

controlled airspace designated for airports. However, a final rule published on December 5, 1995 (58 FR 51968) revised § 91.157. That revision removed paragraph (a)(2) and placed the information in paragraph (b)(4). As a result, the cross-reference in § 137.43 became inaccurate. This final rule revises the cross-reference in § 137.43(c) so that it correctly refers to § 91.157(b)(4).

#### Technical Amendment

This technical amendment merely revises an out-of-date cross-reference. There are no other changes to the existing regulatory text.

#### Justification for Immediate Adoption

Because this action updates an inaccurate cross-reference, the FAA finds that notice and public comment under 5 U.S.C. section 553(b) is unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. section 553(d) for making this rule effective upon publication.

#### List of Subjects in 14 CFR Part 137

Agriculture, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

#### The Amendment

■ In consideration of the forgoing, the FAA amends 14 CFR part 137 as follows:

#### PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

■ 1. The authority citation for part 137 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 44701–44702.

#### § 137.43 [Amended]

■ 2. Amend § 137.43(c) by removing the reference “§ 91.157(a)(2)” and adding in its place the reference “§ 91.157(b)(4)”.

Issued in Washington, DC on March 13, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E9–6731 Filed 3–25–09; 8:45 am]

**BILLING CODE** 4910–13–P

## FEDERAL TRADE COMMISSION

### 16 CFR Part 303

#### Rules and Regulations Under the Textile Fiber Products Identification Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (“Commission” or “FTC”) amends Rule 7(c) of the Rules and Regulations under the Textile Fiber Products Identification Act (“Textile Rules”) to establish a new generic fiber subclass name and definition within the existing definition of “polyester” for a subclass of fibers made from poly(trimethylene terephthalate) (“PTT”). The amendment establishes the subclass name “triexta.”

**EFFECTIVE DATE:** March 26, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Janice Podoll Frankle, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C., 20580; (202) 326-3022.

#### SUPPLEMENTARY INFORMATION:

Pursuant to a petition filed by Mohawk Industries, Inc. (“Mohawk”), E. I. du Pont de Nemours and Company (“DuPont”), and PTT Poly Canada (“PTT Canada”) (collectively “Petitioners”), the FTC amends Rule 7(c) of the Textile Rules. 16 CFR § 303.7(c). The amendment establishes the subclass name “triexta” as an alternative to the generic name “polyester” for a specific subclass of textile fibers defined in the amendment. In reaching this conclusion, the following **Federal Register** document recounts the procedural history of this matter and details the record established by the petition and public comments. The document then analyzes this record based on the applicable Commission standard.

#### I. Procedural History

On February 21, 2006, Petitioners asked the Commission to establish a new generic subclass within the existing “polyester” category for fibers made from poly(trimethylene terephthalate) (“PTT”).<sup>1</sup> After initially analyzing the request with the assistance of a textile expert, tentatively and without the benefit of public comment, the Commission agreed with Petitioners that PTT fiber satisfied the criteria for establishing a new generic fiber subclass name and definition within Rule 7(c)’s definition of “polyester.”<sup>2</sup> Accordingly,

<sup>1</sup> Mohawk sells a line of carpets manufactured from PTT under the trademark SmartStrand®. DuPont markets PTT under the trademark Sorona®. PTT Canada markets PTT under the trademark Corterra® Polymers.

<sup>2</sup> 16 CFR 303.7(c). Rule 7(c) defines “polyester” as “a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of an ester of a substituted aromatic carboxylic acid, including but not restricted to substituted terephthalate units, and para substituted hydroxy-benzoate units.”

on April 18, 2006, the Commission assigned Petitioners the designation “PTT001” for temporary use in identifying PTT fiber pending a final determination on the merits of their Petition.

