

considers whether the firm had actual knowledge that its products violated the flammability requirements. The CPSC also considers whether the firm should be presumed to have the knowledge that would be possessed by a reasonable person acting in the circumstances, including knowledge that would have been obtainable upon the exercise of due care to ascertain the truth of representations. 15 U.S.C. 1194(e). The existence of results of flammability testing based on a reasonable and representative program and, in the case of tests performed by another entity (such as a guarantor), the steps, if any, that the firm took to verify the existence and reliability of such tests, bear directly on whether the firm acted reasonably in the circumstances.

(b) *Applicability.* (1) When tested for flammability, a small number of textile products exhibit variability in the test results; that is, even though they may exhibit class 1 or class 2 burning characteristics in one test, a third test may result in a class 3 failure. Violative products that the Commission has discovered since 1994 include sheer 100% rayon skirts and scarves; sheer 100% silk scarves; 100% rayon chenille sweaters; rayon/nylon chenille and long hair sweaters; polyester/cotton and 100% cotton fleece/sherpa garments, and 100% cotton terry cloth robes. Since August 1994, there have been 21 recalls of such dangerously flammable clothing, and six retailers have paid civil penalties to settle Commission staff allegations that they knowingly sold garments that violated the general wearing apparel standard.

(2) The violations and resulting recalls and civil penalties demonstrate the critical necessity for manufacturers, distributors, importers, and retailers to evaluate, prior to sale, the flammability of garments made from the materials described above, or to seek appropriate guaranties that assure that the garments comply. Because of the likelihood of variable flammability in the small group of textiles identified above, one test is insufficient to assure reasonably that these products comply with the flammability standards. Rather, a person seeking to evaluate garments made of such materials should

assure that the program tests a sufficient number of samples to provide adequate assurance that such textile products comply with the general wearing apparel standard. The number of samples to be tested, and the corresponding degree of confidence that products tested will comply, are to be specified by the individual designing the test program. However, in assessing the reasonableness of a test program, the Commission staff will specifically consider the degree of confidence that the program provides.

(c) *Suggestions.* The following are some suggestions to assist in complying with the general wearing apparel standard:

(1) Purchase fabrics or garments that meet testing exemptions listed in 16 CFR 1610.37(d). (If buyers or other personnel do not have skills to determine if the fabric is exempted, hire a textile consultant or a test lab for an evaluation.)

(2) For fabrics that are not exempt, conduct reasonable and representative testing before cutting and sewing, using standard operating characteristic curves for acceptance sampling to determine a sufficient number of tests.

(3) Purchase fabrics or garments that have been guaranteed and/or tested by the supplier using a reasonable and representative test program that uses standard operating characteristic curves for acceptance sampling to determine a sufficient number of tests. Firms should also receive and maintain a copy of the guaranty.

(4) Periodically verify that your suppliers are actually conducting appropriate testing.

[63 FR 42697, Aug. 11, 1998]

PART 1611—STANDARD FOR THE FLAMMABILITY OF VINYL PLASTIC FILM

Subpart A—The Standard

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SOURCE: 40 FR 59898, Dec. 30, 1975, unless otherwise noted.

CODIFICATION NOTE: Part 1611 is a codification of the previously unpublished flammability standard for vinyl plastic film which was derived from part of the requirements of Commercial Standard 192-53, issued by the Department of Commerce, effective on May 22, 1953. This flammability standard became mandatory through section 4(a) of the Flammable Fabrics Act, as amended in 1954, and remains in effect due to the savings clause (section 11) of Public Law 90-189. Paragraph 3.11 of the Commercial Standard, referred to in the 1954 act, has been codified as §1611.3 16 CFR part 1609 contains the text of the Flammable Fabrics Act of 1953, as amended in 1954.

Subpart A—The Standard

AUTHORITY: Sec. 4, Pub. L. 83-88, 67 Stat. 112, as amended, 68 Stat. 770 (15 U.S.C. 1193); sec. 11, Pub. L. 90-189, 81 Stat. 568.

§ 1611.1 Purpose and scope.

The purpose of this standard is to promulgate a minimum standard for flammability of vinyl plastic film which are subject to the requirements of the Flammable Fabrics Act.

§ 1611.2 General description of products covered.

The material covered is nonrigid, unsupported, vinyl plastic film, including transparent, translucent, and opaque material, whether plain, embossed, molded or otherwise surface treated.^a

^aRefer to sections 2 and 4 of the Flammable Fabrics Act of 1953, as amended in 1954, set out at 16 CFR part 1609 for the scope of this standard. The vinyl plastic film covered by Commercial Standard 192-53, as pro-

§ 1611.3 Flammability—general requirement.

The rate of burning shall not exceed 1.2 in./sec as judged by the average of five determinations lengthwise and five determinations transverse to the direction of processing, when the material is tested with the SPI flammability tester in accordance with the method described in §1611.4.

§ 1611.4 Flammability test.

(a) *Apparatus and materials.* The apparatus shall be constructed essentially as shown in figure 1 and shall consist of the following:

(1) *Specimen holder.* (i) A removable, flat, specimen-holding rack, the upper and lower sections of which are separate, shall have the shape and dimensions shown in figure 2 (sketch of sample-holding rack). The specimen is supported by tight closure of the upper and lower sections around the sides of the specimen. The center section of the rack contains an open U-shaped area in which burning of the specimen takes place. At the open end of the rack the forked sides are at an angle of 45° for the last inch. Thus, when the rack is slid into the cabinet on runners mounted at a 45° angle, the bent portion of the specimen adjacent to the igniter flame is vertical and the remainder is at 45°.

(ii) The switch actuators consist of suitable springs mounted on the side of the rack, one just beyond the curved portion at the open end, and the other at the closed end of the U-shaped holder. The springs are depressed and held in position prior to ignition by means of cotton thread suitably wound across the specimen and securely attached to the rack. As flame reaches these threads, the springs are released, thus activating the microswitches of the stop clocks.

(2) *Igniter flame.* The igniter flame shall be produced at the tip of a No. 22

mulgated by the Secretary of Commerce was vinyl plastic film 10 mils and less in thickness (see §1.3 of the voluntary standard). After CS 191-53 and CS 192-53 were made mandatory by section 4 of the act, the Federal Trade Commission clarified the scope of the standards in rules and regulations now found at §§1611.31(i) and 1611.33(b) (formerly 16 CFR 302.1(a)(9) and 302.3(b)).