

the facts and circumstances present in each case. Relevant factors include:

(i) The nature of the product and its suitability for use by children for sleeping or activities related to sleeping;

(ii) The manner in which the product is distributed and promoted; and

(iii) The likelihood that the product will be used by children primarily for sleeping or activities related to sleeping in a substantial number of cases.

(3) The factors set forth in this policy statement are guidelines only, and are not elements of the definition of the term "children's sleepwear" in § 1615.1(a) of the Standard. For this reason, a particular fabric or garment may meet the definition of "children's sleepwear" set forth in the Standard, even though all factors listed in this policy statement are not present.

(d) Retailers, distributors, and wholesalers, as well as manufacturers, importers, and other persons (such as converters) introducing a fabric or garment into commerce which does not meet the requirements of the flammability standards for children's sleepwear, have an obligation not to promote or sell such fabric or garment for use as an item of children's sleepwear. Also, retailers, distributors, and wholesalers are advised not to advertise, promote, or sell as an item of children's sleepwear any item which a manufacturer, importer, or other person (such as a converter) introducing the item into commerce has indicated by label, invoice, or, otherwise, does not meet the requirements of the children's sleepwear flammability standards and is not intended or suitable for use as sleepwear. "Infant garments" as defined by § 1615.1(c) and "tight-fitting" garments as defined by § 1615.1(o) are exempt from the standard which requires flame resistance. They may be marketed as sleepwear for purposes of this section. Additionally, retailers are advised:

(1) To segregate, by placement in different parts of a department or store, fabrics and garments covered by the children's sleepwear standards from all fabrics and garments that are beyond the scope of the children's sleepwear standards but which resemble items of children's sleepwear;

(2) To utilize store display signs indicating the distinction between types of fabrics and garments, for example by indicating which are sleepwear items and which are not; and

(3) To avoid the advertisement or promotion of a fabric or garment that does not comply with the children's sleepwear flammability standard in a manner that may cause the item to be viewed by the consumer as an item of children's sleepwear.

(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); 5 U.S.C. 553)

[49 FR 10250, Mar. 20, 1984, as amended at 64 FR 2832, Jan. 19, 1999; 64 FR 34533, June 28, 1999]

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14 (FF 5-74)

Subpart A—The Standard

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SOURCE: 40 FR 59917, Dec. 30, 1975, unless otherwise noted.

Subpart A—The Standard

AUTHORITY: Sec. 429, Pub. L. 105-276; Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569-570; 15 U.S.C. 1193.

§ 1616.1 Scope and application.

(a) This Standard provides a test method to determine the flammability of children's sleepwear, sizes 7 through 14 and fabric or related material intended or promoted for use in such children's sleepwear.

(b) All sleepwear items as defined in § 1616.2(c), are subject to the requirements of this Standard.

(c) Children's sleepwear items which meet all the requirements of the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71) (subpart A of part 1615 of this chapter) are in compliance with this Standard. FF 3-71 was issued July 29, 1971 (36 FR 14062), and amended July 21, 1972 (37 FR 14624).

(d) As used in this Standard, *pass* and *fail* refer to the test criteria for specimens while *accept* and *reject* refer to the acceptance or rejection of a production unit under the sampling plan.

(e) The flammability standards for clothing textiles and vinyl plastic film, parts 1610 and 1611 of this chapter, are superseded by this part 1616 insofar as they apply to items defined in § 1616.2(c).

§ 1616.2 Definitions.

In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (15 U.S.C. 1191), the following definitions apply for purposes of this Standard:

(a) Children's sleepwear means any product of wearing apparel size 7 through 14, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping, except:

(1) Diapers and underwear; and

(2) "Tight-fitting garments" as defined by section 1616.2(m), below.

(b) *Sizes 7 through 14* means the sizes defined as 7 through 14 in Department of Commerce Voluntary Product Standards PS 54-72 and PS 36-70, previously identified as Commercial Standards, CS 153-48, "Body Measure-

ments for the Sizing of Girls' Apparel" and CS 155-50, "Body Measurements for the Sizing of Boys' Apparel", respectively.¹

(c) *Item* means any product of children's sleepwear or any fabric of related material intended or promoted for use in children's sleepwear.

(d) *Trim* means decorative materials, such as ribbons, laces, embroidery, or ornaments. This definition does not include (1) individual pieces less than 2 inches in their longest dimension, provided that such pieces do not constitute or cover in aggregate a total of more than 20 square inches of the item or (2) functional materials (findings), such as zippers, buttons or elastic bands, used in the construction of garments.

(e) *Test criteria* means the average char length and the maximum char length which a sample of specimen may exhibit in order to pass an individual test.

(f) *Char length* means the distance from the original lower edge of the specimen exposed to the flame in accordance with the procedure specified in § 1616.5 *Test procedure* to the end of the tear or void in the charred, burned, or damaged area, the tear being made in accordance with the procedure specified in § 1615.5(c)(2) *Specimen burning and evaluation*.

(g) *Afterglow* means the continuation of glowing of parts of a specimen after flaming has ceased.

(h) *Fabric piece* (piece) means a continuous, unseamed length of fabric, one or more of which make up a unit.

(i) *Fabric production unit* (unit) means any quantity of finished fabric up to 4,600 linear m. (5,000 linear yds.) for Normal Sampling or 9,200 linear m. (10,000 linear yds.) for Reduced Sampling which has a specific identity that remains unchanged throughout the unit except for color or print pattern as specified in § 1616.4(a). For purposes of this definition, finished fabric means

¹Copies available from the National Technical Information Service, 5285 Port Royal Street, Springfield VA 22151. The ordering number for PS 54-72 (CS 153-48), on girls' apparel sizing, is COM 73-50603; the ordering number for PS 36-70 (CS 155-50), on boys' apparel sizing, is PB 86125648.