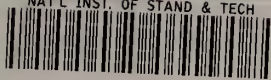


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NBS TECHNICAL NOTE 742

United States and Canadian Fabric Flammability Standards

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United States and Canadian Fabric Flammability Standards

Richard G. Katz

Fire Technology Division
Institute for Applied Technology
U.S. National Bureau of Standards
Washington, D.C. 20234

Technical note no 742

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U.S. DEPARTMENT OF COMMERCE, Peter G. Peterson, *Secretary*
NATIONAL BUREAU OF STANDARDS, Lawrence M. Kushner, *Acting Director*,

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PREFACE

This report describes the current fabric flammability standards of the governments of Canada and the United States. The U.S. Congress passed the Flammable Fabrics Act in 1953, but impetus for the development of new or improved mandatory standards to protect consumers was not given until the 1967 amendment.

Canada passed its first major protective legislation in 1969, the Hazardous Products Act, but flammability standards for fabrics were not included until late 1971. The test methods used or being considered for use by the two nations are identical or similar for most wearing apparel items, mattresses, and carpets. Methods differ with respect to children's sleepwear and blankets.

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United States and Canadian Fabric Flammability Standards

Richard G. Katz

Current fabric flammability standards of the United States and Canada are described. The 1967 amendment to the Flammable Fabrics Act of 1953 gave impetus to basic and applied research in the United States and to the development of new test methods and standards for fabric products. Commercial Standard 191-53, the 45-degree angle test, applies to most clothing items, but a new stringent vertical test was developed for children's sleepwear. A small flame source, i.e. a standard methenamine tablet, is used to test carpets and rugs, while a smoldering cigarette is the ignition source for a mattress standard. The test methods attempt to simulate actual conditions.

In 1970, Canada amended the Hazardous Products Act of 1969 to (a) ban from sale those products already declared dangerously flammable by the United States, and (b) ban from sale some berets and sweatshirts that did not meet the 45-degree angle test. Later amendments (1971) deleted the 1970 amendments and established a basic minimum flammability standard covering all textile products for consumer use. A more stringent standard was established for children's sleepwear and bedding (excluding mattresses, mattress pads and pillows) that uses the same 45-degree angle test but with a time of flame spread of 7 seconds or less.

Key words: Blankets; Canada; carpets; clothing; fabric flammability testing; fabrics; Flammable Fabrics Act; Hazardous Products Act; mattresses; sleepwear; standards; United States.

1. INTRODUCTION

1.1 United States Legislation

The United States enacted legislation as early as 1953 when Congress passed the Flammable Fabrics Act^[1]¹ specifically to protect consumers from wearing apparel and fabrics considered dangerously flammable when tested by the method of Commercial Standard 191-53^[2] and 192-53^[3]. CS 191-53 is a test method developed through a committee of the American Association of Textile Chemists and Colorists specifically to be used as the basis for legislation. The test was later adopted by the American

¹ Figures in brackets indicate the references at the end of this paper.

Society for Testing Materials where it is identified as ASTM Designation D 1230-61 [4]. The Act was amended in 1967 to give the Secretary of Commerce the authority to issue flammability standards for all wearing apparel including hats, gloves and footwear, and interior furnishing fabrics, i.e. draperies, bedding, upholstery, and related materials.

1.2 Canadian Legislation

Canada, like the United States, has had an active test methods and standards development program for many years. With few exceptions, these have been voluntary standards rather than mandatory, with no requirement that they be adhered to except when tied to government regulations. Until the enactment of the Hazardous Products Act (Appendix A) in 1969, however, there was no major Canadian legislation; and, as originally passed, the Act contained no provision for fabric flammability. The Privy Council passed two Orders-in-Council in 1970, both of which have now been superseded. The first, P.C. 1970-241, banned from sale in Canada those fabric products that had been declared dangerously flammable by the United States under its Act of 1954, as amended. The second, P.C. 1970-1933, banned the sale of chenille berets and sweatshirts that did not meet the established flammability standard.

1.3 The 45-degree Angle Test Method

With enactment of two amendments in November 1971, the Canadian Privy Council made ASTM D 1230-61 the official test method, so that in effect both the U.S. and Canada are using the same test method for some fabric products. In this test method, 2 inch by 6 inch specimens in

frame holders are placed at a 45-degree angle. A standard burner flame is applied to the upper surface near the lower end for 1 second, and the time required for the flame to travel a distance of 5 inches is recorded. Depending upon the type of fabric surface, i.e. raised, as is a napped flannel, or not raised, a time of flame spread of less than 4 seconds or 3.5 seconds, respectively, will categorize a fabric as having "rapid and intense burning" and, therefore, dangerously flammable.

2. CHILDREN'S SLEEPWEAR

2.1 Canadian Sleepwear Legislation

In Canada, Item 5 was added to Part I of the Schedule to cover children's sleepwear (P.C. 1971-2276), Appendix B, effective November 2, 1971. It states that children's sleepwear, dressing gowns and robes through size 6X, regardless of the type of fabric surface and using the same ASTM D 1230-61 test method, shall not have a time of flame spread of 7 seconds or less. Slower burning garments, those with a time of flame spread above 7 seconds, may be sold to the public. The standard became effective at the time of the Privy Council action.

2.2 United States Sleepwear Legislation

In the United States, CS 191-53 applies to all articles of wearing apparel. A separate standard has been promulgated for children's sleepwear for which a different test method has been established^[5]. Fabric-burn injury statistics from the Flammable Fabrics Accident Case and Testing System data base at NBS have begun to indicate that the slower burning fabrics do not necessarily correlate with less extensive injuries. The U.S. Department of Commerce elected to establish a separate and more stringent test method^[5], known as DOC FF 3-71, that provides a higher degree of protection to the vulnerable age group that wears garment sizes through 6X. Under this standard, fabrics to be used for sleepwear must be essentially flame-resistant. Specimens are held in the vertical position with a seam or trim down the center; a standard burner flame is applied to the lower edge for 3 seconds. Char length and residual

flame time are measured. None of the specimens may have a char length of 10 inches, the full length of the specimen, nor a residual flame time in excess of 10 seconds. The average char length of the five specimens may not be greater than 7 inches. In effect, the garment must not support combustion after removal of the flame source. A further requirement states that the flame resistance must persist through the useful service life of the garment or through 50 launderings. The standard, which became effective July 29, 1972, requires the labeling of garments that do not comply with the test procedure. Labeled garments may be marketed for one year. After July 29, 1973, all 0 - 6X sleepwear must meet the standard.

3. BEDDING

3.1 Canadian Bedding Legislation

The second amendment enacted in Canada, P.C. 1971-2277 (Appendix C), further extended the protection afforded by the Hazardous Products Act to fabric products used on top of beds, such as pillow cases, sheets, blankets, and bedspreads. Again, the test method is ASTM D 1230-61; the allowable time of flame spread is identical with that for children's sleepwear. This standard became effective on April 1, 1972.

3.2 United States Bedding Legislation

3.2.1 Blanket Standard

The United States has issued a finding of possible need for a blanket flammability standard [6], and has proceeded to develop a test method which simulates the actual hazard conditions more closely than ASTM D 1230-61. Specimens are held in a horizontal position in a 2.5 inch diameter holder in which a tissue paper monitor has been placed to expose a 2 inch circle of fabric. A standard flame is impinged on the upper surface for 1 second in the center of the circle; ignition or non-ignition is recorded. Laboratory tests have shown that the base fibers of blankets that exhibit surface flash eventually ignite when the flash reaches the edges of the blanket that are in the vertical position overhanging the edge of a bed. The problem of surface flash is solved in the test method by use of the paper monitor; if the flash chars the paper, the specimen fails the test.

This considered test is more severe than the 45-degree angle test, since the rate of flame spread is not a consideration; it is essentially a go-no go situation. In practice, if the specimen ignites at all, it will not pass the test. In addition, since the specimen is held horizontally the effect of warp and fill on flame spread is eliminated. Finally, through the use of the paper monitor, the phenomenon of surface flash is dramatically dealt with. Some fabrics that fail the proposed blanket test pass ASTM D 1230-61. The test is currently undergoing an evaluation at several laboratories to determine reproducibility and effectiveness. Intergovernmental and government-industry discussions are taking place to determine if the test method can be applied to bedspreads and quilts as well as blankets.

3.2.2 Other Bedding

There is insufficient evidence from either accident data or laboratory tests to indicate that bed sheets and pillowcases present an "unreasonable risk". The data that implicate bedding as a whole also implicate cigarettes as the prime source of ignition. Laboratory attempts to ignite a bed sheet or pillowcase with a cigarette have met with failure.

4. MATTRESSES

4.1 United States Mattress Standard

In the United States, there has been an announcement of a flammability standard for mattresses [7]. The test requires the placement of three lighted cigarettes on each of three different mattress locations: smooth surface, quilted or tufted area depressions, and at the tape edge. The test is conducted on the bare surface of the mattress, and also, if there is non-ignition, with the cigarettes between two sheets. The standard will become effective June 7, 1973.

4.2 Canadian Mattress Standard

Although Canada has had a voluntary cigarette test method for mattresses since 1968 [8] (which, however, is quite different from the U.S. method), mattresses have not yet been listed under the Hazardous Products Act, the Canadian legislative vehicle for consumer protection. It is very likely, however, that Canada will adopt a mattress flammability standard in the near future similar, if not identical, to the one announced for the United States [9].

