

to use such alternate apparatus or procedures before the alternate apparatus or procedures may be used for purposes of compliance with the standard.

(3) The information required by this paragraph (c) of this section must be retained by the person or firm using the alternate test apparatus or procedures for as long as that apparatus or procedure is used for purposes of compliance with the standard, and for a period of one year thereafter.

(d) Written application to the Commission is not required for approval of alternate test apparatus or procedures, and the Commission will not act on any individual written application for approval of alternate test apparatus or procedures.

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

(f) 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 (c) were approved by the Office of Management and Budget under control number 3041-0027)

(Sec. 5, Pub. L. 90-189, 81 Stat. 569, 15 U.S.C. 1194; Sec. 30(b), Pub. L. 92-573, 86 Stat. 1231, 15 U.S.C. 2079(b))

[48 FR 21316, May 12, 1983]

§ 1616.36 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 representa-

tive tests" in accordance with the applicable standard.

(b) Section 1616.31(e) of the regulations implementing the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (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 §1616.35, 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 for purposes of demonstrating compliance with the requirements of the Standard. Any person or firm meeting the requirements of §1616.35 for use of alternate test apparatus or procedure for compliance with the Standard may also use such alternate test apparatus or procedure 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)).

(Sec. 5, Pub. L. 90-189, 81 Stat. 569, 15 U.S.C. 1194; Sec. 30(b), Pub. L. 92-573, 86 Stat. 1231, 15 U.S.C. 2079(b))

[48 FR 21316, May 12, 1983]

Subpart C—Interpretations and Policies

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

§ 1616.61

§ 1616.61 Enforcement policy.

(a) It is the policy of the Consumer Product Safety Commission that all items of children's sleepwear in sizes 7 through 14 (including garments and fabric or related material intended or promoted for use in such children's sleepwear) are subject to the Standard FF 5-74 (subpart A of this part) unless the manufacturing process has ended before May 1, 1975. The manufacturing process is deemed to end, for the purposes of the Standard, at the time the item is completely assembled, all functional materials have been affixed, and labeling of a permanent nature has been stamped, sewn, or otherwise permanently affixed to the item. Affixing of temporary price or promotional information or the packaging of items of sleepwear (including garments and fabrics or related material intended or promoted for use in such sleepwear) does not affect the date on which the manufacturing process is deemed to end.

(b) All items of children's sleepwear in sizes 7 through 14 (including garments and fabric or related material intended or promoted for use in such children's sleepwear) which are in inventory or with the trade on the effective date of Standard FF 5-74 are exempt from the requirements of the Standard. For domestically-made items of children's sleepwear in sizes 7 through 14 to be considered "in inventory or with the trade" on the effective date of the Standard, the manufacturing process must have ended prior to May 1, 1975. For foreign-made items of children's sleepwear in sizes 7 through 14 to be considered "in inventory or with the trade" on the effective date of the Standard, the manufacturing process must have ended and the goods must have been entered into the United States before May 1, 1975.

§ 1616.62 Policy regarding retail display requirements for items.

For purposes of the retail display and identification requirements of § 1616.31(c), and for those purposes only, any item which was manufactured before May 1, 1975, and for which a retailer has documentary evidence of compliance with all sampling and testing requirements of the Standard (FF

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5-74) (subpart A of this part), will be deemed to be a complying item notwithstanding the absence of an affirmative label to indicate compliance with the Standard as required by § 1616.6(b) of the Standard and § 1616.31(b)(8), or the absence of a garment production unit identification or style identification which meets all requirements of § 1616.31(b) (4) and (7), provided that such an item complies with all other labeling requirements of § 1616.31(b).

§ 1616.63 Policy regarding garment production unit identification.

No provision of 16 CFR 1616.31(b)(7) 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 § 1616.31(b)(6) 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 (§ 1616.31), but placed on the same label with the garment production unit identification, shall not interfere with the garment production unit identification.

§ 1616.64 Policy regarding record-keeping requirements.

No provision of the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (FF 5-74) (subpart A of this part) or of the enforcement regulations at § 1616.31 prohibits the utilization of fabric which was manufactured before May 1, 1975, and which was not manufactured in production units, in the manufacture of children's sleepwear garments which are subject to the Standard. When such fabric is utilized in the manufacture of such garments, the inability of the garment manufacturer to record the fabric production unit identification of such fabric does not constitute a violation of § 1616.31(d)(4)(i).

§ 1616.65 Policy scope of the standard.

(a) The Standard for the Flammability of Children's Sleepwear: Sizes 7