On September 7, 2006, Petitioners submitted a revised petition (“Petition”)<sup>3</sup> restating the original request and addressing minor questions raised by Commission staff.<sup>4</sup>

On August 24, 2007, the Commission solicited comment on whether to amend Rule 7(c) of the Textile Rules to establish a new generic fiber subclass name for PTT within the definition of “polyester” for PTT (“2007 Notice”).<sup>5</sup> At the close of the comment period, November 12, 2007, the Commission had received 49 comments.<sup>6</sup>

INVISTA S.r.l. (“Invista”)<sup>7</sup> was the sole commenter to oppose the Petition. Its comment, however, raised serious concerns. Specifically, the comment criticized Petitioners’ testing procedures and provided Invista’s own test results that showed little difference between PTT and traditional “polyester” fibers (polyethylene terephthalate (“PET”)).<sup>8</sup> Because the Commission received Invista’s comment only three days prior to the close of the 75 day comment period, Petitioners and other interested parties had limited opportunity to review and respond to it.<sup>9</sup> Therefore, on

<sup>3</sup> The Petition is available in electronic form at: (<http://www.ftc.gov/os/statutes/textile/info/PTTGenAppRev8-30-06.pdf>). The Petition, as well as any comments filed in this proceeding, are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission’s Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC.

<sup>4</sup> These questions addressed improving the legibility of some data and identifying the Kruskal-Wallis test as a statistical analysis rather than a carpet human traffic test.

<sup>5</sup> 72 FR 48600 (Aug. 24, 2007).

<sup>6</sup> Comments filed in this rulemaking can be found under the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR Part 303, Matter No. P074201, “Mohawk, DuPont, and PTT Canada Generic Fiber Petition Rulemaking.” The comments also may be viewed on the Commission’s website at: (<http://www.ftc.gov/os/comments/textile-mohawk/index.shtml>) and (<http://www.ftc.gov/os/comments/textilefibernewgeneric/index.shtml>).

<sup>7</sup> In its comment, Invista stated that it is one of the world’s largest integrated producers of man-made fibers, and the largest producer of nylon fibers used in the production of both residential and commercial carpeting. Invista at 1.

<sup>8</sup> Invista also argued that Mohawk violated the Textile Fiber Products Identification Act and Textile Rules by marketing PTT carpet without identifying it as “polyester,” and that this failure to comply should weigh heavily against granting the Petition. Invista at 7.

<sup>9</sup> Prior to the comment period closing, the Commission did not receive any comments responding to Invista’s comment. Petitioners

April 7, 2008, the Commission reopened the comment period for an additional 30 days ("2008 Notice").<sup>10</sup> By the close of the extended comment period, May 5, 2008, the Commission had received 14 additional comments.<sup>11</sup>

## II. The Petition

The Petition sets forth evidence and arguments to support each of the four findings the Commission must make before establishing a new generic subclass designation, specifically, that: (1) the fiber has the same general chemical composition as an established generic fiber category; (2) the fiber has distinctive properties that make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well-suited; (3) these properties are important to the general public; and (4) these properties are the result of a new method of manufacture or the fiber's substantially differentiated physical characteristics.<sup>12</sup> The Petition also suggests three subclass names for PTT fiber.

First, Petitioners provided the chemical composition of the PTT polymer to demonstrate that PTT has the same general chemical composition as PET.<sup>13</sup>

Second, Petitioners submitted tests indicating that PTT fibers are superior to PET fibers with respect to durability and resiliency in carpet applications.<sup>14</sup> Specifically, Petitioners submitted the results of Hexapod Wear Tests conducted by Mohawk in its industry certified lab.<sup>15</sup> According to Petitioners,

submitted an additional comment in January 2008, which the Commission has placed on the public record at: (<http://www.ftc.gov/os/comments/textilefibernewgeneric/index.shtml>) ("Petitioners' submission of January 2008").

<sup>10</sup> 73 FR 18727 (Apr. 7, 2008)

<sup>11</sup> The 14 comments can be found at: (<http://www.ftc.gov/os/comments/textilefibernewgeneric/index.shtml>). On July 18, 2008, after the close of that comment period, the Commission received an additional comment from Invista, which the Commission has considered and placed on the public record along with these 14 comments.

<sup>12</sup> See *infra* Section V.A.

<sup>13</sup> Petition at 6.