5. CARPETS AND RUGS

5.1 United States Carpet and Rug Standards

Flammability standards for carpets and rugs (DOC FF 1-70 and DOC FF 2-70) have been in force in the United States since April, 1971 [10] [11]. Eight 9 inch square specimens are cut and conditioned. Each specimen is placed under a flattening frame that exposes an 8 inch circle of carpet. A standard methenamine tablet placed in the center of the specimen and ignited acts as the flame source of ignition, and is the reason why the test is commonly designated the "pill test". A specimen fails the test if the area of flaming or smoldering approaches closer to the edge of the flattening frame than 1 inch at any point. At least 7 specimens from a sample of 8 must pass the test.

5.2 Canadian Carpet and Rug Standard

Canada has not yet brought carpets and rugs under the Hazardous Products Act. There are regulations that require carpets for public buildings and houses that are built to specifications of the Central Mortgage and Housing Corporation to pass a pill test [12] using two 6 inch square specimens without a flattening frame. Within the domain of the national building codes, a variation of the ASTM E 84-70, "Standard Method of Test Surface Burning Materials", (commonly known as the tunnel test), which positions the carpet specimen on the floor has been under investigation for carpets in high rise buildings. The modified test has been submitted to the Canadian Standards Committee for consideration. One drawback to immediate adoption is the present

lack of adequate facilities to perform the test on a large scale. However, information [9] [13] indicates that for household carpets and rugs Canada intends to adopt the American Society for Testing Materials test method ASTM D 2859-70T [14] with minor differences. ASTM D 2859-70T is identical to DoC FF 1-70 mentioned in 5.1 above. Differences in Canada may be found in (1) the preconditioning of flame-retardant treated carpets which will be shampooed by a newly developed procedure instead of being washed as in the U.S. method, and (2) the method of sampling, i.e. eight specimens allowing two or three failures, but if one or two fail another eight specimens may be tested. The Canadian standard is still under development but is scheduled for legislative action in 1972.

6. CONCLUSION

It would appear that the United States and Canada are moving along very similar paths. The demand for consumer protection in recent years has led to strong legislative measures: the 1967 amendment to the 1953 Flammable Fabrics Act in the U.S., and the 1971 amendments to the 1969 Hazardous Products Act in Canada. In each country, it has taken at least two years to develop and promulgate new or improved standards. With the exception of the test methods for children's sleepwear and blankets, the same or very similar test methods are in use or under consideration by both countries.

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- [11] "Small Carpets and Rugs, Notice of Standard". Federal Register, Vol. 35, No. 251, December 29, 1970, 19702-19704.
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APPENDIX A

HAZARDOUS PRODUCTS ACT - 1969
and the Amendment of March 3, 1970

CHAPTER 42^aCHAPITRE 42^a

An Act to prohibit the advertising, sale and importation of hazardous products

Loi interdisant la vente, l'annonce et l'importation de produits dangereux

[Assented to 27th June, 1969]

[Sanctionnée le 27 juin 1969]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

SHORT TITLE

TITRE ABRÉGÉ

Short title 1. This Act may be cited as the *Hazardous Products Act*.

1. La présente loi peut être citée sous le titre: *Loi sur les produits dangereux*. Titre abrégé

INTERPRETATION

INTERPRÉTATION

Definitions 2. In this Act,

"Advertise" (a) "advertise" includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or other disposition of a hazardous product;

"Analyst" (b) "analyst" means a person designated as an analyst under the *Food and Drugs Act* or by the Minister pursuant to section 4;

"Hazardous product" (c) "hazardous product" means any product or substance included in Part I or Part II of the Schedule;

"Inspector" (d) "inspector" means any person designated as a hazardous products inspector pursuant to section 4;

"Minister" (e) "Minister" means the Minister of Consumer and Corporate Affairs and in sections 9 and 10 includes the Minister of National Health and Welfare; and

"Sell" (f) "sell" includes sell, offer for sale, expose for sale, and distribute.

2. Dans la présente loi, Définitions

a) «annoncer» comprend toute représentation faite par quelque moyen que ce soit en vue de stimuler directement ou indirectement la vente ou autre aliénation d'un produit dangereux;

b) «analyste» signifie une personne désignée à titre d'analyste en vertu de la *Loi des aliments et drogues* ou par le Ministre en conformité de l'article 4;

c) «produit dangereux» désigne toute substance ou tout produit qu'énumère la Partie I ou la Partie II de l'Annexe;

d) «inspecteur» signifie toute personne désignée à titre d'inspecteur de produits dangereux en conformité de l'article 4;

e) «Ministre» désigne le ministre de la Consommation et des Corporations et comprend, aux articles 9 et 10, le ministre de la Santé nationale et du Bien-être social; et

f) «vendre» comprend le fait de vendre, d'offrir en vente, d'exposer pour la vente, et de distribuer.

^a Canada Statutes 1968-1969, Chapt. 42, 997-1007.

OFFENCE

- Offence** 3. (1) No person shall advertise, sell or import into Canada a hazardous product included in Part I of the Schedule.
- Idem** (2) No person shall advertise, sell or import into Canada a hazardous product included in Part II of the Schedule except as authorized by the regulations.
- Punishment** (3) Every person who violates subsection (1) or (2) is guilty of
- (a) an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months or to both fine and imprisonment; or
- (b) an indictable offence and liable to imprisonment for two years.
- Time limit** (4) A prosecution under paragraph (a) of subsection (3) may be instituted at any time within twelve months after the time when the subject matter of the prosecution arose.

INSPECTORS AND ANALYSTS

- Designating hazardous products inspector** 4. (1) The Minister may designate as a hazardous products inspector for the purposes of this Act any person who, in his opinion, is qualified to be so designated.
- Inspector to show certificate of appointment** (2) An inspector shall be furnished with a certificate of his designation as an inspector and on entering any place pursuant to subsection (1) of section 5 shall, if so required, produce the certificate to the person in charge thereof.
- Designating analyst** (3) The Minister may designate as an analyst for the purposes of this Act any person employed in the public service of Canada who, in his opinion, is qualified to be so designated.

SEARCH, SEIZURE AND FORFEITURE

- Powers of inspectors** 5. (1) An inspector may at any reasonable time enter any place where on reasonable grounds he believes any hazardous product is manufactured, prepared, preserved, packaged, sold or stored for sale and

INFRACTION

3. (1) Nul ne doit annoncer, vendre ou importer au Canada un produit dangereux mentionné à la Partie I de l'Annexe.
- Idem** (2) Nul ne doit annoncer, vendre ou importer au Canada un produit dangereux mentionné à la Partie II de l'Annexe, sauf dans la mesure où les règlements l'autorisent.
- (3) Quiconque enfreint le paragraphe (1) ou (2) est coupable
- a) d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende de mille dollars ou d'un emprisonnement de six mois ou à la fois de l'amende et de l'emprisonnement; ou
- b) d'un acte criminel et passible d'un emprisonnement de deux ans.
- (4) Une poursuite en vertu de l'alinéa a) du paragraphe (3) peut être intentée à tout moment dans un délai de douze mois à partir de la date où s'est produit le fait pouvant donner lieu à la poursuite.

INSPECTEURS ET ANALYSTES

4. (1) Le ministre peut désigner, à titre d'inspecteur de produits dangereux aux fins de la présente loi, toute personne qu'il estime qualifiée pour être désignée à ce titre.
- (2) Un inspecteur doit être pourvu d'un certificat de nomination à titre d'inspecteur et, en entrant dans un lieu en conformité du paragraphe (1) de l'article 5, il doit, s'il en est requis, produire le certificat à la personne responsable de ce lieu.
- (3) Le Ministre peut désigner à titre d'analyste aux fins de la présente loi, toute personne de la fonction publique du Canada qu'il estime qualifiée pour être désignée à ce titre.

PERQUISITION. SAISIE ET CONFISCATION

5. (1) Un inspecteur peut, à tout moment raisonnable, entrer dans un lieu où il a des motifs raisonnables de croire qu'un produit dangereux quelconque est fabriqué, préparé, conservé, emballé, vendu ou emmagasiné pour la vente et

(a) examine any product or substance that he reasonably believes is a hazardous product and take samples thereof, and examine any other thing that he reasonably believes is used or is capable of being used for the manufacture, preparation, preservation, packaging, sale or storage of a hazardous product;

(b) open and examine any receptacle or package that on reasonable grounds he believes contains any hazardous product;

(c) examine any books, records or other documents that on reasonable grounds he believes contain any information relevant to the enforcement of this Act and make copies thereof or extracts therefrom; and

(d) seize any product or substance, or any labelling, advertising material or other thing, by means of or in relation to which he reasonably believes any provision of this Act or the regulations has been violated.

a) examiner toute substance ou tout produit, lorsqu'il a des raisons de croire qu'il s'agit d'un produit dangereux, et en prélever des échantillons; examiner toute autre chose lorsqu'il a des raisons de croire que cette chose est utilisée ou est susceptible d'être utilisée pour fabriquer, préparer, conserver, emballer, vendre ou emmagasiner un produit dangereux;

b) ouvrir et examiner tout récipient ou colis lorsqu'il a des motifs raisonnables de croire que ce récipient ou ce colis contient un produit dangereux;

c) examiner tous livres, registres ou autres documents lorsqu'il a des motifs raisonnables de croire qu'ils contiennent des renseignements pertinents à l'application de la présente loi, et en prendre des copies ou des extraits; et

d) saisir toute substance ou tout produit, tout article d'étiquetage, de publicité ou toute autre chose, au moyen ou au sujet desquels il a des raisons de croire qu'une disposition de la présente loi ou des règlements a été violée.

