Subcomm.
of the Comm. on Commerce, United States Senate,
90th Cong. 1st Sess. 8-9 (1967) (Statement of
Sen., Magnuson).

In addition to Senator Magnuson's inclusion of "ornaments" in the types of products encompassed by the term "interior furnishing," this office observes that other items mentioned in the **excerpts** from his statement and the committee report quoted above, such as bedding and drapes,, serve a decorative as well as a utilitarian function.

For these reasons,, this office concludes that decorative textile wall hangings and Christmas tree ornaments made of fabric or related material **fall** within the definition of "**interior furnishing**" set forth in section 2(e) of the FFA.

Finally, with regard to the applicability of the term "**interior furnishing**" to children's articles, this office observes that the mattress flammability standard, as issued by the Department of Commerce in 1972, included within the **scope** of its coverage "**crib mattresses.**" In Bunny Bear, Inc. v. Peterson, 473 F.2d 1002 (1st Cir. 1973), a U.S. Court of Appeals upheld the decision of the **Secretary** of Commerce not to exempt crib mattresses from the provisions of the mattress standard.

As noted in **response** to the first question, in 1975 this office issued Advisory Opinion 215, which states that "**rubberized** flannel sheeting used to protect bedding against infants who wet their beds" is subject to the Commission's jurisdiction under provisions of the FFA **as a** product of interior furnishing.

Thus, in appropriate cases, children's articles made of fabric or related material and intended for indoor use may be regulated by the Commission as products of interior furnishing.

Attachment



215

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

JUL 18 1975

Mr. Gerald I. Brecher
Friedman and Atherton
Nineteenth Floor
28 State Street
Boston, Massachusetts 02109

Dear Mr. Brecher:

This is in response to your June 2, 1975 request for an advisory opinion as to whether any standards under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) are applicable, to the rubberized flannel sheeting product described in your letter.

The Commission's jurisdiction under the Flammable Fabrics Act includes rubberized flannel sheeting because it is an "interior furnishing" (15 U.S.C. 1191). However, it is the opinion of this office and of the Commission's Bureau of Compliance that neither the Flammable Fabrics Act Standard for the Flammability of Mattresses (FF 4-72, as amended; 38 FR 15095, June 8, 1973) nor any other standard is applicable to rubberized flannel sheeting used to protect bedding against infants who wet their beds, as you have described.

Please note, however, that this product is also subject to the Consumer Product Safety Act (copy enclosed) as a "consumer product" (see section 3(a)(1)). As such your client is required to report to the Commission if its rubberized flannel sheeting "contains a defect which could create a substantial product hazard" (see section 15 and clarifying regulations on this subject, also enclosed).

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While the views expressed in this letter **are** based on the most cur-rent interpretation of the law by this office, they could subsequently be changed or superseded by the **Commission** or its staff.

Sincerely,

David Schmeltzer
for Michael A. Brown
General Counsel

Enclosures

FRIEDMAN & ATHERTON
COUNSELLORS AT LAW
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BOSTON
02109

AREA CODE 617
227-3340

June 2, 1975

Michael Brown, Esquire
General Counsel
Consumer Products **Safety** Commission
Washington, DC 20207

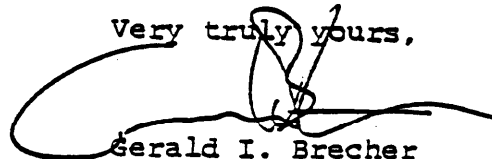
Dear Mr. Brown:

This office represents Plymouth Rubber Company of Canton, Massachusetts. Plymouth Rubber manufactures, among other products, rubberized flannel sheeting. This product consists of a thin flannel sheet bonded to a sheet of rubber. The purpose of the product is to protect bedding **against** infants who wet their beds. It is **commonly** used either over or under the bottom bed sheet **to** protect the bedding.

Plymouth **Rubber** has had inquiries from purchaser/of rubberized flannel sheeting concerning the applicability of federal flammable fabric standards to this product. It is my understanding, from conversations that I **have** had with Consumer Products Safety officers in-Boston, that federal flammable fabric standards do not apply to rubberized **flannel** sheeting. On behalf of Plymouth Rubber Company, I am requesting a **formal** advisory opinion from the Consumer Products Safety Commission to that effect.

I trust that the description of this product, and the uses to which it is put, which I have furnished you is sufficient to enable the Commission **to** furnish **the** requested **advisory** opinion. If there is any other information which you **require** regarding this product, please do not hesitate to contact **me**. I look forward to receiving the Commission's response before too long.

Very truly yours,



Gerald I. Brecher

GIB/sas