<sup>14</sup> *Id.* at 13-19. Petitioners also submitted testing purporting to show that PTT is superior to PET with respect to carpet and apparel softness, and that PTT fibers in apparel recover from stretching better than PET fibers. Because the Commission finds that Petitioners satisfy the standard for creating a PTT subclass based on carpet durability and resilience alone, the agency does not address these other issues.

<sup>15</sup> This test, endorsed by the Carpet and Rug Institute ("CRI"), measures appearance retention by simulating the most aggressive parts of a walking action through the use of a mechanical device. The test assesses the appearance of samples on a scale from 1 to 5, where a rating of "5" shows no change and a rating of "1" shows severe change. In this test, a metal hexapod tumbler (steel cube) with six

at each of 12, 24, and 36 thousand wear cycles, PTT significantly outperformed PET. For example, PTT outperformed PET by more than one interval in the 36 thousand wear cycle test, receiving a rating of over 3 out of 5.<sup>16</sup> Petitioners also submitted data from Performance Appearance Rating tests ("Performance Test") conducted by the same lab.<sup>17</sup> According to Petitioners, PTT again significantly outperformed PET at 20, 40 and 60 thousand wear cycles.

Third, Petitioners submitted evidence that consumers consider durability and resiliency to be important attributes of carpet fiber. Specifically, Petitioners relied on a 2004 study commissioned by Mohawk in which 67% of respondents rated the phrase "the carpet will stand up to years of foot traffic without matting" as very important.<sup>18</sup>

Fourth, Petitioners contended that this improved durability and resiliency is the result of PTT's unique chemistry and molecular design.<sup>19</sup> Specifically, Petitioners explained that the glycol portion of PTT's chemical chain crystallizes into a coil-like structure while the same portion of PET forms a wire-like structure. Petitioners contended that, as a result of this structural difference, "PTT fiber can take an additional level of applied strain [over PET] and recover completely."<sup>20</sup>

Finally, the Petition suggested three new subclass names for PTT fibers: 1) "trixta"; 2) "resisoft"; and 3) "durares."<sup>21</sup>

## III. Comments in Response to the 2007 Notice

Of the 49 comments received in response to the 2007 Notice, 46 came from carpet retailers or dealers, one came from a textile testing service,<sup>22</sup> and two came from textile manufacturers.<sup>23</sup> As noted above, Invista submitted the only comment

polyurethane studs rolls randomly over the surface of the carpet inside a rotating drum. The mass of the tumbler with six studs is 8.4 pounds, plus or minus 0.2 pounds. See Standard Practice for the Operation of the Hexapod Tumble Drum Tester, ASTM D-5252 - 05.

<sup>16</sup> See discussion of five point scale, *supra* note 15.

<sup>17</sup> This test measures the appearance of a sample carpet after a certain number of human footsteps ("cycles"). Like the Hexapod Wear Test, the Performance Test relies on the visual appearance of the carpet sample after testing compared to the appearance of carpet in standardized photographs published by the CRI. Appearance is assessed on the same CRI scale, from 1 to 5.

<sup>18</sup> Petition at 3.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.* at 1.

<sup>22</sup> Independent Textile Testing Service, Inc.

<sup>23</sup> Filature Miroglio S.p.a. and Invista.

opposing a new- subclass designation for PTT.

### A. Comments Supporting Subclass Designation

Comments supporting the PTT subclass designation focused on PTT's superior qualities. For example, one retailer stated that "carpet made from PTT definitely is more durable, more stain resistant [and] softer than any 'polyester' fiber I have ever seen."<sup>24</sup> Another seller commented that PTT "stands up to wear as well as nylon"<sup>25</sup> and has "[e]xceptional, long-lasting durability."<sup>26</sup> Yet another stated that compared to "polyester," the Smartstrand [PTT] fiber "is substantially more durable . . . , [and] is a gigantic leap forward in technology."<sup>27</sup>

In addition to the retailer comments, Independent Textile Testing Service, Inc. ("Independent") explained that for the last 10 years it has conducted extensive testing of PTT carpet fiber including pedestrian traffic, soiling, and staining testing.<sup>28</sup> Based on these tests, Independent asserted: "[I]t would seem that the test results consistently show a marked difference when compared to PET in regards to performance . . . [and] the significant overall performance of the [PTT] fiber to foot traffic and in use areas is remarkably better."<sup>29</sup> Independent concluded that, due to performance differences between PET and PTT, a PTT subclass designation is appropriate.<sup>30</sup>

### B. Invista's Comment Opposing Subclass Designation

Invista asserted that the Commission should deny the Petition because PTT does not have distinctive properties that are important to the general public.<sup>31</sup> Invista made several arguments in support of this position, and also objected to two of the proposed generic subclass names.