Owner and other persons to give assistance (2) The owner or person in charge of a place entered by an inspector pursuant to subsection (1) and every person found therein shall give the inspector such assistance and furnish him with such information as the inspector may, for the purpose of exercising the powers referred to in paragraphs (a) to (d) of subsection (1), reasonably require him to give or furnish.

(2) Le propriétaire ou la personne responsable d'un lieu où entre un inspecteur conformément au paragraphe (1), ainsi que chacune des personnes qui s'y trouvent, doivent prêter à l'inspecteur l'assistance, et lui fournir les renseignements, que celui-ci peut raisonnablement exiger aux fins d'exercer les pouvoirs que lui confèrent les alinéas a) à d) du paragraphe (1). Le propriétaire et d'autres personnes doivent aider l'inspecteur

Obstructing inspector (3) No person shall obstruct an inspector in the exercise of his powers or the carrying out of his duties under this Act or the regulations.

(3) Nul ne doit gêner un inspecteur dans l'exercice des pouvoirs ou l'exécution des fonctions que lui confèrent la présente loi ou les règlements. Obstruction faite à l'inspecteur

False statements (4) No person shall knowingly make any false or misleading statement, either verbally or in writing, to any inspector engaged in exercising his powers or carrying out his duties under this Act or the regulations.

(4) Nul ne doit faire sciemment, oralement ou par écrit, de déclaration fautive ou trompeuse à un inspecteur dans l'exercice des pouvoirs ou l'exécution des fonctions que lui confèrent la présente loi ou les règlements. Fausse déclaration

Interference with articles seized (5) Except with the authority of an inspector, no person shall remove, alter or interfere in any way with anything seized under this Act by an inspector.

(5) Sauf avec l'autorisation d'un inspecteur, nul ne doit enlever ni modifier un article saisi par un inspecteur en vertu de la présente loi, ni rien faire d'autre qui affecte un tel article. Interdiction d'enlever, etc., les articles saisis

Storing
of seized
articles

(6) Anything seized under this Act by an inspector may at the option of an inspector be kept or stored in the building or place where it was seized or may be removed to any other proper place by or at the direction of an inspector.

(6) Tout article qu'un inspecteur a saisi en vertu de la présente loi peut, au choix d'un inspecteur, être gardé ou emmagasiné dans le bâtiment ou le lieu où il a été saisi, ou il peut être transporté dans tout autre lieu approprié par un inspecteur ou sur son ordre.

Emmagas-
inage
des articles
saisisApplication
for
restoration

6. (1) Where any product, substance or other thing has been seized under this Act, any person may, within two months after the date of such seizure, upon prior notice having been given in accordance with subsection (2) to the Minister by registered mail addressed to him at Ottawa, apply to a magistrate within whose territorial jurisdiction the seizure was made for an order of restoration under subsection (3).

6. (1) Lorsqu'un produit, une substance ou autre chose ont fait l'objet d'une saisie en vertu de la présente loi, toute personne peut, dans les deux mois qui suivent la date de cette saisie, après avoir adressé au Ministre, à Ottawa, par courrier recommandé, le préavis que prévoit le paragraphe (2), s'adresser à un magistrat dans le ressort duquel la saisie a été faite en vue d'obtenir une ordonnance de restitution ainsi que le prévoit le paragraphe (3).

Demande de
restitutionNotice to
Minister

(2) The notice referred to in subsection (1) shall be mailed at least fifteen clear days prior to the day on which the application is to be made to the magistrate and shall specify

(2) L'avis mentionné au paragraphe (1) doit être mis à la poste au moins quinze jours francs avant la date à laquelle la demande doit être faite au magistrat; cet avis doit spécifier

Avis au
Ministre

(a) the magistrate to whom the application is to be made;

a) à quel magistrat la demande sera faite;

(b) the place where and the time when the application is to be heard;

b) où et quand la demande sera entendue;

(c) the product, substance or other thing in respect of which the application is to be made; and

c) au sujet de quel produit, de quelle substance ou de quelle autre chose la demande sera faite;

(d) the evidence upon which the applicant intends to rely to establish that he is entitled to possession of the thing in respect of which the application is to be made.

d) quelle preuve le requérant entend invoquer pour établir qu'il a droit à la possession de la chose au sujet de laquelle la demande sera faite.

Order of
restoration

(3) Subject to subsections (5) and (6), where, upon the hearing of an application made under subsection (1), the magistrate is satisfied

(3) Sous réserve des paragraphes (5) et (6), lorsque, à la suite de l'audition d'une demande faite en vertu du paragraphe (1), le magistrat est convaincu

Ordonnance
de
restitution

(a) that the applicant is entitled to possession of the product, substance or other thing seized, and

a) que le requérant a droit à la possession du produit, de la substance ou autre chose ayant fait l'objet de la saisie, et

(b) that the thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act,

b) que la chose n'est pas et ne sera pas requise comme preuve dans quelque procédure relative à une infraction prévue dans la présente loi,

he shall order that the thing seized be restored forthwith to the applicant, and where the magistrate is satisfied that the applicant is entitled to possession of the thing seized but is not satisfied as to the matters mentioned in paragraph (b), he shall order that the thing seized be restored to the applicant

(c) upon the expiration of four months from the date of such seizure if no proceedings in respect of an offence under section 3 have been commenced before that time, or

(d) upon the final conclusion of any such proceedings in any other case.

(4) Where no application has been made under subsection (1) for the restoration of any product, substance or other thing seized under this Act within two months from the date of such seizure, or an application therefor has been made but upon the hearing thereof no order of restoration is made, the thing so seized shall be delivered to the Minister who may make such disposition thereof as he thinks fit.

(5) Where a person has been convicted of an offence under section 3, any hazardous product seized under this Act by means of or in respect of which the offence was committed is forfeited to Her Majesty and shall be disposed of as the Minister directs.

(6) Where an inspector has seized a hazardous product under this Act and the owner thereof or the person in whose possession the product was at the time of seizure consents in writing to the destruction thereof, the hazardous product is thereupon forfeited to Her Majesty and shall be disposed of as the Minister may direct.

il doit ordonner que la chose saisie soit immédiatement restituée au requérant, et, si le magistrat est convaincu que le requérant a droit à la possession de la chose saisie, mais n'est pas convaincu de ce que prévoit l'alinéa b), il doit ordonner que la chose saisie soit restituée au requérant

c) dès l'expiration des quatre mois qui suivront la date de la saisie, si aucune procédure relative à une infraction prévue par l'article 3 n'a été entamée avant l'expiration de ce délai, ou

d) dès la conclusion définitive de toutes procédures de ce genre dans tout autre cas.

(4) Lorsque aucune demande en vue de la restitution de quelque produit, substance ou autre chose ayant fait l'objet de la saisie en vertu de la présente loi n'a été faite, en vertu du paragraphe (1), dans les deux mois qui suivent la date de cette saisie, ou lorsqu'une telle demande a été faite mais que, après l'audition de cette demande, aucune ordonnance de restitution n'a été rendue, la chose ainsi saisie doit être remise au Ministre, qui peut en disposer ainsi qu'il l'estime opportun.

(5) Lorsqu'une personne a été déclarée coupable d'une infraction prévue par l'article 3, tout produit dangereux, saisi en vertu de la présente loi et au moyen ou au sujet duquel l'infraction a été commise, est confisqué au profit de Sa Majesté et il doit en être disposé ainsi que le Ministre l'ordonne.

(6) Lorsqu'un inspecteur a, en vertu de la présente loi, saisi un produit dangereux et que le propriétaire de ce produit ou la personne qui l'avait en sa possession au moment de la saisie, consent par écrit à sa destruction, le produit dangereux est dès lors confisqué au profit de Sa Majesté et il doit en être disposé ainsi que le Ministre l'ordonne.

REGULATIONS

7. The Governor in Council may make regulations

RÈGLEMENTS

7. Le gouverneur en conseil peut établir des règlements

(a) authorizing the advertising, sale or importation into Canada of any hazardous product included in Part II of the Schedule and prescribing the circumstances and conditions under which and the persons by whom such hazardous product may be sold, advertised or imported into Canada;

(b) respecting the powers and duties of inspectors and analysts and the taking of samples and the seizure, detention, forfeiture and disposition of products, substances and other things;

(c) prescribing the procedures to be followed by a Hazardous Products Board of Review established pursuant to section 9 in conducting an inquiry; and

(d) generally, for carrying out the purposes and provisions of this Act.

a) autorisant l'annonce, la vente ou l'importation au Canada de tout produit dangereux mentionné à la Partie II de l'Annexe et prescrivant dans quelles circonstances, à quelles conditions et par qui ce produit dangereux peut être annoncé, vendu ou importé au Canada;

b) concernant les pouvoirs et les fonctions des inspecteurs et des analystes, le prélèvement des échantillons ainsi que la saisie, la rétention, la confiscation et la façon de disposer des produits, substances et autres choses;

c) prescrivant les procédures à suivre lors d'une enquête par une Commission d'examen des produits dangereux établie en conformité de l'article 9; et

d) d'une façon générale, pour la réalisation des objets et l'application des dispositions de la présente loi.

