

Concurring Opinion of Commissioner R. David Pittle

in the Matter of Cone Mills Corporation

*R. David Pittle*

PITTLE, COMMISSIONER: I reluctantly concur in the decision of January 18, 1974 to dismiss the complaint against the Cone Mills Corporation. I concur on the basis of my conclusion that the Clarification of Standard for Flammability of Clothing Textiles (CS 191-53) published in the November 13, 1973 issue of the Federal Register (38 F.R. 31289) by the Commission is dispositive of the issues raised by Cone Mills in this case. I say this because, with the exception of the issue of the thickness of the "template" used to support fabrics during the brushing operation, the Commission reached conclusions in the clarification that were in complete agreement with arguments raised by Cone Mills. To reach conclusions such as the Commission did in its clarification and then to refuse to apply them to a case pending before it in which the very same issues were in contention would, in my opinion, be inconsistent and unfair.

In setting forth this view, I wish to go on record as stating that I would reach a contrary result regarding previous adjudications or previously accepted consent agreements and, on this point, I am in complete accord with the majority opinion. That is, I would limit the application of the clarification to those cases pending before the Commission at the time of the issuance of the clarification.

As a further point, I wish to make clear that my conclusion about the necessity of dismissing this matter on the basis of the Commission's clarification of CS 191-53 does not constitute my personal endorsement of all particulars of this clarification. Had I been a member of the Commission during its deliberations on this matter, I would have agreed with its interpretation regarding the requirements for the positioning of the stop cord and the thickness of the "template". However, I would not have concurred with the interpretation afforded the question of what constitutes the proper criterion for failure.

In my opinion, the Federal Trade Commission's interpretation of the criterion for failure, i.e., it does not matter whether a base burn is caused by the impinging tester flame or the surface flash flame, is not only a proper interpretation but, more importantly, the preferable one since it sets a more stringent requirement for fabrics to pass the flammability standard than that of the Commission's clarification. I do not believe that the CS 191-53 standard, as presently structured, offers the consuming public the type of fire protection that it expects of this Commission. It is my hope that, in the near future, the Commission will be able to strengthen this standard to a degree where it offers a more assurable level of safety than we presently have.