

## § 1610.40

sections 3, 6, 7, and 9 of the act. In particular, section 11(c) does not authorize the sale or offering for sale of any article of wearing apparel or textile fabric which is in fact dangerously flammable at the time of sale or offering for sale, even though the seller intends to ship the article for treatment prior to delivery to the purchaser or has already done so. Moreover, under section 3 of the act a person is liable for a subsequent sale or offering for sale if, despite the purported completion of treatment to render it not dangerously flammable, the article in fact remains dangerously flammable.

### **§ 1610.40 Use of alternate apparatus, procedures, or criteria for tests for guaranty purposes.**

(a) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 the FFA. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) The Standard for the Flammability of Clothing Textiles (the Standard) prescribes apparatus and procedures for testing fabrics and garments subject to its provisions. See 16 CFR 1610.4. The Standard prescribes criteria for classifying the flammability of fabrics and garments subject to its provisions as "Normal flammability, Class 1," "Intermediate flammability, Class 2," and "rapid and intense burning, Class 3." See 16 CFR 1610.3. Sections 3 and 4 of the Flammable Fabrics Act, as enacted in 1953 and amended in 1954, prohibits the manufacture for sale, importation into the United States, or introduction in commerce of any fabric or article of wearing apparel subject to the Standard which exhibits "rapid and intense burning" when tested in accordance with the Standard. See 16 CFR part 1609.

(c) The Commission recognizes that for purposes of supporting guaranties, "reasonable and representative tests" could be either the test in the Standard, or alternate tests which utilize apparatus or procedures other than those in the Standard. This § 1610.40 sets forth

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conditions under which the Commission will allow use of alternate tests with apparatus or procedures other than those in the Standard to serve as the basis for guaranties.

(d)(1) Persons and firms issuing guaranties that fabrics or garments subject to the Standard meet its requirements may base those guaranties on any alternate test utilizing apparatus or procedures other than those in the Standard, if such alternate test is as stringent as, or more stringent than, the test in the Standard. The Commission considers an alternate test to be "as stringent as, or more stringent than" the test in the Standard if, when testing identical specimens, the alternate test yields failing results as often as, or more often than, the test in the Standard. Any person using such an alternate test must have data or information to demonstrate that the alternate test is as stringent as, or more stringent than, the test in the Standard.

(2) The data or information required by this paragraph (d) of this section to demonstrate equivalent or greater stringency of any alternate test using apparatus or procedures other than those in the Standard must be in the possession of the person or firm desiring to use such alternate test before the alternate test may be used to support guaranties of items subject to the Standard.

(3) The data or information required by paragraph (d) of this section to demonstrate equivalent or greater stringency of any alternate test using apparatus or procedures other than those in the Standard must be retained for as long as that alternate test is used to support guaranties of items subject to the Standard, and for one year thereafter.

(e) Specific approval from the Commission in advance of the use of any alternate test using apparatus or procedures other than those in the standard is not required. The Commission will not approve or disapprove any specific alternate test utilizing apparatus or procedures other than those in the Standard.

(f) Use of any alternate test to support guaranties of items subject to the

Standard without the information required by this section may result in violation of section 8(b)), of the FFA (15 U.S.C. 1197(b)), which prohibits the furnishing of a false guaranty.

(g) The commission will test fabrics and garments subject to the Standard for compliance with the Standard using the apparatus and procedures set forth in the Standard. The Commission will consider any failing results from compliance testing as evidence that:

(1) The manufacture for sale, importation into the United States, or introduction in commerce of the fabric or garment which yielded failing results was in violation of the Standard and of section 3 of the FFA; and

(2) The person or firm using the alternate test as the basis for a guaranty has furnished a false guaranty, in violation of section 8(b) of the FFA.

(Reporting requirements contained in paragraph (d) were approved by Office of Management and Budget under control number 3041-0024)

[48 FR 21315, May 12, 1983]

### Subpart C—Interpretations and Policies

#### § 1610.61 Clarification of flammability standard for clothing textiles (CS 191-53).

(a) *Background.* (1) The Flammable Fabrics Act, which became effective July 1, 1954 (Pub. L. 83-88, 67 Stat. 111-15), adopted Commercial Standard 191-53 as a mandatory flammability standard to be applied under that act (CS 191-53 had been a voluntary commercial standard, entitled "Commercial Standard 191-53, Flammability of Clothing Textiles," which became effective January 30, 1953).

(2) On August 23, 1954, the Flammable Fabrics Act was amended (68 Stat. 770) to reduce the burning time for flame spread as provided in CS 191-53.

(3) As amended and revised December 14, 1967 by Public Law 90-189 (81 Stat. 568-74), the Flammable Fabrics Act no longer specifically referred to CS 191-53; however, Public Law 90-189 contained a "savings clause" (section 11), which continued the applicability of any standard effective under the act theretofore until superseded or modified. No such change occurred there-

after to CS 191-53 which, accordingly, continues to be a mandatory flammability standard under the act.

(b) *Need for clarification.* It has been brought to the attention of the Consumer Product Safety Commission that lack of clarity in CS 191-53 regarding (1) the positioning of the stop cord, (2) the technique for brushing fabrics with raised-fiber surface, and (3) the criterion for failure of a fabric with a raised-fiber surface results in variations in the way tests are conducted or results are interpreted under the standard, thereby making both compliance with and enforcement of the standard under the Flammable Fabrics Act needlessly contentious.

(c) *Clarifying interpretations.* To alleviate this situation, the Consumer Product Safety Commission adopts the following interpretations on these subjects for CS 191-53:

(1) *Stop cord.* The stop cord shall be three-eighths of an inch above and parallel to the lower surface of the top plate of the specimen holder. This condition can be achieved easily and reproducibly with the use of L-shaped guides and an additional thread guide popularly referred to as a "sky hook." The essential condition, however, is the uniform height of three-eighths of an inch for the stop cord and not the number, placement, or design of the thread guides.

(2) *Brushing.* Brushing of a specimen shall be performed with the specimen mounted in a specimen holder. The purpose of the metal plate or "template" on the carriage of the brushing device is to support the specimen during the brushing operation. Accordingly, such template should be one-eighth of an inch thick.

(3) *Criterion for failure.* In the case of those fabrics having a raised-fiber surface for which a flame spread time of less than 4 +seconds occurs and is the result of surface burning (sometimes referred to as "surface flash"), the additional finding of base fabric ignition or fusion that is required to establish a failure shall have to be associated with the propagating surface flame and not the igniting flame.

(Sec. 1, et seq., 67 Stat. 111-15, as amended, 68 Stat. 770, 81 Stat. 568-74 (15 U.S.C. 1191-1204, note under 1191))