

# **Standard for the Flammability (Open Flame) of Mattress Sets**

## **16 CFR PART 1633**

### **QUESTIONS & ANSWERS**

Compiled by the staff of the Office of Compliance, USCPSC<sup>1</sup>

#### **Scope**

1. *Are truck mattresses, used in the cab of a semi-trailer, within the scope of 16 C.F.R. Part 1633?*
  - Truck mattresses used in the cab of a truck are considered “motor vehicle equipment” as the term is defined in 15 U.S.C. section 1391(4)<sup>2</sup> and are therefore not within the scope of 16 C.F.R. § 1633. (qna 11/2006)
2. *Are mattresses used in a non-motorized pull behind trailer within the scope of Part 1633?*
  - Yes, mattresses used in a non-motorized pull behind trailer are within the scope of 16 C.F.R. § 1633. Travel trailers, fifth-wheelers and slide-in camper units are considered by the CPSC Office of the General Counsel (OGC) to be “other places of accommodation” as those terms are used in Section 2(c) of the Flammable Fabrics Act (FFA) since each product listed is capable of housing or accommodating people. The flammability standards issued under that Act are applicable to mattresses when installed in travel trailers, fifth-wheelers and slide-in campers. Cushions that have dual purposes as mattresses and seat cushions are not considered mattresses.<sup>2</sup> (qna 11/2006)
3. *Are mattresses used in a recreational vehicle within the scope of Part 1633?*
  - Mattresses used in recreational vehicles are not within the scope of 16 C.F.R. § 1633 if they are installed exclusively in RVs. In that event, they are considered “motor vehicle equipment” and are exempt from regulation under the Consumer Product Safety Act (CPSA).<sup>2</sup> (qna 11/2006)
4. *Are mattresses used in the bunk area of a boat within the scope of Part 1633?*
  - Mattresses used in the bunk area of a boat are not within the scope of 16 C.F.R. § 1633. They are subject to regulation by the U.S. Coast Guard.

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<sup>1</sup> This document reflects interpretations by the staff and has not been reviewed or approved by the Commission.

<sup>2</sup> OGC Advisory Opinion dated 4/74.

- The Coast Guard currently has two different test standards for the flammability of mattresses. One standard is for U.S. flag vessels; the other is for foreign flag vessels, which would include many of the large cruise ships calling out of Miami for example. (qna 11/2006)
- For U.S. flag vessels, the regulations in 46 C.F.R. § 116.405 (j) and 46 C.F.R. § 177.405 (g) currently require compliance with the U.S.D.O.C. mattress flammability standard FF-4-72.16, Subpart A (16 C.F.R. § 1632) if they are not made of polyurethane foam. If the mattresses contain polyurethane foam they must be tested to the International Maritime Organization (IMO) Fire Test Procedures Code (FTPC). This is an international test standard using an open flame ignition source developed by the IMO. (qna 11/2006)
- IMO is a specialized agency of the United Nations dealing with international ship safety. IMO administers the Safety of Life at Sea Treaty (SOLAS) which applies to foreign flag cruise ships. The SOLAS regulations also specify that mattresses must comply with Part 9 of the FTPC if they will be used in certain areas. The IMO anticipates that they will be reconsidering their regulations in light of the new standard for open flame ignition testing, 16 C.F.R. § 1633.<sup>3</sup> Questions regarding the products under jurisdiction of the USCG and their regulations should be directed to the USCG. (qna 11/2006)

5. *Are mattresses sold under federal contract or state contract (e.g. prisons and universities) subject to the Part 1633?*

- In order for mattresses sold under federal or state contract to be subject to 16 C.F.R. § 1633 they must be articles of “interior furnishing” under the FFA and distributed in interstate commerce. There is no requirement that the purchase be made by a consumer. (qna 11/2006)
- An item of “interior furnishing” is defined in section 2(e) of the FFA as “any type of furnishing made in whole or in part of fabric or related material intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation.” CPSC’s OGC issued Advisory Opinion 152 which states: “a place of assembly would be any kind of site where people gather. A place of accommodation would be any kind of a place which provides for needs such as food or lodging.” Mattresses used in prisons and/or dormitories would generally meet the definition of “interior furnishing” and through contract sales would be distributed in interstate commerce and would be covered by 16 C.F.R. § 1633. Under the FFA, however, either the Federal government or any State government may establish flammability standards that are more stringent than the federal mattress standard (offer a higher degree of protection) for mattresses purchased by the federal government for federal facilities or by the State government for State facilities. See 15 U.S.C. § 1203(b). (qna 11/2006)

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<sup>3</sup> Email from R Eberly, USCG to M Toro, CPSC, 7/11/06.

