

Dated: March 2, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. American Association of Textile Chemists and Colorists, "Appearance of Durable Press Fabrics After Repeated Home Launderings," AATCC Test Method 124-1969. AATCC Technical Manual, Vol. 46, 1970.

2. American Association of Textile Chemists and Colorists, "Appearance of Fabrics After Repeated Home Laundering," AATCC Test Method 124-1996. AATCC Technical Manual, Vol. 73, 1997.

3. Briefing memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Proposed Amendments to Flammable Fabrics Act Standards to Replace Obsolete Standard Detergent and Update Laundering Procedures Required for Tests," November 18, 1998.

4. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Amending the Laundering Provisions of the CPSC Flammability Regulations," August 18, 1998.

5. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Textile Laundering Standards," August 18, 1998.

6. Memorandum from Gail Stafford and Shing-Bong Chen, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Detergent Comparison Tests," August 19, 1998.

7. Log of Meeting on January 21, 1998 concerning Flammability Test of Pyrovatex-treated Flame Resistant Fabrics.

8. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, Project Manager, "Amendments to FFA Standards," August 10, 1998.

9. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Briefing Package Supplement: Laundering/Detergent Update for Flammable Fabrics Act Standards—The Soap and Detergent Association (SDA) Laundering Procedures," January 11, 1999.

10. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Soap and Detergent Association Proposed Laundering Procedure," December 23, 1998.

11. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, including SDA Recommended Wash Conditions for CFR 1615.4, September 15, 1998.

12. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, follow-up comments to September 15, 1998, letter, November 12, 1998.

13. Memorandum from Margaret L. Neily, Project Manager, Directorate for Engineering

Sciences, to the Commission, "Laundering/Detergent Updates—FR notice supplements," February 19, 1999.

14. Briefing Memorandum, from Ron Medford, AED, Office of Hazard Identification and Reduction and Margaret L. Neily, Project Manager, ESME, to the Commission, "Final Rule Updating Standard Detergent and Laundering Procedures for Flammable Fabrics Act Standards," January 6, 2000.

15. Memorandum from Martha A. Kosh, OS, "Comments on Children's Sleepwear Laundering Procedures, Mattress Pads Laundering Procedures, Carpet and Rugs Laundering Procedures," June 1, 1999.

16. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, "Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for the Laundering/Detergent Update for the Flammable Fabrics Act Standards," October 25, 1999.

[FR Doc. 00-5530 Filed 3-9-00; 8:45 am]

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1632

Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: The Commission is amending the flammability standard for mattresses and mattress pads by revising the laundering procedure specified in that standard for mattress pads which contain a chemical fire retardant. These laundering procedures help assure that any chemical flame retardant is not removed or degraded by repeated washing and drying, thereby creating a flammability hazard. The Commission is issuing these amendments because the detergent specified by the existing laundering procedure is no longer available and the operating characteristics of the washing and drying machines required by that procedure are no longer representative of machines now used for home laundering.

DATES: The rule will become effective on April 10, 2000, and will apply to products manufactured or imported after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission,

Washington, DC 20207; telephone (301) 504-0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Flammable Fabrics Act ("FFA") (15 U.S.C. 1191 *et seq.*) authorizes the Commission to issue and amend flammability standards and regulations to protect the public from unreasonable risks of death, injury, and property damage from fire associated with products of interior furnishing made from fabric and related materials.

In 1972, the Secretary of Commerce issued a flammability standard for mattresses and mattress pads to protect the public from death and serious burn injuries associated with ignition of mattresses and mattress pads by smoldering cigarettes. That standard became effective in 1973, and is codified at 16 CFR Part 1632. In 1973, authority to issue flammability standards under the FFA was transferred from the Department of Commerce to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)).

B. Amending the Flammability Standard

As discussed below, laundering procedures are prescribed by the standard to help assure that any fire-retardant chemicals used in the production of mattress pads will not be removed or degraded by repeated washing and drying and create a flammability hazard. However, the current procedures are out of date in several respects.