SCHEDULE

Additions
and deletions to
Schedule

8. (1) The Governor in Council may by order amend Part I or Part II of the Schedule by adding thereto

(a) any product or substance that is or contains a poisonous, toxic, inflammable explosive or corrosive product or substance or other product or substance of a similar nature that he is satisfied is or is likely to be a danger to the health or safety of the public, or

(b) any product designed for household, garden or personal use, for use in sports or recreational activities, as life-saving equipment or as a toy, plaything or equipment for use by children that he is satisfied is or is likely to be a danger to the health or safety of the public because of its design, construction or contents,

or by deleting therefrom any product or substance the inclusion of which therein he is satisfied is no longer necessary.

ANNEXE

8. (1) Le gouverneur en conseil peut, au moyen d'une ordonnance, modifier la Partie I ou la Partie II de l'Annexe en ajoutant

a) quelque substance ou produit constituant ou contenant une substance ou un produit empoisonnés, toxiques, inflammables, explosifs ou corrosifs ou autre substance ou produit semblables, s'il est convaincu que cette substance ou ce produit présentent ou présenteront vraisemblablement un danger pour la santé ou la sécurité du public; ou

b) un produit destiné à servir à des usages domestiques, à des usages personnels, au jardin, dans les sports, dans les activités récréatives, comme matériel de sauvetage, comme jouet, comme jeu ou comme équipement pour enfants, s'il est convaincu que ce produit présente ou présentera vraisemblablement, à cause de sa conception, sa construction ou son contenu, un danger pour la santé ou la sécurité du public,

ou en retranchant quelque substance ou produit dont l'inclusion n'est plus, à son avis, nécessaire.

Idem	(2) An order amending Part I of the Schedule may be made by the Governor in Council on the recommendation of the Minister or the Minister of National Health and Welfare.	(2) Une ordonnance modifiant la Partie I de l'Annexe peut être établie par le gouverneur en conseil sur la recommandation du Ministre ou du ministre de la Santé nationale et du Bien-être social.	Idem
Tabling of orders adding to Part I or II	(3) Every order adding a product or substance to Part I or Part II of the Schedule shall be laid before the Senate and the House of Commons not later than fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.	(3) Toute ordonnance ajoutant une substance ou un produit à la Partie I ou à la Partie II de l'Annexe doit être déposée devant le Sénat et la Chambre des communes au plus tard quinze jours après qu'elle a été établie ou, si le Parlement n'est pas alors en session, l'un des quinze premiers jours où il siège par la suite.	Dépôt des ordonnances portant des additions à la Partie I ou II
Revocation of order by resolution	(4) If both Houses of Parliament resolve that an order or any part thereof should be revoked, that order or that part thereof is thereupon revoked.	(4) Si les deux Chambres du Parlement adoptent une résolution révoquant une ordonnance ou une partie d'ordonnance, ladite ordonnance ou partie d'ordonnance est alors révoquée.	Révocation de l'ordonnance par résolution

BOARD OF REVIEW

COMMISSION D'EXAMEN

Request for reference to Board	9. (1) Where a product or substance is added to Part I or Part II of the Schedule by order of the Governor in Council, any manufacturer or distributor of that product or substance or any person having that product or substance in his possession for sale may, within sixty days from the date of the making of the order, request the Minister that the order be referred to a Hazardous Products Board of Review.	9. (1) Lorsqu'une substance ou un produit sont ajoutés par une ordonnance du gouverneur en conseil à la Partie I ou à la Partie II de l'Annexe, un fabricant ou distributeur de cette substance ou de ce produit ou une personne qui est en possession de cette substance ou de ce produit en vue de les vendre peut, dans les soixante jours qui suivent l'établissement de l'ordonnance, demander que l'ordonnance soit soumise à la Commission d'examen des produits dangereux.	Demande de soumission à la Commission
Establishment of Board	(2) Upon receipt of a request described in subsection (1), the Minister shall establish a Hazardous Products Board of Review (hereinafter referred to as the "Board"), consisting of not more than three persons and shall refer the order in respect of which the request was made to the Board.	(2) Sur réception d'une demande visée au paragraphe (1), le Ministre doit créer une Commission d'examen des produits dangereux (ci-après appelée «la Commission») qui doit être composée de trois personnes au plus et doit soumettre l'ordonnance faisant l'objet de la demande à la Commission.	Création de la Commission
Duties	(3) The Board shall inquire into the nature and characteristics of any product or substance to which an order referred to it under subsection (2) applies and shall give the person making the request and any other person affected by the order a reasonable opportunity of appearing before	(3) La Commission doit faire des recherches concernant la nature et le caractère d'une substance ou d'un produit auxquels s'applique l'ordonnance mentionnée au paragraphe (2) et doit donner, à la personne qui fait la demande et à toute personne intéressée par l'ordonnance, une	Fonctions

the Board, presenting evidence and making representations to it.

Powers

(4) The Board has all the powers that are or may be conferred by or under sections 4, 5 and 11 of the *Inquiries Act* on commissioners appointed under Part I of that Act.

Report

(5) The Board, as soon as possible after the conclusion of its inquiry, shall submit a report with its recommendations to the Minister, together with all evidence and other material that was before the Board.

Publication of report

(6) Any report of the Board shall, within thirty days after its receipt by the Minister, be made public by him, unless the Board states in writing to the Minister that it believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public.

Copies of report

(7) The Minister may publish and supply copies of a report referred to in subsection (5) in such manner and upon such terms as he deems proper.

Disclosure to the Minister

10. (1) Where the Minister has reason to believe that a product or substance is a product or substance that may be added to Part I or Part II of the Schedule by an order made pursuant to section 8, he may send a written notice to the manufacturer of the product or substance requesting him to disclose to the Minister the formula, composition or chemical ingredients of the product or substance and such other information in the possession of the manufacturer as the Minister deems necessary for the purpose of determining whether the product or substance is or is likely to be a danger to the health or safety of the public.

possibilité raisonnable de comparaître devant la Commission, de présenter des preuves et de formuler des observations devant cette dernière.

(4) La Commission a tous les pouvoirs qui sont conférés par les articles 4, 5 et 11 de la *Loi sur les enquêtes* ou qui peuvent être conférés en vertu de ces articles à des commissaires nommés en vertu de la Partie I de ladite loi.

(5) La Commission, dès qu'elle le peut après avoir terminé son enquête, doit produire au Ministre un rapport, suivi de ses recommandations, ainsi que de toutes les preuves et autres pièces qui ont été soumises à la Commission.

(6) Un rapport fait par la Commission doit être rendu public dans les trente jours qui suivent sa réception par le Ministre, à moins que la Commission ne déclare par écrit au Ministre qu'elle croit que l'intérêt du public serait mieux sauvegardé si cette publication n'avait pas lieu; en ce cas, le Ministre peut décider si le rapport, ou une partie de ce dernier, sera rendu public ou non.

(7) Le Ministre peut publier un rapport mentionné au paragraphe (5) et en distribuer des exemplaires de la manière et selon les modalités qu'il estime appropriées.

DISCLOSURE**DIVULGATION**

10. (1) Lorsque le Ministre a des raisons de croire qu'une substance ou un produit peuvent être ajoutés à la Partie I ou à la Partie II de l'Annexe au moyen d'une ordonnance rendue en conformité de l'article 8, il peut adresser au fabricant de la substance ou du produit un avis écrit le priant de lui divulguer la formule, la composition ou les ingrédients chimiques de la substance ou du produit ainsi que les autres renseignements dont le fabricant dispose et que le Ministre estime nécessaire de connaître afin de décider si la substance ou le produit présentent ou présenteront vraisemblablement un danger pour la santé ou la sécurité du public.

Idem (2) Every manufacturer to whom a written notice referred to in subsection (1) is sent shall disclose to the Minister, within the time specified by the Minister in the notice, any information described in subsection (1) that is requested in the notice.

(2) Chaque fabricant à qui l'avis écrit mentionné au paragraphe (1) est adressé doit divulguer au Ministre, dans le délai que ce dernier a spécifié dans l'avis, tous renseignements mentionnés au paragraphe (1) qu'exige l'avis.

Information privileged (3) Information received by the Minister from a manufacturer pursuant to subsection (1) is privileged and shall not be disclosed to any other person except as may be necessary for the administration or enforcement of this section or for the purposes of section 8.

(3) Les renseignements que le Ministre reçoit d'un fabricant en conformité du paragraphe (1) sont secrets et ne doivent être divulgués à aucune autre personne, sauf dans la mesure où cela peut être nécessaire à l'application ou à la mise en vigueur du présent article ou aux fins de l'article 8.

PROSECUTIONS

POURSUITES

Burden of proving exception, etc. 11. (1) No exception, exemption, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information or indictment for an offence under section 3 of this Act or under section 406, 407 or 408 of the *Criminal Code* in respect of an offence under section 3.

11. (1) Il n'est pas nécessaire qu'une exception, exemption, excuse ou limitation prescrite par la loi soit énoncée ou réfutée, selon le cas, dans une dénonciation ou un acte d'accusation visant une infraction prévue à l'article 3 de la présente loi ou aux articles 406, 407 ou 408 du *Code criminel*, relativement à une infraction mentionnée à l'article 3.

Idem (2) In any prosecution for an offence mentioned in subsection (1) the burden of proving that an exception, exemption, excuse or qualification prescribed by law operates in favour of the accused is on the accused, and the prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, excuse or qualification does not operate in favour of the accused, whether or not it is set out in the information or indictment.