6. *Is a mattress topper within the scope of the regulation?*

- No, a mattress topper is specifically excluded from the definition of “mattress” under the regulation. See 16 C.F.R. § 1633.2(a)(2). However, while the regulation excludes toppers from the definition of mattress, the term “mattress topper” is not itself defined. The staff regards the term as including items akin to mattress pads. For example, the staff might consider a 4” thick foam piece that is upholstered with a tape edge to be more like a mattress than a topper regardless of how it is marketed. (qna 11/2006)

## **Renovation**

1. *Is sterilization of a mattress equivalent to reconditioning and is this considered renovation? If you remove the ticking is it considered renovation that must comply with the new Part 1633?*

- Sterilization alone is not considered renovation. The Standard defines renovation in 16 C.F.R. § 1633.2(d) as the altering of an existing mattress set for the purpose of resale. The term includes any one, or any combination of the following: replacing the ticking or batting, stripping a mattress to its springs, rebuilding a mattress, or replacing components with new or recycled materials. The term excludes alterations if the person who renovates the mattress intends to retain the renovated mattress for his or her own use or if a customer or a renovator merely hires the services of the renovator and intends to take back the renovated mattress for his or her own use. (qna 11/2006)

2. *Do federally owned mattresses renovated under GSA contracts have to comply with Part 1633?*

- If the owner of a mattress retains title to the mattress during the renovation process and the owner does not intend to sell the renovated mattress, the renovation is not covered by the Standard. (qna 11/2006)

## **Testing**

### **Responsibility**

1. *If a mattress manufacturer makes a mattress to be sold with a mechanical foundation, either generic or specified, and the mechanical foundation is made by another manufacturer, who is responsible for testing the set and maintaining the records for the mattress set? The mattress and the foundation come together at the retail establishment and not before.*

- If the mattress is manufactured to be sold with a specific type of mechanical foundation, the mattress manufacturer should qualify the prototype mattress set,

label the mattress appropriately and maintain the records for the set, including maintaining the record of the components supplied for the foundation. There is no prohibition, however, against the foundation manufacturer completing the qualification tests for the mattress set. (qna 11/2006)

## **Protocol**

1. *Does the identification slate need to be in the video for the full taping or can the slate be removed after the test begins?*
  - The identification slate should be present during the videotaping of the entire mattress test. (qna 11/2006)

## **Conditioning**

1. *The regulation requires conditioning of the sample and test room conditions. Industry representatives outlined the difficulty in controlling these aspects at certain times of the year.*
  - Staff evaluated test data and several comments regarding the potential effects of environmental factors on test results. To minimize variations in testing performance resulting from environmental influences, requirements for sample and test area conditions are specified in the regulation.<sup>4</sup>(qna 11/2006)
2. *At what point does the mattress need to be reconditioned if the mattress flammability test cannot be started within the allotted 20 minutes? Is there a maximum time that a mattress can be out of the conditioning before testing, i.e. 20 ± 5 minutes?*
  - The Standard requires testing of the specimen to begin within 20 minutes after removal of the specimen from the conditioning area, therefore, twenty minutes is the maximum allotted time.<sup>4</sup> (qna 11/2006)
3. *Is there any relationship between the time of re-conditioning based on the time out of the conditioned environment?*
  - Available data suggests that to get back to the properly conditioned state, a specimen should be reconditioned at least three times as long as it was out of conditioning. For example, if the specimen is removed from the conditioning area for two hours, it would need to be reconditioned for at least six hours before testing.<sup>4</sup>(qna 11/2006)

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<sup>4</sup> NIST letter report: *Effect of Laboratory Humidity on the Fire Test Performance of a Mattress; study for the U.S. Consumer Product Safety Commission*. Gaithersburg, MD: National Institute of Standards and Technology [NIST]. October 2005.

