

Industry Views Accepted in CPSC's Changes to Open-Flame Standard

The staff of the Consumer Product Safety Commission (CPSC) have now completed their analysis of public comments filed on behalf of the mattress industry by the International Sleep Products Association (ISPA) and the Sleep Products Safety Council (CPSC), and by other parties on the draft mattress open-flame standard known as "Part 1633" that was formally proposed in January 2005. In recommending how the full Commission might respond to those comments, the CPSC has accepted many of the suggestions that the industry proposed.

The full Commission is expected to decide on or before February 16, 2006 whether to approve these and other changes to proposed Part 1633 that CPSC recommends. If approved, the federal open-flame standard would become effective as to mattresses manufactured or imported on or after July 1, 2007.

The following are several of the more significant changes to the proposed standard that CPSC recommends in response to industry's concerns:

Industry Position	CPSC Conclusions
<p>1. <u>Test Criteria:</u> The industry urged the CPSC to adopt a science-based and practical standard that would allow manufacturers to continue to make mattresses that consumers would find comfortable and affordable.</p>	<p>CPSC approved use of the test equipment and method developed by the National Institute of Standards and Technology (NIST), subject to minor changes discussed below for test sample conditioning and to the gas burner holes on the test apparatus. CPSC also recommends that the Commission approve the pass/fail criteria as proposed, which require the following:</p> <ul style="list-style-type: none"> • The total heat release during the first 10 minutes of the 30-minute test cannot exceed 15 MJ. • The peak heat release rate over the full 30-minute test period cannot exceed 200 kW.

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<p>2. <u>Imported Mattresses</u>: One of the industry's main objectives was fair and consistent enforcement of Part 1633 with regard to both domestic and imported mattresses. ISPA and SPSC were concerned that importers might misinterpret the proposed standard's general statement that "an importer is considered to be a manufacturer" for purposes of Part 1633. Specifically, the industry was concerned that if a given importer bought the same mattress prototype from more than one foreign manufacturer, could the importer arguably meet the prototype testing, quality assurance, documentation, labeling and other requirements only once with respect to the prototype, or would those obligations apply to each foreign manufacturer that sold mattresses to that importer. The industry was also concerned that the CPSC be able to verify a foreign manufacturer's compliance efficiently, including access to necessary records, translation of those records into English, and accurate identification of the foreign manufacturer.</p>	<p>CPSC clarified the standard to require that an importer must maintain all necessary records at a location in the United States, in English and "on an establishment specific basis." That is, the importer is responsible for obtaining and maintaining all necessary records for each foreign manufacturer that sells to the importer. These include records of testing and manufacturing, prototype tests, pooling confirmation tests, and quality assurance. To further facilitate compliance, the records that the manufacturer or importer must maintain must include the names and addresses of the party testing the products, the prototype developer, and each supplier of materials and components.</p> <p>Clearly placing the recordkeeping and maintenance obligation on the importer will require that party to obtain these types of records before importation occurs and to maintain them for a period of at least three years after production of particular prototypes have ceased. The importer, given its legal status as a "manufacturer" for purposes of Part 1633, would also be responsible for conducting "corrective actions," such as product recalls, when necessary.</p> <p>Furthermore, imported product must be labeled to disclose the names and addresses of both the U.S. importer and the foreign manufacturer. The relevant documents must be maintained at the importer's address. Finally, the standard will apply to all mattresses imported on or after the effective date of Part 1633.</p>

