United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

CPSC/OFFICE OF THE SECRETARY

1999 JAN -6 P 3:57

BALLOT VOTE SHEET

DATE: JAN 6 1999

TO : The Commission
Sadye E. Dunn, Secretary

FROM : Jeffrey S. Bromme, General Counsel
Stephen Lemberg, Asst. General Counsel

SUBJECT: Proposed Revocation of Amendments to the Standards for the Flammability of Children's Sleepwear

BALLOT VOTE DUE: _____

As more fully explained in the attached draft Federal Register notice, the fiscal year 1999 appropriations legislation for the Departments of Veterans Affairs and Housing and Urban Development, and several independent agencies, including the Consumer Product Safety Commission, requires the Commission, by January 19, 1999, to propose to revoke the 1996 and later amendments to the standards for the flammability of children's sleepwear. These amendments concern the exemption of infant and tight-fitting sleepwear from the requirements of the standards. The Commission has no discretion in this matter and so the ballot vote below is limited to soliciting any drafting changes in the Federal Register notice itself.

I. APPROVE THE ATTACHED FEDERAL REGISTER NOTICE AS DRAFTED.

_____ (Signature) _____ (Date)

II. APPROVE THE ATTACHED FEDERAL REGISTER NOTICE WITH SPECIFIED CHANGES.

_____

_____

_____ (Signature) _____ (Date)

NOTE: This document has not been reviewed or accepted by the Commission.
Initial rh Date 1/6/99

CPSA 6 (b)(1) Cleared
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[Billing Code 6335-01]

Draft 1/5/99

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

PROPOSED REVOCATION OF AMENDMENTS; STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X; STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed Revocation of Amendments.

SUMMARY: As directed by the fiscal year 1999 appropriations legislation for the Departments of Veterans Affairs and Housing and Urban Development, and several independent agencies, including the Consumer Product Safety Commission, the Commission proposes to revoke certain amendments to the standards for the flammability of children's sleepwear, sizes 0 through 6X and sizes 7 through 14.

DATE: Written comments concerning this proposed revocation are due not later than **[insert date 60 days after publication]**.

ADDRESS: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504-0800 or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Copies should be submitted in

five copies and captioned "Sleepwear Revocation." Comments may also be filed by telefacsimile to (301) 504-0127 or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Margaret L. Neily, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0508, extension 1293.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Commission enforces two flammability standards for children's sleepwear. The flammability standard for children's sleepwear in sizes 0 through 6X is codified at 16 CFR Part 1615. The flammability standard for children's sleepwear in sizes 7 through 14 is codified at 16 CFR Part 1616.

On September 9, 1996, the Commission issued a final rule amending the flammability standards for children's sleepwear to exclude from the definition of "children's sleepwear," codified at 16 CFR 1615.1(a) and 1616.2(a), (1) garments sized for infants nine months of age or younger and (2) tight-fitting garments for children older than nine months. 61 FR 47634. In addition, on January __, 1999, the Commission issued technical changes to the September 9, 1996 amendments. 64 FR ____. At the same time, the Commission amended the policy statements at 16 CFR 1615.64(d) and 1616.65(d) so that infant garments and tight-fitting

garments can be marketed and promoted with other sleepwear. 64 FR ____.

B. Legislation

The bill providing fiscal year 1999 appropriations for the Commission and other agencies was enacted on October 21, 1998. Public Law 105-276. Section 429 of that law requires the Commission to propose, for comment, to revoke the 1996 amendments to the sleepwear standards, along with any subsequent amendments, not later than 90 days after October 21, 1998. The law also requires the General Accounting Office ("GAO") to review burn incident data from the ignition of children's sleepwear from small open-flame sources for the period July 1, 1997 through January 1, 1999. The review must be completed by April 1, 1999 and be submitted to the Congress and the Commission.

Based on the GAO findings and other available information, the Commission is required to issue a final rule by July 1, 1999. The final rule must (1) revoke, (2) maintain, or (3) modify the 1996 and other later amendments of the flammability standards for children's sleepwear. The rulemaking conducted with respect to this matter is not subject to (1) the Consumer Product Safety Act, 15 U.S.C. 2051 et seq., (2) the Flammable Fabrics Act, 15 U.S.C 1191 et seq., (3) the Regulatory Flexibility Act, 5 U.S.C 601 et seq., (4) the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., (5) the Small Business Regulatory

Enforcement Fairness Act of 1996, Public Law 104-121, or (6) any other statute or Executive order.

Based on the foregoing, the Commission proposes to revoke the September 9, 1996 amendments, and subsequent amendments, including the technical amendments issued January __, 1999, and the amendment to the policy statements issued January __, 1999. The following amendments would reinstate the substance of flammability standards for children's sleepwear as they existed before the 1996 and later amendments.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer Protection, Flammable materials, Infants and children, Labeling, Records, Sleepwear, Textiles, Warranties.

Conclusion

Pursuant to Public Law 105-276, the Commission proposes to amend 16 CFR parts 1615 and 1616 as follows:

PART 1615 -- STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority citation for part 1615 continues to read as follows:

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

2. Paragraph 1615.1 is amended by deleting paragraph (c).

3. Paragraphs 1615.1(d) through (n) are redesignated paragraphs 1615.1(c) through (m), respectively.

4. Section 1615.1 is amended by deleting paragraph (o) and revising paragraph (a), to read as follows:

§ 1615.1 Definitions.

* * * * *

(a) *Children's Sleepwear* means 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 related to sleeping. Diapers and underwear are excluded

from this definition.

* * * * *

5. Section 1615.64 is amended by revising paragraph (d) to read as follows:

§ 1615.64 Policy to clarify scope of the standard.

* * * * *

(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. Additionally, retailers are advised:

* * * * *

PART 1616--STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority for Part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569-570; 15 U.S.C. 1193.

2. Section 1616.2 is amended by deleting paragraph (m) and revising paragraph (a) to read as follows:

§ 1616.2 Definitions.

* * * * *

(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. Underwear and diapers are excluded from this definition.

* * * * *

3. Section 1616.65 is amended by revising paragraph (d) to read as follows:

§ 1616.65 Policy scope of the standard.

* * * * *

(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. Additionally, retailers are advised:

* * * * *

Dated: _____

_____
Sadye E. Dunn, Secretary
Consumer Product Safety Commission