## Prototype

1. *Subordinate prototypes differing only by length & width may share the same ID# but it was not clear that this would also include the same allowance if there is a change in the ticking.*
  - The Standard specifies in the prototype records requirements under 16 C.F.R. § 1633.11(b)(1) that a record with the unique identification number for the qualified or confirmed prototype and a list of the unique identification numbers of each subordinate prototype based on the qualified or confirmed prototype be maintained. Subordinate prototypes that differ from each other only by length or width may share the same identification number. Subpart (2) states that a detailed description of all materials, components, and methods of assembly for each qualified, confirmed and subordinate prototype must be maintained. Such description includes the specifications of all materials and components, and the name and complete physical address of each material and component supplier. (qna 11/2006)
  - A manufacturer may assign the same subordinate prototype number to subordinates that differ in ticking and in length and width. The records maintained under Subpart (2) for the subordinate prototype with the unique number would document the ticking styles and the different size mattresses included within the same identification number. (qna 11/2006)
2. *Is the manufacturer required to test every combination of mattress with and without a foundation?*
  - The Standard has provisions that allow certain prototypes to be sold or introduced into commerce without testing; however, objectively reasonable criteria must be used to support any decision not to test (except for situations explicitly described in the regulations.) See 16 C.F.R. § 1633.4(b). The manufacturer must determine the combinations to be tested and keep records to demonstrate the objectively reasonable basis that differences in design would not cause the mattress set to exceed the standard's criteria. (See Testing – Prototype in the Q&A for further discussion of this topic.) (qna 11/2006)
3. *When a mattress manufacturer discontinues the production of a qualified prototype must they also discontinue the production of all subordinate prototypes?*
  - No. When a manufacturer discontinues production of a qualified prototype, it may continue to produce any or all subordinate prototypes. Records of the qualified prototype must be maintained for as long as any subordinate prototype

based on the qualified prototype remains in production, plus three years. (qna 11/2006)

4. *If you test a mattress prototype with a high profile foundation can you assume that the same mattress with a low profile foundation will perform better?*
  - No, you cannot assume that the low profile foundation will perform better. The selection for which thickness to test when all else in the foundation remains the same depends on how the foundation will perform in the test. When aligning the vertical burner, it is possible on some low profile foundations that the flame will extend below the foundation. When this happens, the flame may go into the interior of the foundation which may in fact be the worst case scenario. In the higher profile foundation of the same build up, while the area underneath the foundation might not be protected, it would also not be exposed to the vertical flame. Therefore, it is not reasonable to use only the height or thickness of the foundation as criteria to determine which foundation should be tested. (qna 11/2006)
5. *A manufacturer makes two versions of a mattress, one with California Technical Bulletin (TB) 117 resistance and one that is CA TB-603; (these are identical mattresses except that one does not have a fire barrier). The TB-117 version (without barrier) was tested to Part 1632 and passes the cigarette smoldering test. Would the manufacturer have to test the TB-603 version to Part 1632 due to the fact that the TB-117 is considered the worst case and it met the requirements of the standard?*
  - In this example, the answer is dependent upon the results of the TB-117 mattress performance which were not mentioned here. Did the cigarette penetrate the ticking in any of the locations of the sheeted and bare mattress? If there was no penetration of the cigarette through the ticking and there were no failing sites on the ticking, then the mattress manufacturer could change the materials below the ticking without retesting the mattress as defined by 16 C.F.R. §1632.1(j) and the required records at 16 C.F.R. § 1632.31(c)(4). (qna 11/2006)
6. *If a mattress manufacturer qualifies a 10" thick foam mattress and the mattress meets the requirements of the standard, can they use this data to not test a 9" thick mattress of the exact same composition/build-up or would the 9" mattress also need to be qualified?*
  - The technical definition of subordinate prototype does not explicitly allow for changes in thickness or mattress depth; however, the third clause of the exception at Part 1633.4(b) does make allowances for changes in components, materials and design or method of assembly, so long as the manufacturer can demonstrate on an objectively reasonable basis that such differences will not cause the mattress set to exceed the test criteria. As stated in the preamble to the Standard, the third exception to the requirements for prototype testing

allows the manufacturer to change the depth of the mattress if the manufacturer has the data to show that a change in materials will not negatively affect the fire performance of the prototype. Manufacturers should not simply assume that a mattress set with less fuel load will always perform the same or better than a similar mattress with greater fuel load. Instead, the manufacturer should develop appropriate data to support a decision not to test the thinner mattress. For example, if all the components in the 9" mattress are identical to the 10" mattress and if the manufacturer has data/documentation to show that the change in depth of the mattress will not change the fire progression on the top or underneath the mattress and if the manufacturer has data to show that the thinner mattress has less fuel load, the decision to designate the 9" mattress as a subordinate prototype should satisfy the "objectively reasonable basis" criteria in Part 1633.4(b). (qna 11/2006)

