

each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 2002 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE-12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—2002 (Long Form) must be completed and filed by May 31, 2003, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year and that was majority-owned by one or more foreign parents (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent), if:

(i) It is not a bank or a bank holding company, and is not owned directly or indirectly by a U.S. bank holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$125 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(2) Form BE-12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—2002 (Short Form) must be completed and filed by May 31, 2003 by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year, if:

(i) It is not a bank or a bank holding company, and is not owned directly or indirectly by a U.S. bank holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for a majority-owned U.S. affiliate (not just the foreign parent's share) exceeded \$10 million, but no one item exceeded \$125 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes, or

(iii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for a minority-owned U.S. affiliate (not just the foreign parent's share) exceeded \$10 million (positive or negative) at the end of, or for, its 2002 fiscal year (a "minority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less):

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(3) Form BE-12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—2002 BANK must be completed and filed by May 31, 2003, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year, if:

(i) The U.S. affiliate is in "banking", which, for purposes of the BE-12 survey, covers business enterprises engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, savings and loans, savings banks, and bank holding companies, including all subsidiaries or units of a bank holding company and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$10 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes;

(C) Net income after provision for U.S. income taxes.

(4) Form BE-12(X)—Benchmark Survey of Foreign Direct Investment in the United States—2002 Claim for Exemption from Filing BE-12(LF), BE-12(SF), and BE-12 Bank must be completed and filed within 30 days of the date it was received, or by May 31, 2003, whichever is sooner, by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning

its being subject to reporting in the 2002 benchmark survey), but is exempt from filing Form BE-12(LF), Form BE-12(SF), and Form BE-12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 2002 benchmark survey but that is not otherwise required to file the Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file form BE-12(LF), BE-12(SF), or Form BE-12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed \$10 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 2002 fiscal year but is exempt from filing a completed Form BE-12(LF), BE-12(SF), or Form BE-12 Bank, it must nevertheless file a completed and certified Form BE-12(X).

(f) *Due date.* A fully completed and certified Form BE-12(LF), Form BE-12(SF), or BE-12 Bank is due to be filed with BEA not later than May 31, 2003. A fully completed and certified Form BE-12(X) is due to be filed with BEA within 30 days of the date it was received, or by May 31, 2003, whichever is sooner.

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BILLING CODE 3510-06-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

Standard for the Flammability of Clothing Textiles; Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering amending the flammability standard for clothing textiles. The standard, originally issued in 1953, has become outdated in several respects. The Commission is considering changes that would enable the standard to better reflect current consumer practices and technologies and would clarify several aspects of the standard. The Commission invites comments concerning the risk of injury identified in this notice, the regulatory alternatives being considered, and other possible alternatives. The Commission also invites submission of any existing standard or statement of intention to modify or develop a voluntary standard to address the flammability risk of clothing textiles.

DATES: Comments and submissions must be received by November 12, 2002.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-0800. Comments also may be filed by telefacsimile to (301) 504-0127 or by email to cpssc-os@cpssc.gov. Comments should be captioned "Clothing ANPR."

FOR FURTHER INFORMATION CONTACT:

Margaret Neily, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0508, extension 1293.

SUPPLEMENTARY INFORMATION:

A. Background

1. History of the Standard

The Commission is considering amending the Standard for the Flammability for Clothing Textiles, 16 CFR Part 1610, which covers clothing and textile fabrics intended for use in clothing. It excludes hats, gloves, footwear, and interlining fabrics. The standard provides a test to determine whether such clothing and fabrics exhibit "rapid and intense burning," and are therefore highly flammable.

In 1953, Congress enacted the Flammable Fabrics Act of 1953 ("FFA"), (Pub. L. 83-88, 67 Stat. 111). As enacted in 1953 and amended in 1954, the FFA prohibited the importation, manufacture for sale, or the sale in commerce of any article of wearing apparel, which is "so highly flammable as to be dangerous

when worn by individuals." The FFA of 1953 specified that a test, first published by the Department of Commerce as a voluntary commercial standard, then called "Flammability of Clothing Textiles, Commercial Standard ("CS") 191-53," shall be used to determine if fabric or clothing is "so highly flammable as to be dangerous when worn by individuals."

In 1967, Congress amended the FFA, expanding its coverage and authorizing the Secretary of Commerce to issue flammability standards through rulemaking. A savings clause kept the flammability standard for clothing textiles that the 1953 Act had mandated into effect until superseded or modified by the Secretary of Commerce through the procedures specified in the 1967 amendment. See section 11 of Public Law 90-189, 81 Stat. 568, December 14, 1967.

