

## § 1616.61

## 16 CFR Ch. II (1-1-11 Edition)

### § 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

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

through 14 (16 CFR part 1616) is applicable to any item of children's sleepwear in sizes 7 through 14.

(1) The term *item* is defined in the Standard at §1616.2(c) 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 §1616.2(a) to mean "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. Underwear and diapers are excluded from this 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 §1616.2(c), 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 §1616.2(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 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 §1616.2(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. "Tight-fitting" garments as defined by §1616.2(m) 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 sign 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 standards 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 10251, Mar. 20, 1984, as amended at 64 FR 2833, Jan. 19, 1999]

## PART 1630—STANDARD FOR THE SURFACE FLAMMABILITY OF CARPETS AND RUGS (FF 1–70)

### Subpart A—The Standard

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SOURCE: 40 FR 59931, Dec. 30, 1975, unless otherwise noted.

### Subpart A—The Standard

AUTHORITY: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–70; 15 U.S.C. 1193.

#### § 1630.1 Definitions.

In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (Sec. 1, 81 Stat. 568; 15 U.S.C. 1191), and the procedures under that act for setting standards (part 1607 of this chapter), the following definitions apply for the purposes of this Standard:

(a) *Acceptance Criterion* means that at least seven out of eight individual specimens of a given carpet or rug shall meet the test criterion as defined in this Standard.

(b) *Test Criterion* means the basis for judging whether or not a single specimen of carpet or rug has passed the test, i.e., the charred portion of a tested specimen shall not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

(c) *Carpet* means any type of finished product made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used as a floor covering which is exposed to traffic in homes, offices, or other places of assembly or accommodation, and which may or may not be fastened to the floor by mechanical means such as nails, tacks, barbs, staples, adhesives, and which has one dimension greater than 1.83 m. (6 ft.) and a surface area greater than 2.23 m.<sup>2</sup> (24 sq. ft.). Products such as “carpet squares”, with one dimension less than 1.83 m. (6 ft.) and a surface area less than 2.23 m.<sup>2</sup> (24 sq. ft.), but intended to be assembled upon installation into assemblies which may have one dimension greater than 1.83 m. (6 ft.) and a surface area greater than 2.23 m.<sup>2</sup> (24 sq. ft.), are included in this definition. Mats, hides with natural or synthetic fibers, and other similar products in the above, defined dimensions are included in this definition, but resilient floor coverings such as linoleum, asphalt tile and vinyl tile are not.

(d) *Rug* means the same as carpet and shall be accepted as interchangeable with carpet.

(e) *Traffic Surface* means a surface of a carpet or rug which is intended to be walked upon.

(f) *Timed Burning Tablet* (pill) means a methenamine tablet, flat, with a nominal heat of combustion value of 7180 calories/gram, a mass of 150 mg ±5mg and a nominal diameter of 6mm.

(g) *Fire-Retardant Treatment* means any process to which a carpet or rug has been exposed which significantly