7. *Adding to the previous question, can we consider a 9" mattress a "subordinate prototype" because it differs from the 10" only in thickness? By definition, a subordinate prototype can only differ by length and width and not depth.*
  - See the response to question 6 of this section. If a manufacturer can demonstrate, on an objectively reasonable basis, that changes to a qualified prototype will not cause the mattress to fail the criteria of the standard, then that mattress need not be tested and may be considered a subordinate prototype (see 16 C.F.R. § 1633.11(b)(4)).<sup>5</sup> (qna 11/2006)
8. *A mattress manufacturer tests a 10" thick foam mattress and the mattress meets the requirements of the standard. The manufacturer then qualifies this same mattress with a foundation and the set meets the requirements of the standard. May the manufacturer sell the 10" mattress either with or without a foundation and also sell the 9" mattress that meets the subordinate prototype criteria with and without a foundation. He will sell both mattress thicknesses with the following possible combinations:*
  - 9" foam mattress with foundation*
  - 9" foam mattress without foundation*
  - 10" foam mattress with foundation*
  - 10" foam mattress without foundation*

In the specific example described above, the prototypes are exactly the same mattress design (with differences in thickness) and the foundations are exactly the same (except for differences in thickness). The determination of whether this can be done is dependent upon a number of factors including:

- the performance of the qualified prototype (to give you an idea of how well the design performs);

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<sup>5</sup> Federal Register Vol 71, No. 50, Wednesday 3/15/06, Standard for the Flammability (Open Flame) of Mattress Sets; Final Rule.

- the mattress design (if a one-sided mattress, does the barrier protect the bottom of the mattress?); and,
- the type of barrier used (how robust is the barrier?).
- The above are some considerations to make when analyzing the prototype design. At this time, staff recommends qualifying the ten inch design, both with a foundation and without a foundation (a total of 6 tests). This data (assuming the mattress passed all six tests) may possibly provide the rationale for not testing the thinner design. (qna 11/2006)

9. *A manufacturer has three foundation prototypes and one mattress prototype. The foundations are exactly the same build up differing only in the frame; one prototype is metal, one is wood and one is metal and wood. Would a manufacturer have to test each of the three frame prototypes with the one mattress prototype?*

- The manufacturer may not have to qualify all three sets. The staff recommends that the manufacturer start with the wood frame and mattress to determine its performance. If the mattress and wood foundation set test well below the requirements of the standard the manufacturer may not have to test the other two prototypes, using as reasonable criteria the lower fuel load associated with the metal frame used in the other two prototypes. The manufacturer would not be able to make the assessment regarding the testing of the other designs until the first set of tests was complete. It is the manufacturer's responsibility to have the reasonable criteria (data) to support the decision not to test the other designs. The consideration of fuel load alone is not adequate. (qna 11/2006)

10. *What level of testing must the manufacturer conduct in order to state on the 16 C.F.R. § 1633 label that the mattress is intended to be used with or without a foundation? Must the manufacturer conduct full triplicate testing of both the mattress-foundation set and the mattress alone? Or is an alternative approach appropriate?*

- If the mattress will not be physically different when sold with or without a foundation, it is possible that the three consecutive tests required by 16 C.F.R. § 1633.4 could be conducted for the mattress-foundation set and not necessarily for the mattress alone. There are several factors to consider when making the determination of whether a full qualification test of the mattress alone prototype would be required. For example, if a mattress was designed to have its core fully encased in a barrier and the design, when tested with a foundation, provided a very low total heat release rate (e.g. below 50 kW) following the qualification test for the mattress-foundation set, the manufacturer might use that information to determine that the same mattress alone would meet the 16 C.F.R. Part 1633 criteria when used without the foundation. In this example, the manufacturer could use the data from this test as the objectively reasonable basis for labeling the product as intended for use either with or without a foundation. (qna 11/2006)



