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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1610

#### Standard for the Flammability of Clothing Textiles; Amendment to Remove Footnotes

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

**SUMMARY:** The Commission is amending the Standard for the Flammability of Clothing Textiles by removing two footnotes which identify a particular firm as the source for two items of test equipment specified in the standard. The Commission has learned that the firm named in the footnote is not the only source of the equipment used to determine if fabrics and garments comply with the clothing textiles flammability standard. For this reason, the Commission has decided to remove the footnotes.

**EFFECTIVE DATE:** This amendment is effective on June 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Allen F. Brauning, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0980.

**SUPPLEMENTARY INFORMATION:** The Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) is applicable to clothing and to textile fabrics intended for use in clothing. This standard prescribes a test to determine whether clothing and fabrics intended for use in clothing are dangerously flammable because of "rapid and intense burning."

#### A. Origin of the Standard

The clothing textiles flammability standard was first published by the Department of Commerce in 1953 as a voluntary commercial standard designated "Flammability of Clothing

Textiles, Commercial Standard (CS) 191-53." In the same year, Congress enacted the Flammable Fabrics Act of 1953 (Pub. L. 83-88, 67 Stat. 111). As enacted in 1953, and amended in 1954, the Flammable Fabrics Act of 1953 prohibits the importation, manufacture for sale, or the sale in commerce of any article of wearing apparel, or any fabric used or intended for use in wearing apparel, which is "so highly flammable as to be dangerous when worn by individuals." The Flammable Fabrics Act of 1953 specifies that the test in CS 191-53 shall be used to determine if a fabric or article of wearing apparel is "so highly flammable as to be dangerous when worn by individuals." The Flammable Fabrics Act of 1953 placed enforcement authority with the Federal Trade Commission.

In 1967, Congress amended the Flammable Fabrics Act to expand its coverage to include products of interior furnishing and wearing apparel made from fabric or related material, and fabric or related material used or intended for use in products of interior furnishing and wearing apparel. The 1967 amendment authorized the Secretary of Commerce to issue flammability standards by rulemaking proceedings. Enforcement responsibility remained with the Federal Trade Commission. The Flammable Fabrics Act, as amended in 1967, is codified at 15 U.S.C. 1191 through 1204. An uncodified savings clause in the 1967 amendment continued the flammability standard for clothing textiles mandated by the Flammable Fabrics Act of 1953 in effect until such time as it is amended or superseded in accordance with the procedures specified by the 1967 amendment. See section 11 of Pub. L. 90-189, 81 Stat. 568, December 14, 1967.

In 1972, Congress enacted the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*), which established the Consumer Product Safety Commission. The CPSA also transferred to the Commission the authority formerly held by the Secretary of Commerce to issue and amend flammability standards, and the authority formerly held by the Federal Trade Commission to enforce flammability standards. See 15 U.S.C. 2079(b).

In 1975, the Commission codified the Flammable Fabrics Act of 1953 at 16

CFR Part 1609, and the Standard for the Flammability of Clothing Textiles at 16 CFR Part 1610. See 40 FR 59931 (December 30, 1975). The Commission's codification of the flammability standard for clothing textiles included all of the footnotes contained in Commercial Standard 191-53, as published by the Department of Commerce.

#### B. Firm Named in Footnotes

Section 4.2 of CS 191-53 describes an item of test apparatus called the "flammability tester" in the following language:

*Flammability tester.*<sup>3</sup> The Flammability Tester consists of a draft-proof ventilated chamber enclosing a standard ignition medium, sample rack, and automatic timing device.

\* \* \* \* \*

<sup>3</sup>This apparatus is manufactured by the United States Testing Co., 1415 Park Avenue, Hoboken, N.J. Blue prints of working plans for the manufacture of this apparatus are available, at a nominal charge, from the above-named firm.

Section 4.3 of CS 191-53 described an item of equipment called a "brushing device." A footnote to section 4.3 states:

<sup>5</sup>This device is manufactured by the United States Testing Co., 1415 Park Avenue, Hoboken, N.J.

These provisions, including the footnotes, are codified at 16 CFR 1610.4(b) and 1610.4(c)(1).

The Commission has received information that similar items of equipment are presently available from several sources. When CS 191-53 was first published, a need may have existed to name a specific firm as the source for particular items of test equipment specified by the standard. However, because more than one firm now supplies the test equipment, that need no longer exists.

Additionally, naming a single firm as the manufacturer or supplier of an item of equipment which is available from other sources may be unfair to those firms not identified in the footnotes. The Commission has considered the possibility that the footnotes could be revised to include the names of additional firms which make or sell those items of test equipment. However, that approach could require periodic revision of the standard to assure that the footnote lists all current sources for the flammability tester and brushing

device. Rather than list all sources of those items, the Commission has decided to amend the Standard for the Flammability of Clothing Textiles by removing footnotes 3 and 5.

### C. Rulemaking Procedures

Generally, the Administrative Procedure Act (5 U.S.C. 553) requires that agencies must give notice of proposed rulemaking and provide opportunity for interested parties to submit written comments on the proposal before a rule can be issued or amended. However, 5 U.S.C. 553(b)(B) provides that notice of proposed rulemaking and public participation are not required when the agency makes a finding for good cause that such notice and opportunity for comment are "impracticable, unnecessary, or contrary to the public interest."