1. Current Procedures

The mattress flammability standard describes the apparatus and procedure used to test mattress pads for compliance with the standard. See 16 CFR 1632.4 and 1632.5(a). Sections 1632.5 (a) and (b) of the standard require that any mattress pad manufactured with a fire retardant chemical shall be tested in the condition in which it is intended to be sold, and after it has been washed and dried ten times in accordance with a specified laundering procedure. That laundering procedure is AATCC Test Method 124-82, published by the American Association of Textile Chemists and Colorists ("AATCC").¹ The mattress

¹ Numbers in parentheses identify reference documents in the List of Relevant Documents at the end of this notice. Requests for inspection of any of these documents should be made at the Office of the Secretary, 4330 East-West Highway, room

Continued

standard incorporates that laundering procedure by reference. See 16 CFR 1632.5(b)(2)(iv).

AATCC Test Method 124–82 specifies operating characteristics of the washing machine and dryer to be used, wash water and rinse water temperatures, exhaust temperature of the dryer, and a particular detergent, AATCC Standard Detergent 124. AATCC Test Method 124–82 was originally developed in 1967 and subsequently revised. These specifications are representative of the equipment, wash, rinse, and drying temperatures, and the detergent used for home laundering in the 1960s. For example, AATCC Standard Detergent 124 is a high-phosphate powder with optical brightener, similar to the phosphate-based detergents sold to consumers between 1950 and 1970.(3)

Since 1970, environmental concerns about water pollution have resulted in the elimination of phosphate-based detergents for home laundering. Today, all laundry detergents sold to consumers are nonphosphate-based. Additionally, energy-efficient washing machines and dryers currently sold for consumer use have operating characteristics and temperature settings which differ from those specified by AATCC Test Method 124–82.(3)

2. Revised Laundering Test Method

In 1996, AATCC revised AATCC Test Method 124, “Appearance of Fabrics After Repeated Home Laundering”.(2) The 1996 AATCC test method more closely resembles the equipment and practices currently used for household laundering of fabrics. The revised test method differs from AATCC Test Method 124–82 by specifying the use of

1993 AATCC detergent, a nonphosphate-based detergent. The 1996 test method also specifies use of a washing machine with different operating characteristics than those specified by AATCC Test Method 124–82, and rinse water temperatures which differ from those in the older test method.(3) Table 1, below, provides a summary comparison of the two test methods.

In 1996, AATCC also announced that when that organization’s supply of Standard Detergent 124 is depleted, that detergent will no longer be available. AATCC is the only source for Standard Detergent 124. Additionally, washing machines now offered for sale do not have the settings and operating characteristics of the washing machine specified by AATCC Test Method 124–82.(3)

TABLE 1.—AATCC TEST METHOD 124

Wash/dry conditions	Version 1982	Version 1996	
Washing Machine:			
Cycle	Normal	Normal/Cotton Sturdy	
Wash Water Temp	60±3°C	60±3°C	
Rinse Water Temp	41±3°C	Less Than 29°C	
Water Level	Full	18±1 gal	
Agitator Speed	70±5 spm	179±2 spm	
Wash Time	12 minutes	12 minutes	
Spin Speed	500–510 rpm	630–660 rpm	
Final Spin Cycle	4 minutes	6 minutes	
Dryer:			
Cycle	Normal	Cotton Sturdy	Durable Press
Exhaust Temp	140–160°F	140–160°F	140–160°F
Cool Down Cycle	5 minutes	5 minutes	10 minutes

spm=strokes (or cycles) per minute; rpm=revolutions per minute.

3. Review of Other Existing Standards

As explained in the notice of proposed rulemaking, the Commission staff reviewed and analyzed twelve other international and technical association standards or test methods to determine if any were appropriate for consideration in this proceeding. All of the identified standards for fabric laundering have significant deficiencies. They are either based on earlier versions of AATCC Test Method 124 (with obsolete detergent and equipment), require equipment not available in the U.S., use only water in the laundering procedure, or specify significantly lower wash and rinse water temperatures than those still available for consumers.