11. Triplicate Prototype Testing

Section 1633.4(a) provides that:

*Each manufacturer shall cause three specimens of each prototype to be tested according to 16 C.F.R. § 1633.7 and obtain passing test results according to 16 C.F.R. § 1633.3(b) before selling or introducing into commerce any mattress set based on that prototype.*

Section 1633.4(d)(1) provides that:

*If each of the three specimens meets both the criteria specified in Sec. 1633.3(b), the prototype shall be qualified. If any one (1) specimen fails to meet the test criteria of Sec. 1633.3(b), the prototype is not qualified.*

*From these requirements, it would appear that a prototype is properly qualified only if it passes three **consecutive** tests. Is this interpretation correct?*

- To become qualified, the prototype design must meet the requirements of the Standard in three consecutive tests. (qna 11/2006)

**Component matters**

1. *If a mattress manufacturer qualifies their product with a sewing thread of brand X, and later decides to switch to a thread of brand Y, do they have to re-qualify their products if the threads are made with the same chemical? For example if thread made of the para-aramid brand "Kevlar" were used for qualification, but the customer switches to thread made with the para-aramid brand "Twaron" would they have to re-qualify? Since both are para-aramids and have the same properties in terms of strength, L.O.I (FR performance), but are only a different trade name can a reasonable assumption be made that they do not have to re-qualify?*
- Mattress prototypes would not require re-qualification due to a change in thread provided that both threads are made from fibers having the same generic fiber classification (e.g. para-aramid) and have essentially the same performance characteristics, strength properties, and FR performance. The thread properties need to be equivalent in characteristics and performance rather than bear the same tradename or manufacturer name. (qna 11/2006)
2. *If a prototype has been qualified and the manufacturer would like to change the supplier of their FR high loft to another supplier, would it be "reasonable criteria" to conduct a bench top test to show the effective heat barrier abilities were the same or better? Would I be able to change the supplier without testing, using the "reasonable criteria" under the testing requirement provision under 16 C.F.R. 1633.4(b)?*

- Currently there are no small scale or bench top tests recognized by CPSC that show equivalency of materials. In the absence of a suitable small scale test, substitution of critical components (such as a barrier) requires qualification testing. For many components of the mattress, detailed specifications can be used to show equivalent materials, however, a manufacturer must be very careful when switching from one barrier supplier to another even with the same barrier type because the FR barrier is directly related to the fire performance of the prototype. (A manufacturer must have objectively reasonable criteria to avail itself of the third exemption from testing under 16 C.F.R. § 1633.4(b).) Staff recommends at this time (until more data is generated to show equivalency of materials or an accepted component test is developed), that qualification tests are completed with both suppliers' barriers to ensure similar fire performance. If the prototype is qualified with both barriers, the data would establish the reasonable criteria needed to switch between the two barriers during manufacturing. (qna 11/2006)
  - The data record generated by the recommended test should be attached to the subordinate prototype record. The change in supplier can either be documented in the "method of assembly change section" (of the subordinate prototype record) as an additional supplier or documented in the "other" section. The quality assurance record should also have this as a data record on the component material. (qna 11/2006)
3. *The mattress industry considers the financial impact of the new mattress regulation on the industry to be significant. In order to reduce the cost of compliance it is necessary to reduce the number of prototypes that require testing. Can manufacturers substitute commodities without having to re-prototype test? One suggested example is to allow substitution of the materials used above the barrier (sacrificial layer) without re-prototype testing.*
- The regulation states at § 1633.4(b) that “. . .a manufacturer may sell or introduce into commerce a mattress set that has not been tested according to § 1633.7 if that mattress set differs from a qualified or confirmed prototype only with respect to: (1) mattress/foundation length and width and not depth; (2) ticking unless the ticking of the qualified prototype has characteristics designed to improve performance on the test prescribed in this part; and/or (3) any component, material, design or method of assembly, so long as the manufacturer can demonstrate on an objectively reasonable basis that such differences will not cause the mattress set to exceed the test criteria. . .”. The example given above would only be appropriate if the “worst case” prototype was qualified **and** the manufacturer had supporting data that demonstrates that the changes (e.g. changes to the sacrificial layer) would not negatively affect the fire performance of the prototype. (qna 11/2006)