The Commission finds for good cause that notice of proposed rulemaking and opportunity for written comment are not necessary for issuance of the amendment to delete footnotes 3 and 5 from the clothing textiles flammability standard because that amendment does not affect the rights or duties of any person or firm subject to the requirements of the standard. The amendment does not change the apparatus, procedure, or criteria used to determine if clothing and textiles intended for use in clothing are dangerously flammable because of rapid and intense burning. The only purpose of the amendment is to delete footnotes which identify a single firm as the source of two items of equipment used to conduct the test specified by the standard.

### D. Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, including small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis when the agency certifies that the rule will not, if issued, have a significant economic impact on a substantial number of small entities. In accordance with provisions of section 605(b) of the RFA, the Commission certifies that the amendments proposed below, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

As noted above, the amendment does not modify the equipment, test procedure, or pass/fail criteria of the clothing textiles flammability standard.

The amendment will simply remove two footnotes naming one firm as the source for two items of test equipment. The amendment will not affect the availability of either item of test equipment or increase or decrease any cost for any firm which manufactures or sells any product subject to the clothing textiles flammability standard.

### E. Environmental Considerations

The proposed 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. Because the proposed amendments, if issued on a final basis, will not change any aspect of the testing required by the standard, the proposed action does not have any potential to produce significant environmental effects. For that reason, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 16 CFR Part 1610

Consumer protection, Flammable materials, 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 section 4 of the Flammable Fabrics Act (15 U.S.C. 1193), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Part 1610 to read as follows:

### PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

1. The authority for part 1610 continues to read as follows:

**Authority:** Sec. 5, 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.

2. Section 1610.4 is amended by revising paragraphs (b) introductory text and (c)(1) to read as follows:

#### § 1610.4 Methods of test.

\* \* \* \* \*

(b) *Flammability tester.* The flammability tester consists of a draft-proof ventilated chamber enclosing a standardized ignition medium, sample rack, and automatic timing device.

\* \* \* \* \*

(c) *Brushing device.*<sup>b</sup> (1) This device consists of a baseboard over which a smaller carriage is drawn. This carriage runs on parallel tracks attached to the edges of the upper surface of the baseboard. The brush is hinged with pin hinges at the rear edge of the baseboard

and rests on the carriage vertically with a pressure of 150 grams.

\* \* \* \* \*

<sup>b</sup> See § 1610.61(c)(2) for a clarification of the brushing technique for fabric with raised-fiber surfaces.

Dated: June 21, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94-15550 Filed 6-27-94; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 176

[Docket No. 90F-0202]

### Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of siloxanes (silicones), dimethyl, isopropyl methyl, methyl 1-methyl-C<sub>6-9</sub>-alkyl, as a modifier for polyolefin resins to be used as coatings for paper and paperboard. This action responds to a food additive petition filed by Chugai Boyeki (America) Corp. **DATES:** Effective June 28, 1994; written objections and requests for a hearing by July 28, 1994.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of July 17, 1990 (55 FR 29105), FDA announced that a petition (FAP 9B4171) had been filed by Chugai Boyeki (America) Corp. ("Chugai") was inadvertently misspelled in the filing notice as "Chaugai", 500 Fifth Ave., suite 1730, New York, NY 10110. The petition proposed to amend the food additive regulations to provide for the safe use of the addition product of (C<sub>10-15</sub>) alkene and propylene to polymethyl hydrogensiloxane for use as a modifier and as an antifoaming agent for polyolefin resin coatings for paper and paperboard.

FDA has evaluated the data in the petition and other relevant material and concluded that the proposed use for the additive in paper and paperboard coatings is safe. However, based upon a complete review of the petition, the agency has determined that the appropriate technical effect of the additive is primarily as a polymer modifier, that effect is reflected in the listing regulation. The agency has further determined that the Chemical Abstracts Service nomenclature and registry number more accurately describe the additive than the description in the notice of filing, and therefore, the agency has used them in this rule. Under this nomenclature, the additive is denominated "Siloxanes (silicones), dimethyl, isopropyl methyl, methyl 1-methyl-C<sub>9-49</sub>-alkyl." Accordingly, FDA concludes that the food additive regulations should be amended in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 28, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be

identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

#### PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

**Authority:** Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding a new entry under the headings "List of Substances" and "Limitations" to read as follows:

#### § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

#### List of Substances

#### Limitations

Siloxanes (silicones), dimethyl, isopropyl methyl, methyl 1-methyl-C<sub>9-49</sub>-alkyl (CAS Reg. No. 144635-08-5).

For use only as a component of polyolefin coatings with § 177.1520 of this chapter at a level not to exceed 3 percent by weight. The finished coating will be used only for paper and paperboard that contact food of types VI-A and VI-B of Table 1 in paragraph (c) of this section, and under conditions of use C, D, and E, as described in Table 2 in paragraph (c) of this section, with a maximum hot fill temperature of 200 °F (94 °C).

\* \* \* \* \*

Dated: June 21, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-15667 Filed 6-27-94; 8:45 am]

BILLING CODE 4160-01-F

#### 21 CFR Part 178

[Docket No. 91F-0391]

#### Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for

the safe use of *N*-phenylbenzenamine reaction products with 2,4,4-trimethylpentenes, as an antioxidant or stabilizer in pressure-sensitive adhesives intended for contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

**DATES:** Effective June 28, 1994; written objections and requests for a hearing by July 28, 1994.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-