

§ 1615.36

approval of alternate test apparatus or procedure.

(d) Use of any alternate test apparatus or procedure without the data or information required by paragraph (b), of this section, may result in violation of the Standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

(e) The Commission will test fabrics and garments subject to the Standard for compliance with the requirements of the Standard using the apparatus and procedures set forth in the Standard. The Commission will consider any failing results from compliance testing as evidence of a violation of the Standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

(Reporting requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 3041-0027)

[48 FR 21315, May 12, 1983]

§ 1615.36 Use of alternate apparatus or procedures for tests for guaranty purposes.

(a) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) Section 1615.31(f) of the regulations implementing the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (the Standard) provides that for purposes of supporting guaranties issued in accordance with section 8 of the FFA for items subject to the Standard, "reasonable and representative tests" are tests "performed pursuant to any sampling plan or authorized alternative sampling plan engaged in pursuant to the requirements of the Standard."

(c) At §1615.35, the Commission has set forth conditions under which the Commission will approve the use of test apparatus or procedures other than those prescribed in the Standard

16 CFR Ch. II (1-1-05 Edition)

for purposes of demonstrating compliance with the requirements of the Standard. Any person or firm meeting the requirements of §1615.35 for use of alternate test apparatus or procedure for compliance with the Standard may also use such alternate test apparatus or procedures under the same conditions for purposes of conducting "reasonable and representative tests" to support guaranties of items subject to the Standard, following any sampling plan prescribed by the Standard or any approved alternate sampling plan.

(d) The Commission will test fabrics and garments subject to the Standard for compliance with the Standard using the apparatus and procedures set forth in the Standard. The Commission will consider any failing results from compliance testing as evidence that the person or firm using alternate test apparatus or procedures has furnished a false guaranty in violation of section 8(b) of the FFA (15 U.S.C. 1197(b)).

[48 FR 21316, May 12, 1983]

Subpart C—Interpretations and Policies

AUTHORITY: Secs. 1-17, 67 Stat. 111-115, as amended, 81 Stat. 568-74; 15 U.S.C. 1191-1204.

§ 1615.61 [Reserved]

§ 1615.62 Policy and interpretation relative to items in inventory or as to recordkeeping requirements.

(a) The Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71) (subpart A of this part) was published in the FEDERAL REGISTER on July 29, 1971, at 36 FR 14062 et seq., and amended in the FEDERAL REGISTER of July 21, 1972 (37 FR 14624). The Notice of Standard provided at 36 FR 14063 that "Items in inventory or with the trade on the effective date of the Standard are exempt. All concerned parties shall be required to maintain records that these items offered for sale after the effective date of the Standard are eligible for the exemption."

(b) The Children's Sleepwear Standard was amended on July 21, 1972, at 37 FR 14624 et seq. to incorporate a sleepwear sampling plan therein and to make certain nonsubstantive technical

corrections as to the test equipment. The effective date remained the same. In issuance of such amendment the Notice of Amendment specified at 37 FR 14625 that "It is emphasized that the only substantive change made to the standard involves the amendment necessary to include the sampling plan."

(c) The Notice of Amendment did not repeat the language in the original 1971 Notice of Standard relative to items in inventory or as to recordkeeping requirements.

(d) Questions have arisen under this standard as to the application of the standard to goods manufactured outside the United States prior to the effective date of the standard on July 29, 1972, as to whether a person claiming the exemption specified in the standard must maintain records showing eligibility for exemption from the standard.

(e) In the Commission's view, the provisions of the July 29, 1971, Notice of Standard as to exemption of items of children's sleepwear in inventory or with the trade on the effective date of the standard and as to the necessity of maintenance of records to show eligibility for such exemption are in full force and effect.

NOTE: This policy was published by the Federal Trade Commission on January 31, 1973 (38 FR 3014). It continues in effect.

§ 1615.63 Policy regarding garment production unit identification.

No provision of § 1615.31(b)(8) prohibits placement of a garment production unit identification on a label containing other information. Provided, however, that when the garment production unit identification appears on a label containing other information, provisions of § 1615.31(b)(7) require that the garment production unit identification must be set forth separately from any other information appearing on the same label, and that information not required by the applicable enforcement regulation § 1615.31, but placed on the same label with the garment production unit identification, shall not interfere with the garment production unit identification.

§ 1615.64 Policy to clarify scope of the standard.

(a) The Standard for Flammability of Children's Sleepwear: Size 0 Through 6X (16 CFR part 1615) is applicable to any item of children's sleepwear in sizes 0 through 6X.

(1) The term *item* is defined in the Standard at § 1615.1(d) to mean "any product of children's sleepwear, or any fabric or related material intended or promoted for use in children's sleepwear."

(2) The term *children's sleepwear* is defined in the Standard at § 1615.1(a) to mean "any product of wearing apparel up to and including size 6X, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities relating to sleeping. Diapers and underwear are excluded from the definition."

(b) The Commission makes the following statement of policy regarding (1) the phrase "intended or promoted" as used in the definition of "item" in § 1615.1(d), and (2) the phrase "intended to be worn primarily for sleeping or activities related to sleeping" as used in the definition of "children's sleepwear" in § 1615.1(a).

(c) For enforcement purposes, the meaning of these phrases will be interpreted by the Commission in accordance with the following principles:

(1) *Sleepwear fabrics and related materials.* Whether fabric or related material is "intended or promoted" for use in children's sleepwear depends on the facts and circumstances in each case. Relevant factors include:

(i) The nature of the fabric and its suitability for use in children's sleepwear;

(ii) The extent to which the fabric or a comparable fabric has been sold to manufacturers of children's sleepwear for use in the manufacture of children's sleepwear garments; and

(iii) The likelihood that the fabric will be used primarily for children's sleepwear in a substantial number of cases.

(2) *Sleepwear garments.* Whether a product of wearing apparel is "intended to be worn primarily for sleeping or activities related to sleeping" depends on