## **FR treatments**

1. *Does tufting impact the FR performance of the barrier?*
  - Any manufacturing process that breaches the protective nature of the barrier has the potential to undermine its fire performance. (qna 11/2006)
2. *Did CPSC test for every chemical that could possibly be used as an FR treatment to make a mattress comply with the standard? What happens if someone comes up with an alternative treatment that has not yet been assessed for health effects?*
  - CPSC did not test for every chemical that could possibly be used as an FR treatment, nor could it possibly do so. This issue was addressed in the comment section of the preamble to the final rule published in the *Federal Register*, Vol. 71, No. 50, March 15, 2006.

Ultimately, it is the responsibility of the **manufacturer** to ensure that its products do not present an unreasonable risk to consumers. Thus, manufacturers should conduct the appropriate exposure testing and risk assessment to ensure that any new products that are placed on the market are not hazardous substances. This is equally true for new FR treatments. (qna 11/2006)

3. *Has there been any discussion at the CPSC about requiring Flame Retardant foam even though Flame Retardant foam is not mandatory for a mattress to pass? Would CPSC find it acceptable to put a non-FR piece of foam into a mattress that is meant to pass a strict flame standard? What if there is a tear in the barrier fabric, a missing stitch in the sewing, etc.?*
  - The regulation is a performance standard, not a design standard; it does not specify the use of individual components, such as FR foams, barriers or thread, to meet the standard. Instead, it gives manufacturers maximum flexibility in their designs while requiring that the mattresses meet the strict heat release rate requirements. Of course, the manufacturer must use certain FR components in order to meet the requirements, and the positioning of the components is critical in the build-up of the mattress, but the choice of how to meet the requirements is up to each manufacturer to decide. (qna 11/2006)
4. *Are flame retardants used on barriers considered to be durable? What did the CPSC study find?*
  - This issue was addressed in the comment section of the final rule to the mattress standard published in the *Federal Register*, Vol. 71, No. 50, March 15, 2006. The regulation does not specify the use of FR chemicals to meet the

requirements. Manufacturers are free to choose the means of complying with the regulation and this may include the use of inherently flame resistant materials and FR barriers, in addition to FR chemicals. If the manufacturer chooses to use FR chemicals, the regulation does not require tests for durability after exposure to moisture. CPSC staff evaluated available data from tests of mattress designs that incorporated barrier systems utilizing different inorganic compounds, some considered to be water soluble, after exposure to moisture. The test data did not support requirements for barrier durability after exposure to moisture. (qna 11/2006)

## **Quality Assurance**

### **Components**

1. *Is it possible to revise the regulation to only require quality assurance controls on those items that affect the fire performance of the mattress?*
  - Since the regulation is new, it is generally premature to limit the application of quality assurance controls. However, the staff has identified a few items where controls would not be needed. We will not consider wire fasteners, hog rings, staples, and the material for labels to be subject. This item can be revisited after experience in complying with the regulation develops. (qna 11/2006)
2. *Would it be adequate or appropriate to require suppliers to follow quality programs such as UL's quality assurance program that combines a certificate of analysis with a product? Would a certificate of analysis be adequate to add assurance of compliance with the regulation for quality control purposes?*
  - If a certificate of analysis defines the product it is certifying and the test to which the product has been certified, staff would consider that an adequate measure to track for consistency of materials. The regulation states that the manufacturer must have a system in place but it does not prescribe the system that should be in place; that is left to the manufacturer to decide. If the manufacturer verifies the consistency of the materials, for instance, by having an audit specification of its suppliers that would verify that the suppliers are supplying specified materials, staff would also consider that to be adequate. (qna 11/2006)
3. *Supplier component consistency is problematic due to the variability of supplies and the way commodities are purchased. Is it true that the manufacturer is "on the hook" for consistency of materials?*
  - Yes, the manufacturer should have a "consistency of materials requirement" in their QA program requirements and as discussed earlier there are many ways of specifying consistency of materials. (qna 11/2006)

