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Mr. Fred B. Shippee
Director of Technical Services
American Apparel Manufacturers Assoc.
1611 North Kent Street
Arlington, Virginia 22209

Dear Mr. Shippee:

This is in response to your letter of May 6, 1976 expressing concern that material regarded by the American Apparel Manufacturers Association as an important supplement to Commercial Standard (CS) 191-53, the Standard for the Flammability of Clothing Textiles, (the Appendix) was not included in the recent codification of that standard by the Commission. In considering the matter, we would like to review with you its background.

CS 191-53 was developed by members of the industry and published by the Department of Commerce as a voluntary standard with an effective date of January 30, 1953. When the Flammable Fabrics Act (FFA) was enacted on June 30, 1953, CS 191-53 became part of that law; the FFA became effective on July 1, 1954. On December 15, 1953, after incorporation of CS 191-53 into the FFA, some members of the industry committee which developed the standard issued an Appendix which sought to clarify parts of CS 191-53.

At the direction of the Commission, all of the standards, regulations, policies and interpretations administered by the Commission under the FFA were published together and codified (40 FR 59884, December 30, 1975; 16 CFR 1602-1632), including CS 191-53, which was designated 16 CFR 1610. The Appendix to CS 191-53 was not included in the codification

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as an Appendix to 16 CFR 1610 because it had not been part of the standard when the standard was incorporated into the FFA.

The subsection of the Standard for the Flammability of Clothing Textiles of specific interest in your letter is now codified at 16 CFR 1610.4(a)(4); it provides,

> "If the specimens in the preliminary test, when tested as described ..., do not ignite or are very slow burning, or should have a fire-retarding finish, a swatch large enough to provide the specimens required for the test ..., is subjected to the dry cleaning and washing procedures ... The specimens for the flammability test are then taken from it.

The interpretation of the above section in the Appendix states,

> "This paragraph directs that when specimens do not ignite or are very slow burning, or should have a fire-retarding finish, additional specimens shall be carried through the dry cleaning and washing procedure and then retested.
>
> There are many fabrics, which in their untreated state, will not ignite in the Flammability Tester, or if ignited, will burn slowly. It was not the purpose of this paragraph to require that such materials be carried through a dry cleaning and washing procedure. Instead the intent was to require that any fabric which might have received a fire-retardant treatment be carried through the dry cleaning and washing procedure as an assurance that such a finish would not be readily removed in service. In other words, this is another case of the dry cleaning and washing provision being incorporated as a safe-guard against fugitive fire-retardant finishes, with no intent that the dry cleaning and washing should be a testing requirement if it is known that the fabric has not been given a fire-retardant treatment.

> In summary, ... [a]ll textiles will be tested in their original state, and testing after dry cleaning and washing will only be carried out in the absence of proof that a fire-retardant finish has not been applied." (Appendix to Commercial Standard 191-53. Section III, par. 4.1.4)

The mandatory requirement of the standard at section 1610.4(a)(4) provides for flammability tests (after preliminary tests) of three classes of textiles: (a) those that are slow to ignite, (b) those that are slow to burn, and (c) those that have been treated with a flame retardant.

However, the non-mandatory interpretation contained in the Appendix concludes that only one of these groups, the textiles that have been treated with a flame retardant, need undergo flammability testing after a preliminary test. The Appendix states that the dry cleaning and washing procedure required by section 1610.4(a)(4) was meant only for treated textiles in order to assure that such a procedure would not remove the fire retardant. Therefore, the Appendix concludes: if a manufacturer can prove that a fire retardant has not been applied, the textile need not be subjected to the dry cleaning and washing procedure and then to flammability tests.

Although you believe that this interpretation in the Appendix should prevail because it was written by the same people who wrote the original voluntary standard, we cannot agree, because the Appendix was never enacted into law. In fact, this Appendix did not exist when the original voluntary standard was enacted into law. Further it is our understanding that the Appendix was not circulated for acceptance by fiber producers, fabric manufacturers, finishers, converters, testing laboratories, wholesalers, retailers, and consumers as the voluntary standard itself had been. Accordingly, the Appendix was not accepted in the same manner as the voluntary standard.

It is the view of the Bureau of Compliance and members of the technical bureaus and offices that the Appendix (which provides for flammability testing only for slow-to-ignite or slow-to-burn textiles that have been treated with fire retardants) attempts to limit the language of section 1610.4(a)(a) (which requires flammability testing of all textiles that show slow-to-ignite or slow-to-burn

characteristics during preliminary testing whether or not they have been treated with flame retardants.) Since the Appendix has never had the force of law, it cannot change the clear language of a standard that has become part of the law.

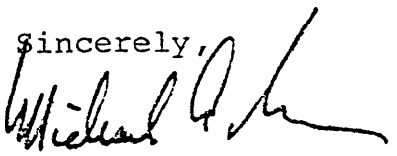
In addition, the Bureau of Compliance advises that, for purposes of enforcement, testing by the staff has always been in accordance with the terms of section 1610.4(a)(4), and not the terms of the Appendix. Further, they believe that the Federal Trade Commission, which administered the general wearing apparel standard prior to formation of the CPSC, also tested for compliance only in accordance with the standard.

Therefore in response to your request for "reaffirmation of the Commission policy to interpret provisions of Commercial Standard 191-53 that are not entirely clear", please be advised that the Office of the General Counsel believes that the Appendix has no legal effect. The omission of the Appendix from the codification of FFA standards, regulations, policies and interpretations published in December 1975 occurred because, as a matter of law, the Appendix does not apply to section 1610.4(a)(4).

We are aware that problems are associated with the Standard for the Flammability of Clothing Textiles. Staff study of the matter includes review of a draft standard recently submitted by the National Bureau of Standards as well as possible extension of parts of the Children's Sleepwear Standards to certain specified items of general wearing apparel. This evaluation shall continue in accordance with priorities for allocation of resources established by the Commission. Your suggestions, as well as the suggestions of other members of the public, on possible ways to improve the general wearing apparel standard will be welcome.

The views expressed in this letter have been approved by the Commission.

Sincerely,



Michael A. Brown
General Counsel