4. Comparability of Test Results

The Commission intended to perform some testing of mattress pads

manufactured with chemical fire retardants using AATCC Test Method 124–82 and AATCC Test Method 124–1996 to compare the two test methods. However, the staff has been unable to locate any flame retardant-treated mattress pads for this comparison. The Commission believes, however, it is appropriate to revise the laundering method so that it is consistent with actual consumer and industry laundering practices should cotton mattress pads (which might need flame retardant treatment) return to the market in the future.

5. Proposed Amendment

On March 17, 1999, the Commission proposed to revise the laundering procedures specified in 16 CFR 1632.5(b) to those of AATCC Test Method 124–1996. 64 FR 13137. As

explained in the preamble to the proposed rule, the Commission determined that an advance notice of proposed rulemaking was not necessary to begin this proceeding. Id. at 13139. The amendments preserve the original intent and effect of the existing test method, modifying that method only as necessary to reflect the existence of modern equipment and detergent. Moreover, the existing regulations permit the Commission to employ a laundering test method different from AATCC Test Method 124 if it concludes that the test method is substantively as protective.

The Commission received comments on the proposed rule from the Soap and Detergent Association (“SDA”), American Textile Manufacturers Institute (“ATMI”), and the National Cotton Council (“NCC”). ATMI and

NCC both expressed their support for the proposed revision. SDA's comments are discussed below.

Wash and Rinse Water Temperatures

SDA suggested that the Commission consider a laundering protocol different than AATCC Test Method 124. SDA's suggested protocol calls for cooler wash and rinse temperatures, stating that they are more representative of today's laundering conditions.

The Commission declines to make this change. Many water heaters in use today are set at 60C/140F. Thus, consumers have hotter wash water available to them than the 32C/90F that SDA recommends. It is appropriate that the laundering requirements reflect not necessarily the average conditions, but the most rigorous that a consumer is likely to use. By specifying a hot water wash and a cold water rinse, the revised CPSC standard represents the most rigorous real, although not necessarily average, wash conditions.

Water Hardness

SDA also suggested that the revised standard should specify water hardness criteria. While water hardness is one factor that may affect the flammability performance of some fabrics, the Commission has no evidence that water hardness is a significant problem for flame retardant treated products currently marketed. At this time, the Commission is only correcting the outdated detergent and laundering conditions in the current FFA standards. It is not within the scope of this proceeding to consider additional criteria.

Ballast Load Weight

The SDA suggested changing the ballast load weight to 2.7±0.1 kg (6±0.2 lb). CPSC's current standard specifies 3.64 kg (8 lb) while the AATCC Test Method 124 only requires 1.8kg (4 lb). SDA may not have realized that CPSC is retaining the larger load requirement. As explained above, the Commission is only correcting the outdated aspects of the laundering standard. It is not altering other criteria.

Omit Reference to a Specific Date

Finally, SDA suggested that the Commission not refer to the specific year of the AATCC standard but simply refer to the most current method. This would alleviate the need to revise the standard every time the AATCC standard is revised.

The Commission cannot accept this suggestion. For any change by AATCC to have the force and effect of a Commission rule the Commission must

formally adopt it through notice and comment rulemaking.

6. Final Rule

The amendments require a mattress pad containing a fire retardant chemical to be tested in the condition in which it is intended to be sold and after washing and drying 10 times using the procedure specified in AATCC Test Method 124-1996. The amendments incorporate that test method into the mattress standard by reference.

The mattress flammability standard and enforcement rules exempt any "one-of-a-kind" mattress or mattress pad manufactured to a physician's written prescription from all requirements of the standard. See §§ 1632.2(b)(4) and 1632.31(f). Those sections are not affected by the amendments.

Additionally, existing § 1632.5(b)(1)(i) exempts from the laundering requirements of the standard any mattress pad intended for "one time use" and any mattress pad which is not intended to be laundered. Existing § 1632.5(b)(1)(ii) states that mattress pads that cannot be laundered and are labeled "dryclean only" shall be drycleaned by a procedure which has been found to be acceptable by the Commission before testing. Existing § 1632.5(b)(2)(v) allows manufacturers of mattress pads manufactured with a chemical fire retardant to test specimens after laundering "a different number of wash and dry cycles using another procedure * * * if that procedure has previously been found to be equivalent by the Consumer Product Safety Commission." These sections are not affected by the amendments.