## **Records**

1. *The records are required to be kept at the location where the mattress is tested. May records be maintained at a centralized location if they are available electronically at any facility? Having an allowance for a centralized location for the records would reduce the cost of duplication of CDs or DVDs of testing.*
  - Maintaining records at a centralized facility with electronic copies at individual locations would be acceptable provided the documents are readily accessible at these locations. (qna 11/2006)
2. *When filling out documentation, whose name should go on the records, when commodities are purchased by a distributor/supplier and not a manufacturer?*
  - The regulation requires that the records include the name and complete physical address of each material and component supplier along with the detailed description of the component, etc. (qna 11/2006)
3. *Is a manufacturer required to keep records of failed samples?*
  - The regulation requires that records be maintained of test results and details of each test performed by or for that manufacturer (including failures), whether for qualification, confirmation, or production, in accordance with 16 C.F.R. § 1633.7.<sup>6</sup> (qna 11/2006)

## **Labeling**

1. *The labeling requirement does not define how the label is to be attached to the mattress however the law tag has an attachment requirement. Can a perforated label be used on the mattress in order to comply with both the state and federal requirement? Sewing a side-by-side label that can be separated at the perforation would be less costly than sewing two independent labels.*
  - The regulation requires a permanent, conspicuous, and legible label containing several items in English. (qna 11/2006)
  - Manufacturers can put the CPSC flammability information on the tag as they are currently doing for California with a bold black line and the wording on one side of the tag. A perforation between the state tagging information and the federal requirement is not necessary. (qna 11/2006)
  - Another acceptable means would allow the state tagging information to be followed by the federally required statements. The information required by the two separate entities should be separated by white space. (qna 11/2006)

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<sup>6</sup> 16 C.F.R. 1633.11(a)(1) Records.

2. *Whose name goes on the label of components that are manufactured to a U.S. suppliers' specifications but they are made overseas?*
  - There are no requirements for components under 16 C.F.R. § 1633. If a mattress is manufactured overseas, then the foreign manufacturer's name and physical address and the importer's name and physical address must be on the product label. A mattress manufacturer is required to document who it purchases components from (supplier) and keep records in regard to the components. Other agencies may require disclosure of components made overseas. (qna 11/2006)
3. *How should a mattress be labeled when the mattress is made in China to the specification of a Canadian firm who directly exports to a U.S. Retailer? The Canadian firm receives the product in a compressed form and would prefer to not have to uncrate the mattress or mattress set before shipment in the U.S.*
  - The foreign manufacturer should label the product with its own name and address, date of manufacture and the U.S. location for the records. If the U.S. Retailer is the importer of record, its name can be stamped on the label/tag upon receipt of the mattress. (qna 11/2006)

## **Production lot**

1. *There is confusion over the size of the production lot and how to designate a lot because currently production is considered "just in time" production and each mattress is a lot of one. There really is no mass production as each bed is considered a single unit of production. The information that the regulation would likely obtain by production lot is really already available with the other required information. There was a suggestion to remove the production lot requirement. The industry believes that the manufacturer name, date of manufacture, model number and location is enough to trace backward based on the information that the manufacturer already maintains.*
  - The regulation allows the manufacturer flexibility in determining the lot size and there is no requirement that it be any specific size. A manufacturer should determine, based on its production numbers, how to designate the lot size. This method for determining the lot size should be written into the quality assurance procedure. (qna 11/2006)

## **General Compliance**

1. *There was a request for the staff to list all the state laws that would now be preempted by Part 1633.*
  - Preemption questions regarding a specific state or local law may be addressed directly to the CPSC Office of the General Counsel. (qna 11/2006)

2. *Does the CPSC recall products due to inconsistency or defects in component/suppliers materials or are recalls only conducted at the retail/manufacturer level?*
  - Recalls can be conducted due to a supplier error if that error causes the product to fail the performance requirements of the regulation. For example, if a supplier of quilted panels sold a panel that was missing a FR barrier (which was specified on the manufacturing spec. of the panel by the mattress manufacturer) the panel manufacturer should notify CPSC of the error and recall the panels from distribution. If the panel was used on mattresses in production, the mattresses would have to be recalled if they failed the performance requirements. It is the manufacturer/importer (that distributes the item in commerce) that has the responsibility for conducting the recall but it usually would conduct the recall in cooperation with the supplier or other responsible parties. (qna 11/2006)
3. *Can a chiropractor or MD write a prescription for a consumer so that they can purchase or have a non-complying mattress made specifically for their use?*
  - A one-of-a-kind mattress that has been manufactured in accordance with a physician's written prescription or other comparable written medical therapeutic specification can be sold without meeting the performance requirements of the standard. There are specific requirements for such mattresses as stated in 16 C.F.R. § 1633.13(c). (qna 11/2006)