(2) Dans toute poursuite pour une infraction mentionnée au paragraphe (1), il incombe à l'accusé de prouver qu'une exception, exemption, excuse ou limitation, prescrite par la loi, joue en sa faveur; et le poursuivant n'est pas tenu, sauf par voie de réplique, de prouver que l'exception, exemption, excuse ou limitation ne joue pas en faveur de l'accusé, qu'elle soit ou non énoncée dans la dénonciation ou l'acte d'accusation.

Certificate of analyst 12. (1) Subject to this section, a certificate of an analyst stating that he has analyzed or examined a product or substance and stating the result of his analysis or examination is admissible in evidence in any prosecution for an offence mentioned in subsection (1) of section 11 and in the absence of any evidence to the contrary is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

12. (1) Sous réserve du présent article, le certificat d'un analyste portant qu'il a analysé ou examiné une substance ou un produit et énonçant le résultat de son analyse ou de son examen est recevable en preuve dans toute poursuite pour une infraction mentionnée au paragraphe (1) de l'article 11 et, en l'absence de preuve contraire, fait preuve des déclarations contenues dans le certificat sans qu'il soit nécessaire de faire la preuve de la signature de la personne par laquelle il paraît avoir été signé ni de la qualité officielle de cette personne.

Attendance
of analyst

(2) The party against whom a certificate of an analyst is produced pursuant to subsection (1) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(3) No certificate shall be received in evidence pursuant to subsection (1) unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

Trial of
offences

13. A complaint or information in respect of an offence under this Act may be heard, tried or determined by a magistrate or a justice if the accused is resident or carrying on business within his territorial jurisdiction, although the matter of the complaint or information did not arise in that territorial jurisdiction.

(2) La partie contre laquelle le certificat d'un analyste est produit en conformité du paragraphe (1) peut, avec la permission du tribunal, exiger la présence de l'analyste aux fins de contre-interrogatoire.

Présence de
l'analyste

(3) Aucun certificat n'est recevable en preuve conformément au paragraphe (1) à moins que la partie qui se dispose à le produire n'ait, avant le procès, donné à la partie contre laquelle il doit être produit un avis raisonnable de l'intention de le produire, avec une copie du certificat.

Instruction
des
infractions

13. Une plainte ou dénonciation relative à une infraction prévue par la présente loi peut être entendue, instruite ou jugée par un magistrat ou un juge de paix si l'accusé réside ou fait des affaires dans le ressort de sa juridiction, même si l'objet de la plainte ou dénonciation n'a pas pris naissance dans ce ressort.

OTHER OFFENCES

Other
offences

14. Every person who contravenes any provision of this Act, other than section 3, or of the regulations is guilty of an offence and liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months or to both fine and imprisonment.

AUTRES INFRACTIONS

14. Quiconque contrevient à une disposition de la présente loi, autre que l'article 3, ou des règlements est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende de cinq cents dollars ou d'un emprisonnement de trois mois ou à la fois de l'amende et de l'emprisonnement.

Autres
infractions

APPLICATION OF ACT

Application
of Act

15. This Act does not apply to any product or substance that is

- (a) an explosive within the meaning of the *Explosives Act*;
- (b) a cosmetic, device, drug or food within the meaning of the *Food and Drugs Act*;
- (c) a control product within the meaning of the *Pest Control Products Act*; or
- (d) a prescribed substance within the meaning of the *Atomic Energy Control Act*.

APPLICATION DE LA LOI

15. La présente loi ne s'applique pas à un produit ou à une substance qui est

Application
de la loi

- a) un explosif, au sens où l'entend la *Loi sur les explosifs*;
- b) un cosmétique, un instrument, une drogue ou une substance alimentaire, au sens où l'entend la *Loi des aliments et drogues*;
- c) un produit antiparasitaire au sens où l'entend la *Loi sur les produits antiparasitaires*; ou
- d) une substance prescrite, au sens où l'entend la *Loi sur le contrôle de l'énergie atomique*.

- Coming into force
16. Subsection (2) of section 3 shall come into force on a day to be fixed by proclamation.
16. Le paragraphe (2) de l'article 3 entrera en vigueur à une date qui sera fixée par proclamation.

SCHEDULE

PART I

1. Jequirity beans (*abrus precatorius*) or any substance or article made from or including jequirity beans in whole or in part.

2. Furniture, toys and other articles intended for children, painted with a liquid coating material containing lead compounds of which the lead content (calculated as lead) is in excess of 0.50 per cent of the total weight of the contained solids, including pigments, film solids and driers.

3. Liquid coating materials and paint and varnish removers for household use having a flashpoint of less than 0°F as determined by method 3.1 of Specification 1-GP-71 of the Canadian Government Specifications Board.

PART II

1. Bleaches, cleansers and sanitizers for household use containing chlorine or compounds thereof.

2. Cleansers for household use containing sodium hydroxide, potassium hydroxide, sodium bisulfate, hydrochloric acid or phosphoric acid.

3. Household polishes and cleaning agents containing petroleum distillates or chlorinated aliphatic hydrocarbons.

4. Glues for household or hobbycraft use containing aliphatic or aromatic hydrocarbon solvents or ketone solvents.

ANNEXE

PARTIE I

1. Graines de jequirity (*abrus precatorius*) ou toute substance ou article provenant de ces graines ou contenant de telles graines, entières ou partielles.

2. Meubles, jouets et autres articles destinés aux enfants, enduits d'un revêtement protecteur liquide contenant des composés du plomb dont la teneur en plomb (exprimée en quantité de plomb) dépasse 0.50 pour cent du poids total des corps solides y contenus, y compris les pigments, les corps solides de la pellicule et les siccatifs.

3. Revêtements protecteurs liquides et décapants pour peintures et vernis, à usage domestique, ayant un point d'inflammation de moins de 0°F déterminé par la méthode 3.1 de la norme 1-GP-71 de l'Office des normes du gouvernement canadien.

PARTIE II

1. Agents de blanchiment, de nettoyage et d'assainissement, d'usage domestique, contenant du chlore ou des produits qui renferment du chlore.

2. Agents de nettoyage, d'usage domestique, contenant de l'hydrate de soude, de l'hydroxyde de potassium, du sulfate de sodium, de l'acide chlorhydrique ou de l'acide phosphorique.

3. Encaustiques et agents de nettoyage contenant des produits obtenus par distillation du pétrole ou des dérivés chlorés d'hydrocarbures aliphatiques.

4. Colles, d'usage domestique ou employées dans le bricolage, contenant des solvants tirés d'hydrocarbures aliphatiques ou aromatiques ou de cétones.

SOR/70-94

HAZARDOUS PRODUCTS ACT^a

Part II of the Schedule to the Act, amended

P.C. 1970 372

3 March, 1970

Whereas the Governor General in Council is satisfied that it is no longer necessary to include in Part II of the Schedule to the Hazardous Products Act, the hazardous products set forth in items 1 to 4 of that Part;

And Whereas the Governor General in Council is further satisfied that the products and substances set forth in the Schedule hereto are or are likely to be a danger to the health or safety of the public;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Consumer and Corporate Affairs, pursuant to subsection 8(1) of the Hazardous Products Act, is pleased hereby to amend Part II of the Schedule to the Hazardous Products Act in accordance with the Schedule hereto.

SCHEDULE

1. Part II of the Schedule to the *Hazardous Products Act* is amended by deleting therefrom items 1 to 4 and by adding thereto the following items:

"1. Bleaches, cleansers and sanitizers that

(a) contain chlorine, or

(b) are sources of available chlorine,

when such substances are packaged as consumer products.

2. Corrosive chemicals including hydrochloric acid, sulphuric acid, sodium hydrogen sulphate, nitric acid, phosphoric acid, acetic acid, trichloroacetic acid, formic acid, lactic acid, oxalic acid and its salts, sodium hydroxide, potassium hydroxide, ammonia and ammonium hydroxide phenol, o-cresol, m-cresol and p-cresol, silver nitrate, zinc chloride and iodine or any corrosive product that contains a corrosive chemical that has a pH of 2.5 or less or 11.5 or more when prepared for use according to the directions on the label of the product or in the manner that is customary or usual, when such corrosive chemicals or products are packaged as consumer products.

3. Petroleum distillates or products containing petroleum distillates including naphtha, mineral spirits, Stoddard solvent, kerosene, gasoline, mineral seal oil and other related distillates of petroleum, when such distillates or products are packaged as consumer products.

4. Adhesives, cleaning solvents, thinning agents and dyes containing toluene or acetone, when such products or substances are packaged as consumer products.

DORS/70-94

LOI SUR LES PRODUITS DANGEREUX^a

Partie II de l'Annexe de la Loi—Modification

C. P. 1970-372

3 mars 1970

Vu que le Gouverneur général en conseil est convaincu qu'il n'est plus nécessaire d'inclure, dans la Partie II de l'annexe de la Loi sur les produits dangereux, les produits dangereux énumérés aux articles 1 à 4 de ladite Partie;

Et vu que le Gouverneur général en conseil est convaincu en outre que les produits et substances énumérés à l'annexe ci-jointe présentent ou présenteront vraisemblablement un danger pour la santé ou la sécurité du public;

A ces causes, sur avis conforme du ministre de la Consommation et des Corporations et en vertu du paragraphe (1) de l'article 8 de la Loi sur les produits dangereux, il plaît à Son Excellence le Gouverneur général en conseil d'apporter par les présentes la modification ci-après à la Partie II de l'annexe de la Loi sur les produits dangereux.