In 1972, Congress established the Consumer Product Safety Commission when it enacted the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051 *et seq.* The CPSA transferred to the Commission the authority the Secretary of Commerce had to issue and amend flammability standards under the FFA. 15 U.S.C. 2079(b). In 1975, the Commission codified the FFA of 1953 at 16 CFR 1609 and the Standard for the Flammability of Clothing Textiles at 16 CFR part 1610. It is this standard that the Commission is considering amending.

2. The Current Standard

The clothing textile standard describes a test apparatus and the procedures for testing clothing and textiles intended for clothing. It establishes three classes of flammability: Class 1 or normal flammability; class 2 or intermediate flammability; and class 3 or rapid and intense burning. Clothing and textiles that are categorized as class 3 under the prescribed test method are considered dangerously flammable. 16 CFR 1610.3

To determine the appropriate classification, the standard prescribes the method of testing. Five specimens are subjected to a flammability tester. This is a draft-proof ventilated chamber containing an ignition medium, a sample rack and an automatic timing device. *Id.* 1610.4(b). The ignition medium is a spring-motor driven gas jet around a 26-gage hypodermic needle. *Id.* 1610.4(b)(6). A swatch of each sample must be subjected to the dry cleaning and hand washing procedure prescribed by the standard. *Id.* 1610.4(d)&(e). To determine results, the average time of flame spread is taken for five specimens. However, if the time of

flame spread is less than 4 seconds (3^{1/2} seconds for plain-surfaced fabrics) or the specimens do not burn, five additional specimens must be tested and the average time of flame spread for these ten specimens taken. *Id.* 1610.4(g)(7). Classification is based on the reported results before and after drycleaning and washing, whichever is lower. *Id.* 16110.4(g)(8).

B. Statutory Provisions

The FFA sets forth the process by which the Commission can issue or amend a flammability standard. The Commission first must issue an advance notice of proposed rulemaking ("ANPR") which: (1) Identifies the fabric or product and the nature of the risk associated with the fabric or product; (2) summarizes the regulatory alternatives under consideration; (3) provides information about existing relevant standards and reasons why the Commission does not preliminarily believe that these standards are adequate; (4) invites interested persons to submit comments concerning the identified risk of injury, regulatory alternatives being considered, and other possible alternatives; (5) invites submission of an existing standard or portion of a standard as a proposed regulation; and (6) invites submission of a statement of intention to modify or develop a voluntary standard to address the risk of injury. 15 U.S.C. 1193(g).

If, after reviewing comments and submissions responding to the ANPR, the Commission determines to continue the rulemaking proceeding, it will issue a notice of proposed rulemaking. This notice must contain the text of the proposed rule along with alternatives the Commission has considered and a preliminary regulatory analysis. 15 U.S.C. 1193(i). Before issuing a final rule, the Commission must prepare a final regulatory analysis, and it must make certain findings concerning any relevant voluntary standard, the relationship of costs and benefits of the rule, and the burden imposed by the regulation. *Id.* 1193(j). The Commission also must provide an opportunity for interested persons to make an oral presentation before the Commission issues a final rule. *Id.* 1193(d).

C. Possible Amendment

This notice initiates the rulemaking process to amend the flammability standard for clothing and textiles intended for clothing.

1. The Products

The products of concern are clothing and fabrics intended to be used for clothing. The flammability standard

applies to all items of clothing, and fabrics used for such clothing, whether for adults or children, for daywear or nightwear. The Commission has regulations governing the flammability of sleepwear, 16 CFR 1615 and 1616, that are more stringent than this general wearing apparel flammability standard. The possible changes the Commission discusses in this notice would not affect the sleepwear standards. The changes the Commission is considering would not affect the scope of the standard, but would modernize the test method.

2. The Risk of Injury

According to the standard, its purpose is to "reduce danger of injury and loss of life by providing, on a national basis, standard methods of testing and rating the flammability of textiles and textile products for clothing use, thereby discouraging the use of any dangerously flammable clothing textiles." 16 CFR 1610.1. Any amendments the Commission is considering would continue to address this risk of injury. Changes to the test method to better reflect current practices and technologies and clarify some aspects of the standard may improve the standard's ability to address the risk of injury. Based on the most recent five years of available data, 153 deaths and an estimated 4,000 hospital emergency department-treated injuries result annually from the ignition of clothing.

3. Regulatory Alternatives

The Commission is considering changes to the clothing textile flammability standard that would modernize and clarify it. Only minimal changes, such as removing obsolete footnotes, have been made since its development in 1953. However, clothing and technology have undergone many changes in that time. Below, is a discussion of the changes the Commission is considering at this point.

Changes to the flammability tester. The flammability tester prescribed in the current standard is a mechanical apparatus that is no longer available. Apparel manufacturers and other testing laboratories now use more modern flammability testers that incorporate electronic timers and several other electro-mechanical devices that control and apply flame impingement. The Commission is considering requiring a more modern flammability tester.