## **Retailer**

1. *What if a retailer allows the sale of a non-compliant mattress and foundation set?*
  - It is a prohibited act to sell a mattress manufactured on or after July 1, 2007 that does not meet the requirements of the new standard, 16 C.F.R. § 1633 (with an exception for prescription mattresses). (A retailer can continue to sell a mattress manufactured prior to July 1, 2007, after that date.) (qna 11/2006)
  - All mattresses entering commerce must comply with 16 C.F.R. § 1632. Any mattress manufactured on or after July 1, 2007, must comply with both 16 C.F.R. §§ 1632 and 1633. In both cases the manufacturer would hold the primary responsibility if the mattress did not comply with the requirements of the standard. However, the CPSC could additionally take action against a retailer that sells non-complying mattresses. (qna 11/2006)
  - In particular, the CPSC can take action against a retailer who mixes and matches mattresses and foundations that fail to meet the requirements of 16 C.F.R. § 1633. If the retailer sells sets that the manufacturer does not intend to go together and those sets fail the requirements of the standard, the retailer would be committing a prohibited act. (qna 11/2006)

2. *Are floor samples, manufactured prior to July 1, 2007 allowed to stay on the retail floor as a display model? In this example, the prototype as shown at retail might not meet the requirements of the regulation but it would be redesigned to include, say a FR barrier, with all other components being the same.*
  - The regulation does not prohibit the continued sale of mattresses manufactured prior to July 1, 2007 that do not comply with 16 C.F.R. § 1633. Retail floor samples should be changed out, over time, to reflect/represent the new prototypes that will be offered for sale to meet the requirements of the new regulation. (qna 11/2006)
3. *Can a retailer sell a foundation without a mattress?*
  - There is no prohibition against selling a foundation without a mattress. (qna 11/2006)
4. *Each mattress made or imported on or after July 1, 2007 must bear a federal law label certifying (among other things) that the mattress complies with Part 1633. The label must also state whether the mattress is intended for use with a foundation, without a foundation, or either with or without a foundation. (CPSC defines a foundation as “a ticking covered structure used to support a mattress or sleep surface.”) If the mattress is intended for use with a foundation, the label must also identify the foundation(s). The CPSC staff has stated that a retailer would violate Part 1633 if it were to sell a mattress in a manner inconsistent with the intended use stated on the label. For example, if a given mattress were intended for use only with a specific foundation, the retailer would violate Part 1633 if it sold that mattress either with no foundation or with a foundation other than that specified on the label. Is that correct?*
  - One of the prohibited acts under the FFA is to sell product that does not meet the standard. The label that a manufacturer attaches to a mattress attests to the mattress set meeting the regulation. If a retailer chooses to take the chance of assuming that every mattress it sells will pass the standard with every foundation it sells, regardless of what the manufacturer’s label states, without doing any testing or keeping any records of those tests, that retailer puts itself at the risk of violating the statute and accumulating substantial fines (up to \$8000 per unit sold) if the mattress or set does not meet the requirements of the regulation. (qna 11/2006)
5. *If a manufacturer produces a mattress and box spring and tests them as a set and for sale alone and then a retailer sells that product to go along with a consumer’s box-spring, which mattress should he be selling to the consumer?*



- If a consumer requests to purchase a mattress without a foundation, then a retailer should sell the consumer a mattress that has been tested as a mattress to be sold alone or one that has been tested so that it can be sold either with or without a foundation (qna 11/2006)
6. *Is it prohibited for a retailer to continue to sell or a manufacturer to continue distribution of mattresses manufactured prior to the effective date of the new standard after July 1, 2007?*
- The effective date of the Standard is based on the **date of manufacture** of the mattress set. The regulation does not prohibit a retailer from continuing to sell or a manufacturer to continue to distribute mattresses that were manufactured prior to the July 1, 2007 effective date. The regulation does not contain a stockpiling provision which would prohibit continued sales past the effective date of the Standard. (qna 11/2006)