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<p>3. <u>Renovated Mattresses:</u> The proposed standard dealt with renovated mattresses in a “Policy clarification on renovation of mattresses.” The industry was concerned that this policy statement was somewhat vague and may not have the same legal significance as an express provision of the standard.</p>	<p>CPSC modified the standard to make clear that mattresses subject to this standard also include renovated mattresses. This means that renovators must comply with the same prototype testing, quality assurance and other requirements as a manufacturer of new mattresses. Furthermore, the standard will apply to all mattresses renovated on or after the effective date of Part 1633. That means that a party that renovates used mattresses after the effective date cannot argue that its products are exempt from Part 1633 because they were originally produced before the effective date.</p>
<p>4. <u>Retention of Physical Samples:</u> In the proposed standard, the CPSC stated that mattress manufacturers would be required to maintain physical samples of materials used to make mattress prototypes for the production duration of the prototype plus three years. The industry was concerned that storing such samples would be cumbersome, the samples might be prone to loss, damage or deterioration and that objective documentation of the physical characteristics of the materials would be preferable to storage of physical samples.</p>	<p>CPSC does not require that manufacturers be required to maintain physical samples, which should substantially simplify their records maintenance obligations.</p>
<p>5. <u>Test Apparatus Modification:</u> During the comment period, the industry became aware that a minor error in the manufacturing drawings for the burners used by labs to test mattresses for compliance with the performance criteria set forth in proposed Part 1633 was made. The gas burner holes in the test apparatus were inadvertently drilled slightly larger than those specified by NIST when it developed the test apparatus as specified by CPSC in the proposed standard. ISPA and the SPSC contacted NIST, which compared the test results obtained from using one apparatus with the original gas burner holes and another with the larger holes. NIST concluded that the larger holes did not materially affect the results of the tests. Based on that information, the industry requested that the CPSC modify the technical specifications in Part 1633 for the burner apparatus to specify the larger burner holes currently being used by the test labs.</p>	<p>CPSC modified the specifications accordingly. This means that manufacturers may rely on the tests results obtained to date using the existing test equipment, and that they do not need to repeat those tests using different equipment.</p>

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<p>6. <u>Sample Conditioning</u>: To promote test result consistency, the industry asked that the CPSC specify narrower sample conditioning requirements prior to conducting test burns.</p>	<p>CPSC modified the conditioning requirements accordingly.</p>
<p>7. <u>Miscellaneous Definitional Issues</u>: To reduce possible confusion in application of Part 1633, the industry requested clarifications of certain existing Part 1633 definitions and several additional definitions.</p>	<p>CPSC has clarified and added several definitions in Part 1633 that include the following:</p> <ul style="list-style-type: none"> • Prototype developer: Added to recognize that parties other than mattress manufacturers may develop prototypes. • Prototype pooling: Clarified to define the responsibilities of manufacturers that rely on a prototype developed by another party to conduct confirmation tests. • Mattress sets: Added to provide a convenient definition for an intended mattress/foundation combination. • Subordinate and Confirmed prototypes: Added to provided clearer distinctions between products for which prototype testing is required and products based on qualified prototypes developed under a pooling arrangement.

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<p>8. <u>FR Materials Safety</u>: The industry provided scientific data to the CPSC regarding the safety of components being used by mattress producers today to meet the requirements of both the California and proposed federal open-flame standards.</p>	<p>Based on this and other information, CPSC considered comments that questioned the safety of several specific FR mattress materials as well as FR barriers in general. CPSC concluded that there are a number of commercially available FR barriers that can be used to meet the standard without presenting any appreciable risks of health effects to consumers. CPSC also concluded that there is no evidence to suggest that FR chemical exposures from mattresses would contribute to the causation or exacerbation of allergies, asthma, or multiple chemical sensitivity. CPSC based its conclusions on the fact that the FR materials or chemicals under consideration are generally non-volatile, are not associated with fragrances or odors, and are not derived from biological materials. Likewise, CPSC cited research studies that concluded there is no credible scientific evidence that any FR chemicals contribute to sudden infant death syndrome.</p> <p>CPSC also stated that inherently flame resistant materials and FR chemicals are available that can be used to meet the federal open-flame standard and that are not likely to present a hazard to workers or the environment. CPSC indicated that it will continue to work with the Environmental Protection Agency to evaluate the potential effects of FR treatments to ensure that they do not present a hazard to consumers, workers, or the environment.</p>

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9. <u>Durability of FR Materials:</u> The industry provided scientific data to the CPSC concerning the durability of FR materials under typical use conditions.	CPSC considered evaluations of materials durability data developed by FR barrier suppliers and data obtained independently from tests performed by NIST. CPSC concluded that this information does not support requiring specific durability tests for FR barrier components. The NIST research replicated a severe wetting scenario in which sample mattress sets were exposed to repeated localized wetting and drying cycles. CPSC found that this type of wear did not change the overall flammability performance of the mattress sets. CPSC concluded that since localized wetting, as in bedwetting, is anticipated to be the most likely exposure of a mattress to water in real-world applications, it is unnecessary to add durability test requirements to the standard to account for mattress designs that incorporate barrier systems that use water-soluble flame retardants.