<sup>24</sup> Llewellyn, Kevin.

<sup>25</sup> Nylon fibers are stronger and better able to resist oil-based soiling and staining than "polyester" fibers. Invista at 6. Because of these superior attributes nylon carpet has commanded a higher price than "polyester" carpet. Invista at 6; and Petition at 3.

<sup>26</sup> Issis & Sons, Inc.

<sup>27</sup> Colonial Floors, Inc.

<sup>28</sup> Independent is a comprehensive testing laboratory for carpets and textiles. Its laboratory is accredited under the National Voluntary Laboratory Accreditation Program that administers the U.S. Department of Commerce/National Institute of Standards and Technology. It conducted some of the tests that Petitioners rely on to support their Petition.

<sup>29</sup> Independent.

<sup>30</sup> *Id.*

<sup>31</sup> Invista at 3. Invista, however, acknowledged that PTT has the same general chemical composition as PET.

First, Invista made three arguments to support its contention that Petitioners' testing was inadequate to demonstrate a significant difference between PTT and PET: (1) Petitioners compared the wrong weight filaments; (2) Petitioners used the wrong test; and (3) the test results were so insignificant that they would not be meaningful to consumers. Invista began by stating that Petitioners unfairly compared heavier PTT filaments (18 dpf) to lighter PET (15 dpf) and nylon (12 dpf) samples.<sup>32</sup> Specifically, Invista explained that although total fiber weight may be equal, the weight and construction of individual filaments determines how carpet fibers perform on tests based on visual appearance.<sup>33</sup> Because both of Petitioners' tests draw conclusions based on visual appearance, Invista concluded that PET's superior performance on these tests did not demonstrate greater durability or resiliency.<sup>34</sup>

Invista next criticized Petitioners' use of the Hexapod Wear Test. Specifically, Invista asserted that this test uses a lighter impact ball than the Vettermann Drum Test,<sup>35</sup> which Invista contended had been the industry standard for more than twenty years and produces more reliable results.<sup>36</sup> Moreover, Invista explained that its own Vettermann Drum Test results showed little difference in the durability of PET and PTT fibers.<sup>37</sup>

Invista's final argument regarding the adequacy of Petitioners' testing was that it yielded differences that are too small to be meaningful to consumers.<sup>38</sup> Specifically, Invista explained that the CRI appearance rating scale (from 1 to 5) used by Petitioners is nonlinear, so that a divergence between 4 and 5 represents a smaller actual difference in appearance than the divergence between 2 and 3.<sup>39</sup> Therefore, Invista explained, differences at the top of the scale have

to be large to be meaningful for consumers, and any rating of 3 or above is considered an acceptable appearance.<sup>40</sup> Given this explanation, Invista argued that Petitioners have not met their burden because most of Petitioners' testing shows a difference of less than one full interval at levels over a rating of 3.<sup>41</sup>

Second, Invista asserted that even if Petitioner's testing were adequate, PTT outperformed PET on too small a percentage of carpet performance characteristics to demonstrate the distinctiveness necessary to warrant a new generic fiber subclass.<sup>42</sup> Specifically, Invista explained that PTT fibers performed better on only three of the 14 categories that Petitioners assert are important to consumers, and only two of the top ten.