Changes to the dry cleaning procedure. The method of dry cleaning the current standard prescribes requires perchloroethylene in an open vessel. However, perchloroethylene has been shown to cause cancer in animal tests,

and use in this manner violates regulations issued by the Environmental Protection Agency. The Commission staff has not used this procedure since 1986. (The standard allows alternate procedures if they are as stringent as the specified procedure.) An alternative procedure using commercial dry cleaning procedures and washing/tumble drying as provided in ASTM D 1230 appears to be just as stringent, if not more so, as the outdated dry cleaning procedures required by 16 CFR part 1610.

Changes to the hand washing procedure. The current standard requires that after fabric specimens are dry cleaned they must be hand washed with neutral chip soap and line dried before testing them for flammability. 16 CFR 1610.4(e). However, this practice is outdated. Neutral chip soap is no longer available to consumers, who now use non-phosphate detergent and usually use home washers and dryers. Moreover, limited testing by CPSC indicates that for some raised surfaces the machine wash/tumble dry method is more stringent than the procedure now required by the standard. The Commission is considering laundering requirements similar to those prescribed in American Association of Textile Chemists and Colorists ("AATCC") 124-1996. This would be consistent with changes the Commission recently made to the laundering requirements for flammability standards for children's sleepwear, carpets and rugs, and mattress pads. 65 FR 12924, 12929, and 12935 (March 10, 2000).

The Commission is also considering clarifying several portions of the standard. When the staff conducts flammability testing it follows CPSC's Laboratory Test Manual. The Test Manual provides specific directions that aid in appropriate testing. The Commission is considering using some portions of the Test Manual to clarify aspects of the standard, as discussed below.

Clarify selection of surface/direction for testing. The standard requires that for textiles without a raised-fiber surface, "the long dimension shall be that in which they burn most rapidly, and the more rapidly burning surface shall be tested." 16 CFR 1610.4(a)(2). However, the standard does not clearly describe how to select the sample surface and direction for testing. Similarly, for textiles with a raised-fiber surface, specimens must be taken from the part that has the fastest rate of burning. 16 CFR 1610(a)(3). However, the standard does not describe how to determine which area is the most flammable. Language from CPSC's Test

Manual could be used to clarify both of these procedures. The Commission is also considering whether to add directions on how to test specialty fabrics.

Clarify when to test 5 additional specimens. The standard states that for plain-surface fabrics if the time of flame spread is less than 3.5 seconds or if the first five specimens do not burn, five additional specimens should be tested. 16 CFR 1610.4(g)(7). However, CPSC testing experience has shown that if the first five specimens do not ignite, the next five specimens will not ignite either. The CPSC Engineering Laboratory Test Manual states that if none of the first five specimens burns, five additional specimens should not be tested. As for raised-fiber surfaces, whose burning characteristics are complicated, the standard does not clearly specify when it is necessary to test five additional specimens. CPSC's Test Manual could be used to clarify this.

Clarify when base fabric ignition occurs. Whether the base fabric ignites during testing is important because it is a factor in determining whether additional testing is necessary and what the fabric classification should be. However, the standard provides no clear definition of base burn for raised-surface fabrics. The Appendix of CS 191-53, which was not incorporated in the FFA, clearly defines base burn and surface flash. CPSC's Test Manual also contains a clarification. These could be added to the standard.

Add test result codes. The standard provides no codes to report complex test results consistently. CPSC developed some codes many years ago to record test results. Industry members and test laboratories have adopted some of the CPSC codes, but also developed some of their own codes. Uniform result codes would facilitate reporting accuracy, understanding of flammability performance, and resolution of test result differences among laboratories.

Clarify calculations for determining burn rates and classification. The standard generally describes the procedures of calculating average time of flame spread. However, it does not clearly state the method to determine the flame spread time for raised-fiber surface fabrics. More specific direction on calculating average flame spread time would enable more accurate fabric classification.

Specify different desiccant. The standard specifies anhydrous calcium chloride as the desiccant to allow specimens to cool before testing without reabsorbing moisture. CFR 1610 1610.4(f). However, CPSC's Test Manual

specifies silica gel. Silica gel is more effective, reliable and economical.

Other possible changes. The Commission is considering several other possible changes. For example, the Commission is considering some changes to the organization of the standard to consolidate it and make it easier to understand. The Commission is also considering: Specifying that tape can be used to secure specimens in the specimen holder; specifying the purpose of brushing specimens and when replacing the brush is necessary; specifying the details of specimen conditioning; and requiring only the type of laundering/drycleaning specified on a garment's care label. The Commission is also considering clarifying and amending regulations concerning fabrics exempted from testing for guaranties. See 16 CFR 1610.37(d).