MODIFICATION

1. La Partie II de l'Annexe de la *Loi sur les produits dangereux* est modifiée par le retranchement des articles 1 à 4 et leur remplacement par les articles suivants:

"1. Agents de blanchiment, de nettoyage et d'assainissement

a) qui contiennent du chlore, ou

b) qui sont des sources de chlore pouvant être facilement libéré,

lorsque ces substances sont emballées comme produits de consommation.

2. Produits chimiques corrosifs, y compris l'acide chlorhydrique, l'acide sulfurique, le sulfate monosodique, l'acide nitrique, l'acide phosphorique, l'acide acétique, l'acide trichloroacétique, l'acide formique, l'acide lactique, l'acide oxalique et ses sels, l'hydroxyde de sodium, l'hydroxyde de potassium, l'ammoniac et l'hydroxyde d'ammonium, le phénol, l'ortho-crésol, le méta-crésol et le paracrésol, le nitrate d'argent, le chlorure de zinc, l'ode ou tout produit corrosif qui contient un produit chimique corrosif qui a un pH de 2.5 ou moins, ou de 11.5 ou plus lorsqu'il est préparé pour utilisation soit selon le mode d'emploi indiqué sur l'étiquette du produit, soit de la façon habituelle ou ordinaire, lorsque ces produits corrosifs chimiques ou autres sont emballés comme produits de consommation.

3. Distillats de pétrole ou produits contenant des distillats de pétrole, y compris le naphtha, les essences minérales, le solvant Stoddard, le kérosène, l'essence, le pétrole lampant et autres distillats de pétrole similaires, lorsque ces produits sont emballés comme produits de consommation.

4. Substances adhésives, solvants de nettoyage, agents de dilution et teintures contenant du toluène ou de l'acétone, lorsque ces produits ou substances sont emballés comme produits de consommation.

(1)

91272-21

^a Canada Gazette Part II, Vol. 104, No. 6, March 25, 1970, 327-328.

5. Polishes, cleaning agents, liquid coating materials, paint and varnish removers containing carbon tetrachloride, 1,1,2-trichloroethane, chloroform or 1,1,2,2-tetrachloroethane, 1,2-dichloroethane when such products or substances are packaged as consumer products.

6. Fire extinguishing fluids composed of or containing any halogenated aliphatic hydrocarbons.

7. Antifreeze preparations containing ethylene glycol or diethylene glycol, when such preparations are packaged as consumer products.

8. Turpentine or products containing turpentine including gum turpentine, steam distilled wood turpentine, sulphate wood turpentine and destructively distilled wood turpentine, when the turpentine or such products are packaged as consumer products.

9. Methyl alcohol or products containing methyl alcohol when the alcohol or such products are packaged as consumer products.

10. Disposable metal containers of consumer products designed to release pressurized contents by the use of a manually operated valve that forms an integral part of the container."

5. Eneustiques, agents de nettoyage, revêtements protecteurs liquides, décapants pour peintures et vernis contenant du tétrachlorure de carbone, du trichloro-1,1,2-éthane, du chloroforme, du 1,1,2,2-tétrachloroéthane, ou du 1,2-dichloroéthane, lorsque ces produits ou substances sont emballés comme produits de consommation.

6. Liquides extincteurs composés de dérivés halogénés d'hydrocarbures aliphatiques ou en contenant.

7. Préparations anti-gel contenant de l'éthylène-glycol ou du diéthylène-glycol, lorsque ces préparations sont emballées comme produits de consommation.

8. Térébenthine ou produits contenant de la térébenthine, notamment, térébenthine de la gemme et térébenthines du bois obtenues par distillation à la vapeur, par le procédé au sulfate et par distillation sèche, lorsque la térébenthine ou les produits en contenant sont emballés comme produits de consommation.

9. Alcool méthylique ou produits contenant de l'alcool méthylique lorsque l'alcool ou les produits en contenant sont emballés comme produits de consommation.

10. Contenants métalliques non réutilisables de produits de consommation conçus pour laisser s'échapper un contenu sous pression lorsqu'on se sert d'une valve actionnée à la main qui fait partie intégrante du contenant."

APPENDIX B

P.C. 1971-2276

Amendment to the Hazardous Products Act

November 2, 1971



CANADA

P.C. 1971-2276

2 November, 1971

PRIVY COUNCIL • CONSEIL PRIVÉ

HIS EXCELLENCY THE GOVERNOR GENERAL IN
COUNCIL, on the recommendation of the Minister of
Consumer and Corporate Affairs, pursuant to section
8 of the Hazardous Products Act, is pleased hereby
to amend Part I of the Schedule to the Act, as
amended, in accordance with the Schedule hereto.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

A handwritten signature in black ink, appearing to read 'M. A. Robertson', written over a horizontal line.

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

SCHEDULE^a

1. Part I of the Schedule to the Hazardous Products Act is amended by deleting items 4 and 5 therefrom and by adding thereto, immediately after item 3 thereof, the following items:

"4. Textile fibre products for consumer use, other than textile fibre products included in item 5 of this Part, that, when tested in accordance with the method prescribed in the Standard Method of Test for Flammability of Clothing Textiles ASTM D 1230-61, a standard of the American Society for Testing and Materials, have a time of flame spread

- (a) of less than 3.5 seconds, where the products do not have a raised fibre surface, or
- (b) of less than 4 seconds with ignition or fusion of the base fibre occurring within that time, where the products have a raised fibre surface.

5. Children's sleepwear, dressing gowns and robes in sizes up to and including size 6X that, when tested in accordance with the method prescribed in the Standard Method of Test for Flammability of Clothing Textiles ASTM D 1230-61, a standard of the American Society for Testing and Materials, have a time of flame spread of 7 seconds or less."

^a Canada Gazette Part II, Vol. 105, No. 22, November 24, 1971, 1884.

APPENDIX C

P.C. 1971-2277

Amendment to the Hazardous Products Act

November 2, 1971



P.C. 1971-2277

2 November, 1971

PRIVY COUNCIL • CONSEIL PRIVÉ

HIS EXCELDCENCY THE GOVERNOR GENERAL IN
COUNCIL, on the recommendation of the Minister of
Consumer and Corporate Affairs, pursuant to section
8 of the Hazardous Products Act, is pleased hereby
to amend Part I of the Schedule to the Act, as
amended, in accordance with the Schedule hereto,
effective April 1, 1972.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

SCHEDULE ^a

1. Part I of the Schedule to the Hazardous Products Act is amended by deleting item 4 therefrom and by adding thereto, immediately after item 3 thereof, the following item:

"4. Textile fibre products for consumer use, other than textile fibre products included in items 5 and 13 of this Part, that, when tested in accordance with the method prescribed in the Standard Method of Test for Flammability of Clothing Textiles ASTM D 1230-61, a standard of the American Society for Testing and Materials, have a time of flame spread

- (a) of less than 3.5 seconds, where the products do not have a raised fibre surface, or
- (b) of less than 4 seconds with ignition or fusion of the base fibre occurring within that time, where the products have a raised fibre surface."

2. Part I of the Schedule to the said Act is further amended by adding thereto the following item:

"13. Textile fibre products for use on beds or on pillows that, when tested in accordance with the method prescribed in the Standard Method of Test for Flammability of Clothing Textiles ASTM D 1230-61, a standard of the American Society for Testing and Materials, have a time of flame spread

- (a) of 7 seconds or less, where the products do not have a raised fibre surface; or
- (b) of 7 seconds or less with ignition or fusion of the base fibre occurring within that time, where the products have a raised fibre surface."

^a Canada Gazette Part II, Vol. 105, No. 22, November 24, 1971, 1885.

APPENDIX D

FLAMMABLE FABRICS ACT - 1953
and the Amendments of 1954 and 1967

Public Law 88 - 83d Congress
Chapter 164 - 1st Session
H. R. 5069

AN ACT

All 67 Stat. 111.

To prohibit the introduction or movement in interstate commerce of articles of wearing apparel and fabrics which are so highly flammable as to be dangerous when worn by individuals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Flammable Fabrics Act". Flammable Fabrics Act.

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(c) The term "Territory" includes the insular possessions of the United States and also any Territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals except hats, gloves, and footwear: *Provided, however,* That such hats do not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals: *Provided further,* That such gloves are not more than fourteen inches in length and are not affixed to or do not form an integral part of another garment: *And provided further,* That such footwear does not consist of hosiery in whole or in part and is not affixed to or does not form an integral part of another garment.

(e) The term "fabric" means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this Act.

(f) The term "interlining" means any fabric which is intended for incorporation into an article of wearing apparel as a layer between an outer shell and an inner lining.

(g) The term "Commission" means the Federal Trade Commission.

(h) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended.