Finally, Invista stated that two of Petitioners' three suggested generic subclass names for PTT "appear to be intentionally designed to create confusion with existing INVISTA trademarks."<sup>43</sup> Specifically, Invista asserted that Petitioners' proposed names "resisoft" and "durares" are "alarmingly similar" to Invista's ResisTech® and DuraTech® brand names.<sup>44</sup>

#### IV. Comments in Response to the 2008 Notice

In response to Invista's comment, the Commission reopened the record and received 14 additional comments: two from Petitioners<sup>45</sup> and 12 from various manufacturers or sellers of fibers. Eleven of the comments from manufacturers and sellers of fibers favored providing a subclass for PTT. These commenters stated that PTT was softer,<sup>46</sup> had more resilience,<sup>47</sup> and/or had better ability to stretch with recovery than PET.<sup>48</sup> Shaw Industries Group, Inc. ("Shaw"), a carpet manufacturer, opposed the Petition, stating that "there are no distinctive properties that make PTT suitable for uses which other "polyester" fiber products either cannot be used or would be significantly less well suited."<sup>49</sup>

#### A. Petitioners' Response to Invista's Comment

Petitioners responded to Invista's comment by arguing that: (1) its testing methodology is sound; (2) its survey demonstrates that PTT's distinctive properties are important to consumers; and (3) "trixeta" is an acceptable subclass designation.

##### 1. Petitioners' Testing Methodology Is Sound.

Petitioners responded to Invista's assertion that its testing was flawed with four explanations. First, Petitioners asserted that, contrary to Invista's contention, consumers would notice a difference of one full interval on the Hexapod Wear Test and the Performance Test. They contended that carpet photographs on the CRI website showing varying degrees of wear performance demonstrate this fact.<sup>50</sup>

Second, Petitioners explained that Invista's Vettermann Drum Test used carpet with face weights far heavier than that typically purchased by residential consumers.<sup>51</sup> Specifically, Petitioners noted that Invista tested carpet weighing 60 ounces per square yard, while most consumers purchase residential carpeting in the 35-45 ounces per square yard weight range.<sup>52</sup> Petitioners explained that only a small percentage (about 10 percent) purchase carpet weighing 60 ounces and above.<sup>53</sup> Thus, Petitioners asserted that their test results are "far more relevant to what consumers will experience."<sup>54</sup> Moreover, Petitioners argued that Invista's results conflict not only with Petitioners', but also with those of Independent and with "the very favorable real world durability reports submitted by carpet retailers."<sup>55</sup>

Third, Petitioners noted that the 2007 Petition correctly reported that the tested PET and PTT carpets were of identical fiber weight, but Mohawk incorrectly transcribed the dpf numbers in Appendix A to the Petition. Petitioners explained that the PET and PTT fibers that Mohawk tested both had dpf's of 18, allowing for a meaningful comparison.<sup>56</sup>

<sup>50</sup> Petitioners' submission of January 2008, at 11.

<sup>51</sup> Dupont #535294-00017, at 13. Petitioners criticized Invista's other test results because they were not performed using industry standard testing methods and were performed using carpet weights that consumers rarely purchase. Petitioners' submission of January 2008, at 12.

<sup>52</sup> Dupont #535294-00017, at 13; *see also* Petition at Appendix A. Petitioners tested carpet averaging 43 ounces per square yard. *Id.*

<sup>53</sup> DuPont #535294-00017, at 13 Note 1.

<sup>54</sup> *Id.* at 13.

<sup>55</sup> *Id.* at 13.

<sup>56</sup> *Id.*

<sup>32</sup> *Id.* at 9-10.

<sup>33</sup> *Id.* at 10.

<sup>34</sup> *Id.*

<sup>35</sup> In this test, a steel ball with 14 rubber studs rolls randomly over the surface of the carpet inside a rotating drum. The mass of the ball with the studs is 16.8 pounds, plus or minus 0.2 pounds. *See* Standard Practice for the Operation of the Vettermann Drum Tester, ASTM D-5417 - 05.

<sup>36</sup> *Id.* at 12-13.

<sup>37</sup> Invista submitted several other tests purporting to show that PTT failed to perform significantly better than PET regarding carpet durability and resilience: a test described as a real-world traffic test involving carpet used in a commercial space; a 5,000 cycle caster chair (60 kg) test; a proprietary test measuring wear on residential stairs; and a test of carpet pile height loss and recovery. Invista did not assert that any of these tests qualify as industry standard tests, either now or in the past. Nor did Invista assert that these tests involved carpet representative of what consumers purchase.

