

## § 1615.63

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.

## 16 CFR Ch. II (1-1-12 Edition)

### § 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

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)

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