7. Effective Date

The Commission proposed that the amendments become effective 30 days after publication of a final rule. 64 FR 13139. As discussed in the preamble to the proposed rule, the standard detergent specified by the existing laundering method in the standard is no longer available. Thus the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA.

The Commission received no comments on the proposed effective date. The Commission continues to believe that an effective date of thirty days allows adequate notice to all interested persons of the change in laundering procedure, and at the same time assures that the Commission will

be able to test for compliance with the standards without interruption. Those manufacturers who perform prototype testing in accordance with the laundering procedure specified in the standard will also benefit from a relatively short effective date.

C. Other Issues

1. Impact on Small Businesses

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certified that the proposed amendments to the mattress flammability standard would not have a significant economic impact on a substantial number of small entities, including small businesses, if issued on a final basis. 64 FR 13140. The Commission has no information that would alter this determination.

2. Environmental Considerations

As discussed in the preamble to the proposed rule, the amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. The Commission has no information indicating any special circumstances in which these amendments may affect the human environment. Accordingly, the Commission determined that neither an environmental assessment nor an environmental impact statement is required. 64 FR 13140.

3. Executive Orders

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, to be given to a new regulation. The amendments modify a flammability standard issued under the FFA. With certain exceptions which are not applicable here, no state or political subdivision of a state may enact or continue in effect "a flammability standard or other regulation" applicable to the same fabric or product covered by an FFA standard if the state or local flammability standard or regulation is "designed to protect against the same risk of the occurrence of fire" unless the state or local standard or regulation is "identical" to the FFA standard. See section 16 of the FFA (15 U.S.C. 1203). Consequently, the amendments will preempt nonidentical state or local flammability standards or regulations that are intended to address the unreasonable risk of fire from ignition of mattress pads.

The Commission has also evaluated this rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does

not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Incorporation by reference, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Part 1632 to read as follows:

PART 1632—STANDARD FOR THE FLAMMABILITY OF MATTRESSES AND MATTRESS PADS

1. The authority for part 1632 continues to read as follows:

Authority: 15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b).

2. Section 1632.5 is amended by revising paragraphs (b)(2)(i) through (iv) and by removing the undesignated paragraph following (b)(2)(iv) to read as follows:

§ 1632.5 Mattress pad test procedure.

* * * * *

(b) * * *

(2) Laundering procedure. (i) Washing shall be performed in accordance with sections 8.2.2 and 8.2.3 of AATCC Test Method 124–1996, using wash temperature V (60±3°C, 140±5°F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for “Normal/Cotton Sturdy” in Table III.

(ii) Drying shall be performed in accordance with section 8.3.1(A) of AATCC Test Method 124–1996 “Appearance of Fabrics after Repeated Home Laundering,” Tumble Dry, using the exhaust temperature (66±5°C, 150±10°F) and cool down time of 10 minutes specified in the “Durable Press” conditions of Table IV.

(iii) Maximum washer load shall be 3.64 Kg (8 pounds) and may consist of any combination of test samples and dummy pieces.

(iv) AATCC Test Method 124–1996 “Appearance of Fabrics after Repeated

Home Laundering,” is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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Dated: March 2, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. American Association of Textile Chemists and Colorists, “Appearance of Durable Press Fabrics After Repeated Home Launderings,” AATCC Test Method 124–1969. AATCC Technical Manual, Vol. 46, 1970.

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[FR Doc. 00–5529 Filed 3–9–00; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB48

Exemption From Registration as a Commodity Trading Advisor

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission has amended Commission Rule 4.14 to create an exemption from the Commodity Exchange Act’s registration requirements for commodity trading advisors that provide standardized advice by means of media such as newsletters, prerecorded telephone newlines, Internet web sites, and non-customized computer software.