<sup>38</sup> *Id.* at 10-11.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 12.

<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.* at 25-26.

<sup>44</sup> *Id.*

<sup>45</sup> DuPont, #535294-00017 and 00018.

<sup>46</sup> Guo, Chen; Gu, Pony; Lee, Xuemei; Shi, Rita; and Tian Lin, Chen.

<sup>47</sup> Lee, Xuemei.

<sup>48</sup> Frankenberg, Paul; Gu, Pony; Lee, Xuemei; and Shi, Rita.

<sup>49</sup> Shaw Industries Group at 2-3.

Finally, Petitioners asserted that Invista's own website had promoted the superiority of PTT over PET. Specifically, Petitioners referenced a chart on Invista's website that rated the performance of five carpet fibers, including PTT and PET,<sup>57</sup> with respect to nine different carpet performance parameters.<sup>58</sup> Petitioners noted that Invista's chart rated PTT's performance as "excellent to good" and PET's performance as "poor" with respect to: (1) appearance retention and (2) resistance to foot traffic and furniture weight.<sup>59</sup>

## 2. Petitioner's Survey Demonstrates that Durability Is Important to Consumers.

Petitioners responded to Invista's assertion that PTT is not sufficiently distinctive in carpet performance characteristics important to consumers by explaining that, in their consumer survey, the top eight-ranked carpet performance characteristics of importance to consumers fell into two subject categories: carpet durability/resiliency, and resistance to staining and soiling.<sup>60</sup> Petitioners asserted that PTT fibers have significant advantages with respect to one of the two most important carpet characteristics—durability/resiliency.<sup>61</sup>

## 3. "Triexta" Is an Acceptable Subclass Designation.

Lastly, Petitioners responded to Invista's objections regarding Petitioners' choice of subclass names by noting that neither Invista, nor any other commenter, challenged the name "triexta."<sup>62</sup>

### B. Petitioners' Response to the Shaw Comment

Petitioners responded to Shaw's comments by noting that they "were submitted without factual support."<sup>63</sup> Moreover, Petitioners commented that, prior to Shaw's business acquisition of Honeywell International Inc.'s nylon fiber business, Shaw had launched a line of carpets made from PTT fibers and promoted them as "equal [to] nylon in independent walk-test

<sup>57</sup> The carpet fibers were: Stainmaster Nylon (sold by Invista), Nylon, PET, PTT, and Olefin Polypropylene. *Id.* at 10-11.

<sup>58</sup> The parameters were: assortment of colors and styles; appearance retention; resistance to foot traffic and furniture weight; soil resistance; resistance to melting; durability of stain resistance; resistance to fading; resistance to damage from chair casters; and built-in permanent static control. *Id.* at 10.

<sup>59</sup> *Id.* at 10-11.

<sup>60</sup> DuPont #535294-00017 at 11-12.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 16.

<sup>63</sup> DuPont #535294-00018, at 2.

evaluations."<sup>64</sup> Petitioners also stated that, in a marketing brochure, Shaw published the results of a "foot step" study comparing walk performance of PTT and nylon carpets, which concluded that PTT outperformed nylon.<sup>65</sup> Finally, Petitioners provided the following quote from Shaw's brochure: "[m]ake no mistake, . . . (PTT) produces a totally new fiber, not a variation or enhancement."<sup>66</sup>

## V. Analysis and Conclusion

### A. The Commission's Standard for Granting a New Generic Fiber Subclass

On April 15, 1996, in response to Courtaulds Fibers, Inc.'s petition to create a new generic subclass for a rayon fiber, the Commission set forth the standard for creating a new generic subclass fiber name. Specifically, the Commission stated:

[W]here appropriate, in considering [an] application for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, it may allow such fiber to be designated in required information disclosures by either its generic name, or alternatively, by its "subclass" name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited or would be significantly less well suited.<sup>67</sup>

Therefore, a new generic fiber subclass for PTT is appropriate if: (1) PTT has the same general chemical composition as an established generic fiber category; (2) PTT has distinctive properties that make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited; (3) these properties are important to the general public; and (4) these properties are the result of a new method of manufacture or PTT's substantially differentiated physical characteristics.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> 61 FR 16385, 16386 (Apr. 15, 1996).