38 Stat. 717.
15 USC 58.

PROHIBITED TRANSACTIONS

SEC. 3. (a) The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any article of wearing apparel which under the provisions of section 4 of this Act is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be

15 USC 58.

an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) The sale or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any fabric which under the provisions of section 4 of this Act is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(c) The manufacture for sale, the sale, or the offering for sale, of any article of wearing apparel made of fabric which under section 4 is so highly flammable as to be dangerous when worn by individuals and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

STANDARD OF FLAMMABILITY

Sec. 4. (a) Any fabric or article of wearing apparel shall be deemed so highly flammable within the meaning of section 3 of this Act as to be dangerous when worn by individuals if such fabric or any uncovered or exposed part of such article of wearing apparel exhibits rapid and intense burning when tested under the conditions and in the manner prescribed in the Commercial Standard promulgated by the Secretary of Commerce effective January 30, 1953, and identified as "Flammability of Clothing Textiles, Commercial Standard 191-53", or exhibits a rate of burning in excess of that specified in paragraph 3.11 of the Commercial Standard promulgated by the Secretary of Commerce effective May 22, 1953, and identified as "General Purpose Vinyl Plastic Film, Commercial Standard 192-53". For the purposes of this Act, such Commercial Standard 191-53 shall apply with respect to the hats, gloves, and footwear covered by section 2 (d) of this Act, notwithstanding any exception contained in such Commercial Standard with respect to hats, gloves, and footwear.

(b) If at any time the Secretary of Commerce finds that the Commercial Standards referred to in subsection (a) of this section are inadequate for the protection of the public interest, he shall submit to the Congress a report setting forth his findings together with such proposals for legislation as he deems appropriate.

ADMINISTRATION AND ENFORCEMENT

15 USC 58.

Sec. 5. (a) Except as otherwise specifically provided herein, sections 3, 5, 6, and 8 (b) of this Act shall be enforced by the Commission under rules, regulations and procedures provided for in the Federal Trade Commission Act.

(b) The Commission is authorized and directed to prevent any person from violating the provisions of section 3 of this Act in the same manner, by the same means and with the same jurisdiction, powers and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act; and any such person violating any provision of section 3 of this Act shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this Act.

(c) The Commission is authorized and directed to prescribe such rules and regulations as may be necessary and proper for purposes of administration and enforcement of this Act.

(d) The Commission is authorized to—

(1) cause inspections, analyses, tests, and examinations to be made of any article of wearing apparel or fabric which it has reason to believe falls within the prohibitions of this Act; and

(2) cooperate on matters related to the purposes of this Act with any department or agency of the Government; with any State, Territory, or possession or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

INJUNCTION AND CONDEMNATION PROCEEDINGS

SEC. 6. (a) Whenever the Commission has reason to believe that any person is violating or is about to violate section 3 of this Act, and that it would be in the public interest to enjoin such violation until complaint under the Federal Trade Commission Act is issued and dismissed ^{15 USC 58.} by the Commission or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act or is set aside by the court on review, the Commission may bring suit in the district court of the United States or in United States court of any Territory for the district or Territory in which such person resides or transacts business, to enjoin such violation and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(b) Whenever the Commission has reason to believe that any article of wearing apparel has been manufactured or introduced into commerce or any fabric has been introduced in commerce in violation of section 3 of this Act, it may institute proceedings by process of libel for the seizure and confiscation of such article of wearing apparel or fabric in any district court of the United States within the jurisdiction of which such article of wearing apparel or fabric is found. Proceedings in cases instituted under the authority of this section shall conform as nearly as may be to proceedings in rem in admiralty, except that on demand of either party and in the discretion of the court, any issue of fact shall be tried by jury. Whenever such proceedings involving identical articles of wearing apparel or fabrics are pending in two or more jurisdictions, they may be consolidated for trial by order of any such court upon application seasonably made by any party in interest upon notice to all other parties in interest. Any court granting an order of consolidation shall cause prompt notification thereof to be given to other courts having jurisdiction in the cases covered thereby and the clerks of such other courts shall transmit all pertinent records and papers to the court designated for the trial of such consolidated proceedings.

(c) In any such action the court upon application seasonably made before trial shall by order allow any party in interest, his attorney or agent, to obtain a representative sample of the article of wearing apparel or fabric seized.

(d) If such articles of wearing apparel or fabrics are condemned by the court they shall be disposed of by destruction, by delivery to the owner or claimant thereof upon payment of court costs and fees and storage and other proper expenses and upon execution of good and sufficient bond to the effect that such articles of wearing apparel or fabrics will not be disposed of for wearing apparel purposes until properly and adequately treated or processed so as to render them lawful for introduction into commerce, or by sale upon execution of good and sufficient bond to the effect that such articles of wearing

apparel or fabrics will not be disposed of for wearing apparel purposes until properly and adequately treated or processed so as to render them lawful for introduction into commerce. If such products are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States.

PENALTIES

SEC. 7. Any person who willfully violates section 3 or 8 (b) of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this Act.

GUARANTY

SEC. 8. (a) No person shall be subject to prosecution under section 7 of this Act for a violation of section 3 of this Act if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the wearing apparel or fabric guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made under the procedures provided in section 4 of this Act show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of section 4 of this Act, so highly flammable as to be dangerous when worn by individuals, and (2) has not, by further processing, affected the flammability of the fabric or wearing apparel covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the wearing apparel or fabric guaranteed, in which case it may be on the invoice or other paper relating to such wearing apparel or fabric; or (2) a continuing guaranty filed with the Commission applicable to any wearing apparel or fabric handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

(b) It shall be unlawful for any person to furnish, with respect to any wearing apparel or fabric, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the wearing apparel or fabric guaranteed was manufactured or from whom it was received) with reason to believe the wearing apparel or fabric falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

15 USC 58.

SHIPMENTS FROM FOREIGN COUNTRIES

SEC. 9. Any person who has exported or who has attempted to export from any foreign country into the United States any wearing apparel or fabric which, under the provisions of section 4, is so highly flammable as to be dangerous when worn by individuals may thenceforth be prohibited by the Commission from participating in the exportation from any foreign country into the United States of any wearing apparel or fabric except upon filing bond with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this Act.

INTERPRETATION AND SEPARABILITY

SEC. 10. The provisions of this Act shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law. If any provision of this Act or the application thereof to any person or circumstances is held invalid the remainder of the Act and the application of such provisions to any other person or circumstances shall not be affected thereby.

EXCLUSIONS

SEC. 11. The provisions of this Act shall not apply (a) to any common carrier, contract carrier, or freight forwarder with respect to an article of wearing apparel or fabric shipped or delivered for shipment into commerce in the ordinary course of its business; or (b) to any converter, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this Act: *Provided*, That said converter, processor, or finisher does not cause any article of wearing apparel or fabric to become subject to this Act contrary to the terms of the contract or commission service; or (c) to any article of wearing apparel or fabric shipped or delivered for shipment into commerce for the purpose of finishing or processing to render such article or fabric not so highly flammable, under the provisions of section 4 of this Act, as to be dangerous when worn by individuals.

EFFECTIVE DATE

SEC. 12. This Act shall take effect one year after the date of its passage.

AUTHORIZATION OF NECESSARY APPROPRIATIONS

SEC. 13. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Approved June 30, 1953.

Public Law 629 - 83d Congress
Chapter 833 - 2d Session
S. 3379

AN ACT

All 68 Stat. 770.

To amend section 4 of the Flammable Fabrics Act, with respect to standards of flammability in the case of certain textiles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 4 of the Flammable Fabrics Act (15 U. S. C., sec. 1193) is hereby amended by inserting at the end thereof the following subsection:

Flammability
standards,
67 Stat. 112.

“(c) Notwithstanding the provisions of paragraph 3.1 Commercial Standard 191-53, textiles free from nap, pile, tufting, flock, or other type of raised fiber surface when tested as described in said standard shall be classified as class 1, normal flammability, when the time of flame spread is three and one-half seconds or more, and as class 3, rapid and intense burning, when the time of flame spread is less than three and one-half seconds.”

Approved August 23, 1954.



An Act

81 STAT. 568

To amend the Flammable Fabrics Act to increase the protection afforded consumers against injurious flammable fabrics.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Flammable Fabrics Act (15 U.S.C. 1191; 67 Stat. 111) is amended by—

(1) amending paragraph (b) to read as follows:

“(b) The term ‘commerce’ means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.”

Flammable Fabrics Act, amendment.

"Commerce."

(2) amending paragraph (c) to read as follows:

“(c) The term ‘territory’ includes the insular possessions of the United States and also any territory of the United States.”

"Territory."

(3) amending paragraph (d) to read as follows:

“(d) The term ‘article of wearing apparel’ means any costume or article of clothing worn or intended to be worn by individuals.”

"Article of wearing apparel."

(4) repealing paragraph (f);

Repeal.

(5) redesignating paragraphs (e), (g), and (h) as paragraphs (f), (i), and (j), respectively;

(6) inserting therein, immediately after paragraph (d), the following new paragraph:

“(e) The term ‘interior furnishing’ means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation.”

"Interior furnishing."

(7) amending redesignated paragraph (f) to read as follows:

“(f) The term ‘fabric’ means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended for use or which may reasonably be expected to be used, in any product as defined in subsection (h).”

"Fabric."

(8) inserting therein, immediately after redesignated paragraph (f), the following new paragraphs:

“(g) The term ‘related material’ means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in subsection (h).”

"Related material."

“(h) The term ‘product’ means any article of wearing apparel or interior furnishing.”

"Product."

SEC. 2. Section 3 of the Flammable Fabrics Act is amended to read as follows:

67 Stat. 111.
15 USC 1192.

“PROHIBITED TRANSACTIONS

“SEC. 3. (a) The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 4 of this Act, shall be unlaw-

Post, p. 569.

ful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

38 Stat. 717.
15 USC 58.

“(b) The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 4 of this Act, and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.”