4. Existing Relevant Standards

The Commission staff conducted a review to find other relevant textile standards. The staff found three relevant standards with modern dry cleaning methods and/or laundering methods.

American Society for Testing and Materials (ASTM) D 1230-94, Standard Test Method for Flammability of Apparel Textiles. This voluntary standard provides methods for testing and evaluating the flammability of textile fabrics used as apparel in both original state condition and after refurbishment. The standard specifies two dry cleaning options. However, only one—any commercial dry cleaning operation in a closed environment for one cycle—is still available. After the fabric is dry cleaned, it is laundered using home-type washing and drying machines. The standard refers to the American Association of Textile Chemists and Colorists (AATCC) Test Method 135 entitled Dimensional Changes in Automatic Home Laundering of Woven and Knit Fabrics. This voluntary standard specifies the type of detergent, washing and drying conditions and washer and dryer specifications. An analysis of the laboratory test data from an ASTM interlaboratory round robin conducted in 1991 indicates that for specimens subjected to ASTM D 1230 (both dry cleaning and machine laundering followed by tumble drying procedures specified in AATCC Test Method 135), this flammability test was as stringent or more stringent than the refurbishing procedure in 16 CFR part 1610.

British Standards Institution ("BSI") BS EN ISO 3175: 1996 Textile—Evaluation of Stability to Machine Drycleaning. The purpose of this

standard is to determine whether normal to very sensitive fabrics can be dry cleaned by examining dimensional changes after three to five cleaning treatments. It uses a commercial dry cleaning machine containing perchloroethylene and a detergent followed by some form of steam treatment and/or hot pressing (a lesser drying temperature or line drying is used for fabrics containing heat sensitive fibers). This standard uses a modern procedure, a commercial dry cleaning machine, but such a machine would not necessarily be available in the U.S. and would have to have appropriate environmental controls installed. The standard does not have a laundering procedure.

Canadian General Standards Board ("CGSB") CAN/CGSB-4.2 No. 30.3-94, Procedure for the Removal of Non-permanent Flame-retardant Treatments from Textile Products. The purpose of this dry cleaning and laundering standard is to test fabrics for the presence of nonpermanent flame-retardant treatments applied to textile products. The procedures specify that the fabric should be initially dry cleaned in either a coin-operated perchloroethylene dry cleaning machine or in any commercial dry cleaning operation. This is followed by laundering in a domestic-type washing machine using neutral chip soap and dried according to the care instructions provided by the fabric manufacturer. One dry cleaning and one laundering cycle are recommended. The washing machine specified in this standard is not currently available in the U.S.

5. Invitations to Comment

In accordance with section 4(g) of the FFA, the Commission invites comments on this notice, specifically:

1. Comments concerning the risk of injury identified in this notice, the regulatory alternatives discussed above, and other alternatives to address the risk of injury;

2. an existing standard or portion of a standard as a proposed rule;

3. a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in the notice along with a description of a plan to modify or develop the standard.

In addition, the Commission is interested in obtaining further information and comments about the possible changes to the clothing flammability standard discussed above, such as:

1. Modernizing the flammability tester;

2. updating the prescribed dry cleaning method;

3. updating the laundering method described in the standard;

4. revising or clarifying confusing test procedures;

5. developing standardized language for interpreting and reporting test results;

6. reorganizing some text of the rule for clarity; and

7. clarifying or amending the exemptions from the requirements for testing to support guaranties at 1610.37(d).

Dated: September 9, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Jacqueline Elder, Acting Assistant Executive Director, EXHR and Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, "Amending the Standard for the Flammability of Clothing Textiles, 16 CFR 1610," May 29, 2002.

2. Memorandum from Weiyong Tao, Division of Electrical Engineering, to Margaret Neily, Project Manager, "Amending the Flammability Tester Specifications, the Dry Cleaning and Washing Procedures of the CPSC Flammability Regulations in 16 CFR 1610," February 28, 2002.

3. Memorandum from Weiyong Tao, Division of Electrical Engineering, to Margaret Neily, Project Manager, "Alternate Dry Cleaning and Washing Requirements of Apparel Specified in Standards Other than 16 CFR Part 1610 Standard for the Flammability of Clothing Textiles," March 1, 2002.

4. Memorandum from Weiyong Tao, (previously) on detail to ESME, to Margaret Neily, Project Manager, "Proposed Revisions for the Standard for the Flammability of Clothing Textiles," March 25, 2002.

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BILLING CODE 6355-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05-02-054]

RIN 2115-AE47

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Route 70 Bridge across the Manasquan River. The proposed rule would limit the required openings of the draw year-round from 7 a.m. to