### B. Analysis of the Petition

The Commission now has a factual record sufficient to render a decision. Based on that record, the Commission concludes that Petitioners have met each of the criteria for creating a new generic fiber subclass.

First, the record demonstrates that PTT has the same general chemical composition as the Commission's established "polyester" generic fiber category and thus falls within Rule 7(c)'s definition of "polyester." 16 CFR 303.7(c). Using the chemical composition of the PTT polymer provided by Petitioners, a textile expert hired by the FTC confirmed this fact.<sup>68</sup> Moreover, Invista agreed.<sup>69</sup> Accordingly, the Petition satisfies the first criterion for granting a new generic fiber subclass name.

Second, PTT has distinctive properties that make it suitable for uses for which other fibers under the established generic name would be significantly less well suited. Specifically, Petitioners submitted testing demonstrating that PTT is more durable and resilient than ordinary "polyester" (PET) in some carpet applications. Petitioners compared PTT and PET carpet using the Hexapod Wear Test, a standard industry appearance retention test that simulates walking action on carpet.<sup>70</sup> Invista agreed that this is a standard industry test for durability, and the Commission's textile expert confirmed that it is a well established protocol.<sup>71</sup> Having reviewed the test results, the Commission's expert confirmed that they demonstrate that carpets made from PTT fibers significantly outperform carpets made from PET.<sup>72</sup>

We reject Invista's argument that the Hexapod Test failed to show that PTT is significantly more durable or resilient. First, even assuming, *arguendo*, Invista's contention that consumers would not notice a difference of only one interval at higher

<sup>68</sup> The Commission's textile expert was Martin Bide, Ph.D., Department of Textiles, University of Rhode Island, Kingston, RI 02881. The Commission has placed Dr. Bide's Report Concerning Petition to Establish a New Generic Subclass of "polyester" for PTT (July 5, 2006), on the public record at: (<http://www.ftc.gov/os/comments/textilefibernewgeneric/index.shtml>) ("Expert Report").

<sup>69</sup> Invista at 7.

<sup>70</sup> Petitioners' Performance Tests were consistent with the results from their Hexapod Tests and indicated that PTT carpet performed better than PET and comparable to nylon carpet. Petition at 15-17. The Petition also included the results of additional Hexapod Tests conducted by Independent. The results of these tests were consistent with the results of Petitioners' Hexapod Tests. Petition at 17-19.

<sup>71</sup> Invista at 12-13. *See also*, Expert Report.

<sup>72</sup> Expert Report.

CRI ratings, PTT significantly outperformed PET on the heaviest of the three wear cycles. Specifically, in the vast majority of trials, PET performed below an acceptable rating (*i.e.*, 3) while PTT performed at or above a 3 rating in all trials.<sup>73</sup> Moreover, the central tendency of each data set shows a difference of over one full interval. Second, Petitioners tested carpet weights that consumers typically purchase, whereas Invista's Vettermann Drum testing utilized heavier carpet that only a small percentage of consumers actually buy.<sup>74</sup> Finally, Invista's assertion that Petitioners tested PET and PTT of different fiber weights (dpf) is not at issue because Petitioners did, in fact, test the same weight PET and PTT carpet fibers.<sup>75</sup> Accordingly, the Petition satisfies the second criterion for granting a new generic fiber subclass name.

Third, Petitioners have demonstrated that PTT's distinctive properties are of importance to the general public. As discussed earlier, Mohawk's consumer survey shows that consumers shopping for carpet consider durability/resiliency to be very important attributes. Specifically, a 2004 study that Mohawk commissioned found that 67% of respondents rated carpet durability/resiliency as a very important trait. Thus, the Petition satisfies the third criterion for granting a new generic fiber subclass name.