67 Stat. 112.
15 USC 1193.

SEC. 3. Section 4 of the Flammable Fabrics Act is amended to read as follows:

“REGULATION OF FLAMMABLE FABRICS

Post, p. 573.

“SEC. 4. (a) Whenever the Secretary of Commerce finds on the basis of the investigations or research conducted pursuant to section 14 of this Act that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, he shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

“(b) Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms. Each such standard, regulation, or amendment thereto, shall become effective twelve months from the date on which such standard, regulation, or amendment is promulgated, unless the Secretary of Commerce finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard or regulation or amendment thereto shall exempt fabrics, related materials, or products in inventory or with the trade as of the date on which the standard, regulation, or amendment thereto, becomes effective except that, if the Secretary finds that any such fabric, related material, or product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, he may under such conditions as the Secretary may prescribe, withdraw, or limit the exemption for such fabric, related material, or product.

62 Stat. 791.

“(c) The Secretary of Commerce may obtain from any person by regulation or subpoena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which he is required or authorized to make pursuant to this Act. All information reported to or otherwise obtained by the Secretary or his representative pursuant to this subsection which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceed-

ing under this Act. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

“(d) The provisions of sections 551 through 559 of title 5, United States Code, shall apply to the issuance of all standards or regulations or amendments thereto under this section.

“(e) (1) Any person who will be adversely affected by any such standard or regulation or amendment thereto when it is effective may at any time prior to the sixtieth day after such standard or regulation or amendment thereto is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the standard or regulation, as provided in section 2112 of title 28 of the United States Code.

80 Stat. 381;

Ante, p. 54.

Judicial review.

72 Stat. 941.

“(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original standard or regulation or amendment thereto, with the return of such additional evidence.

“(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the standard or regulation in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief as provided in such chapter.

80 Stat. 392.

5 USC 701-706.

“(4) The judgment of the court affirming or setting aside, in whole or in part, any such standard or regulation of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

62 Stat. 928.

“(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

“(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

“(f) A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this Act, irrespective of whether proceedings with respect to the standard or regulation or amendment thereto have previously been initiated or become final under subsection (e).”

Transcript of proceedings.

Sec. 4. (a) Subsection (c) of section 5 of the Flammable Fabrics Act is amended to read as follows:

Rules and regulations.

67 Stat. 113.

15 USC 1194.

Records.

38 Stat. 717.

15 USC 58.

67 Stat. 113.

15 USC 1194.

Injunction and

condemnation

proceedings.

15 USC 1195.

Ante, p. 568.

“(c) The Commission is authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to fabrics, related materials, and products, as may be necessary and proper for administration and enforcement of this Act. The violation of such rules and regulations shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act.”

(b) Subsection (d) of section 5 of the Act is amended by substituting “product,” for “article of wearing apparel or” and by inserting “or related material” immediately after “fabric” in paragraph (1) thereof; and by striking out “, Territory, or possession or with the District of Columbia” and inserting in lieu thereof “or territory or with the District of Columbia or the Commonwealth of Puerto Rico” in paragraph (2) thereof.

SEC. 5. (a) Subsection (a) of section 6 of the Flammable Fabrics Act is amended by inserting “, or a rule or regulation prescribed under section 5(c),” immediately after “section 3”; and by striking out “or in United States court of any Territory for the district or Territory in which such person resides or transacts business” and inserting in lieu thereof the following: “for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be)”.

(b) Subsections (b), (c), and (d) of section 6 of the Flammable Fabrics Act are amended to read as follows:

“(b) Whenever the Commission has reason to believe that any product has been manufactured or introduced into commerce or any fabric or related material has been introduced in commerce in violation of section 3 of this Act, it may institute proceedings by process of libel for the seizure and confiscation of such product, fabric, or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found. Proceedings in cases instituted under the authority of this section shall conform as nearly as may be to proceedings in rem in admiralty, except that on demand of either party and in the discretion of the court, any issue of fact shall be tried by jury. Whenever such proceedings involving identical products, fabrics, or related materials are pending in two or more jurisdictions, they may be consolidated for trial by order of any such court upon application seasonably made by any party in interest upon notice to all other parties in interest. Any court granting an order of consolidation shall cause prompt notification thereof to be given to other courts having jurisdiction in the cases covered thereby and the clerks of such other courts shall transmit all pertinent records and papers to the court designated for the trial of such consolidated proceedings.

“(c) In any such action the court, upon application seasonably made before trial, shall by order allow any party in interest, his attorney or agent, to obtain a representative sample of the product, fabric, or related material seized.

“(d) If such products, fabrics, or related materials are condemned by the court they shall be disposed of by destruction, by delivery to the owner or claimant thereof upon payment of court costs and fees and storage and other proper expenses and upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated

or processed so as to render them lawful for introduction into commerce, or by sale upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce. If such products, fabrics, or related materials are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States."

SEC. 6. Section 8 of the Flammable Fabrics Act is amended to read as follows:

67 Stat. 114.
15 USC 1197.

"GUARANTY

"SEC. 8. (a) No person shall be subject to prosecution under section 7 of this Act for a violation of section 3 of this Act if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made in accordance with standards issued or amended under the provisions of section 4 of this Act show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 4 of this Act, and (2) has not, by further processing, affected the flammability of the fabric, related material, or product covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the product, fabric, or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric, or related material; (2) a continuing guaranty given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a form as the Commission by rules and regulations may prescribe; or (3) a continuing guaranty filed with the Commission applicable to any product, fabric, or related material handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

15 USC 1196.
Ante, p. 568.

Ante, p. 569.

"(b) It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received) with reason to believe the product, fabric, or related material falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act."

38 Stat. 717.
15 USC 58.
15 USC 1198.

SEC. 7. Section 9 of the Flammable Fabrics Act is amended to read as follows:

"SHIPMENTS FROM FOREIGN COUNTRIES

"SEC. 9. An imported product, fabric, or related material to which flammability standards under this Act are applicable shall not be delivered from customs custody except as provided in section 499 of the Tariff Act of 1930, as amended. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 499 of the Tariff Act of 1930, as amended,

46 Stat. 728;
52 Stat. 1084.
19 USC 1499.

and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall be not less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above."

67 Stat. 115.
15 USC 1200.

SEC. 8. Section 11 of the Flammable Fabrics Act is amended to read as follows:

"EXCLUSIONS

"SEC. 11. The provisions of this Act shall not apply (a) to any common carrier, contract carrier, or freight forwarder in transporting a product, fabric, or related material shipped or delivered for shipment into commerce in the ordinary course of its business; (b) to any converter, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this Act: *Provided*, That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this Act contrary to the terms of the contract or commission service; or (c) to any product, fabric, or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 4 of this Act."

Ante, p. 569.
15 USC 1191 note.

SEC. 9. Section 13 of the Flammable Fabrics Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 13. There are hereby authorized to be appropriated \$1,500,000 for the fiscal year ending June 30, 1968, and \$2,250,000 each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970, to carry out the provisions of this Act."

15 USC 1191-
1200.

SEC. 10. The Flammable Fabrics Act is further amended by adding at the end thereof the following new sections:

"INVESTIGATIONS

"SEC. 14. (a) The Secretary of Health, Education, and Welfare in cooperation with the Secretary of Commerce shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials. The Secretary of Health, Education, and Welfare shall submit annually a report to the President and to the Congress containing the results of the study and investigation.

Report to Pres-
ident and Con-
gress.

"(b) In cooperation with appropriate public and private agencies, the Secretary of Commerce is authorized to—

"(1) conduct research into the flammability of products, fabrics, and materials;

"(2) conduct feasibility studies on reduction of flammability of products, fabrics, and materials;

“(3) develop flammability test methods and testing devices;
and

81 STAT. 573

“(4) offer appropriate training in the use of flammability test
methods and testing devices.

81 STAT. 574

The Secretary shall annually report the results of these activities to the
Congress.

Report to Con-
gress.

“EXPORTS

“SEC. 15. (a) This Act shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; except that this Act shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

“(b) This Act shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States; except that this Act shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

“PREEMPTION

“SEC. 16. This Act is intended to supersede any law of any State or political subdivision thereof inconsistent with its provisions.

“NATIONAL ADVISORY COMMITTEE FOR THE FLAMMABLE FABRICS ACT

“SEC. 17. (a) The Secretary of Commerce shall appoint a National Advisory Committee for the Flammable Fabrics Act, composed of not less than nine members, fairly representative of manufacturers, distributors, and the consuming public. Each member appointed by the Secretary shall hold office for not more than two years, except that any member may be reappointed.

“(b) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

Compensation,
travel expenses.

80 Stat. 499.

“(c) The Secretary shall consult with the National Advisory Committee before prescribing flammability standards or other regulations established under this Act.”

Savings clause.
67 Stat. 111.
15 USC 1191
note.

SEC. 11. Notwithstanding the provisions of this Act, the standards of flammability in effect under the provisions of the Flammable Fabrics Act, as amended, on the day preceding the date of enactment of this Act, shall continue in effect for the fabrics and articles of wearing apparel to which they are applicable until superseded or modified by the Secretary of Commerce pursuant to the authority conferred by the amendments made by this Act.

Approved December 14, 1967.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 972 (Comm. on Interstate & Foreign Commerce).
SENATE REPORT No. 407 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 113 (1967):

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