Finally, PTT's enhanced durability is the result of substantially differentiated physical characteristics. Specifically, Petitioners explained that the molecular structure of PTT is more coil-like than PET's straight-wire structure. Thus, PTT fibers are better able to recover without permanently deforming and developing a crushed appearance.<sup>76</sup> The Commission's textile expert reviewed the material that Petitioners submitted and confirmed this fact.<sup>77</sup> Accordingly, the Petition satisfies the final criterion for granting a new generic fiber subclass name.

Because the Petition meets all the criteria for establishing a new generic subclass fiber name, the Commission

amends Rule 7(c) to define the generic subclass "triexta" and to allow use of the name "triexta" as an alternative to the generic name "polyester" for PTT fiber.<sup>78</sup> Because "triexta" is the second subclass generic designation for "polyester," we have moved the first subclass designation to its own subsection, (c)(1), for clarity. Finally, based on this decision, the temporary designation "PTT001" is revoked as of the effective date of this amendment.

#### VI. Effective Date

The Commission is making the amendment effective today, March 26, 2009, as permitted by 5 U.S.C. 553(d), because the amendment does not create new obligations under the Textile Rules; rather, it merely creates a fiber name and definition that covered companies may use to comply with the Textile Rules.

#### VII. Regulatory Flexibility Act

In the Request for Public Comment,<sup>79</sup> the Commission tentatively concluded that the provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis, 5 U.S.C. 603-604, did not apply to the Petition's proposal because the amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission believed that the proposed amendment would impose no additional obligations, penalties, or costs. The amendment simply would allow covered companies to use a new generic name as an alternative to an existing generic name for that defined subclass of fiber, and would impose no additional labeling requirements. To ensure, however, that the Commission did not overlook any substantial economic impact, the Commission solicited public comment in the Request for Public Comment on the effects of the proposed amendment on costs, profits, competitiveness of, and employment in small entities.

The Commission did not receive any comment in response. Accordingly, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the amendment promulgated today will not have a significant economic impact on a substantial number of small entities.

#### VIII. Paperwork Reduction Act

This amendment does not constitute a "collection of information" under the Paperwork Reduction Act of 1995, Pub.

L. 104-13, 109 Stat. 163, 44 U.S.C. chapter 35 (as amended), and its implementing regulations, 5 CFR 1320 *et seq.* Those procedures for establishing generic names that do constitute collections of information, 16 CFR 303.8, have been submitted to OMB, which has approved them and assigned them control number 3084-0101.

#### List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

#### IX. PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

■ 1. The authority citation for part 303 continues to read as follows:

**Authority:** Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

■ 2. In § 303.7, in paragraph (c), designate the second sentence, which follows the second chemical description, as paragraph (c)(1) and add new paragraph (c)(2) to read as follows:

#### § 303.7 Generic names and definitions for manufactured fibers.

\* \* \* \* \*

(c) \* \* \*

(2) Where the glycol used to form the ester consists of at least ninety mole percent 1,3-propanediol, the term "triexta" may be used as a generic description of the fiber.

\* \* \* \* \*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9-6633 Filed 3-25-09; 8:45 am]

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#### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

#### 18 CFR Part 42

[Docket No. RM06-8-002; Order No. 681-B]

#### Long-Term Firm Transmission Rights in Organized Electricity Markets

Issued March 20, 2009.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order on rehearing and clarification.

**SUMMARY:** The Federal Energy Regulatory Commission is issuing an order on rehearing and clarification of *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681-A, 71 FR 68,440 (November 16,

<sup>73</sup> Petition at 14-15.

<sup>74</sup> Invista also submitted the results of several other tests purporting to show that PTT does not perform significantly better than PET. See *supra* note 37. The record does not indicate that any of these tests are current or former industry standard tests. In addition, some of them involved heavier weight PET and PTT carpet than the weight of carpet consumers typically purchase and, for others, the record does not indicate the weight of the carpets tested. Therefore, we accord these test results less weight.

<sup>75</sup> DuPont #535294-00017 at 13.

<sup>76</sup> Petition at 7-8.

<sup>77</sup> Expert Report.

<sup>78</sup> The Commission has selected the name "triexta" because it was the one subclass name proposed by Petitioners to which no commenter objected.

<sup>79</sup> 72 FR 48600 (Aug. 24, 2007).