



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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Re: Sleepwear Policy and Loungewear Position

Dear Manufacturer/Distributor/Importer/Retailer:

The U.S. Consumer Product Safety Commission (CPSC), an agency of the United States Government, enforces the Flammable Fabrics Act (FFA) and is responsible for protecting the public from the hazards of dangerously flammable items of wearing apparel, fabric, and interior furnishings. Two of the standards that address the flammability of apparel under the FFA are the Standards for the Flammability of Children's Sleepwear, 16 C.F.R. Parts 1615 and 1616. This letter is being issued to restate the agency's sleepwear policy and position on children's loungewear and to notify the industry of the new obligations under the Consumer Product Safety Improvement Act of 2008 (CPSIA).

The children's sleepwear standards were developed to prevent children's sleepwear from igniting due to exposure to ignition sources such as matches/lighters, candles, ranges, stoves, space heaters, and fireplaces. Most of the ignition incidents occurred while children were awake and wearing sleepwear or sleep-related items during the evening before bedtime or in the morning around breakfast time.

The Commission's regulations define the term "children's sleepwear" to include any product of wearing apparel (in sizes 0 – 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; (2) "infant garments," sized for a child nine months of age or younger; and (3) "tight-fitting garments" that meet specific maximum dimensions.¹

The CPSC staff considers several factors when determining whether a garment is sleepwear and does not only consider the manufacturer's marketing terms or designations. Factors include: (1) the nature of the garment and its suitability for sleeping or activities related to sleeping; (2) the type of fabric, decorative features, and print pattern; (3) how the garment is promoted and distributed; and (4) the likelihood that the garment will be purchased for and used by children primarily for sleeping or activities related to sleeping.

The individual products in the category of items intended to be worn primarily for sleeping or activities related to sleeping changes over time. In the 1990s, a category of products called "loungewear"

¹ Although the exceptions are exempt from the children's sleepwear standards, they must still meet the flammability requirements for clothing textiles, 16 C.F.R. Part 1610 (or vinyl plastic film 16 C.F.R. Part 1611).

was introduced into the children's market. **The CPSC staff views children's "loungewear" (or other similar garments marketed as comfort wear) as garments worn primarily for sleep-related activities. Therefore, "loungewear" must comply with the children's sleepwear standards.**

The CPSC staff bases its position that "loungewear" must comply with the children's sleepwear standards on the background development and text of the children's sleepwear standards and the development of the standards, the literature on the definition and trends regarding loungewear, a review of a number of catalogs to see what types of garments are being marketed as "loungewear," where in stores and catalogs "loungewear" is generally marketed, and discussions with manufacturers and importers of children's sleepwear and underwear. A letter of guidance and interpretation was sent to the industry in December 1996 and has been posted on our website since that date. The letter was re-issued in 2008. **It is a violation of federal law to manufacture for sale, sell, offer for sale, import, and/or distribute garments that are subject to and fail to meet the children's sleepwear standards. The staff intends to take enforcement action against firms that market loungewear items that do not comply with the children's sleepwear standards (16 C.F.R. Parts 1615 and 1616).**

The CPSIA amended several existing regulations and created a number of new requirements for importers and manufacturers. Many of the new requirements are specifically for children's products, defined as products designed and intended primarily for children 12 years of age or younger. Under the CPSIA, in addition to the mandatory testing of children's sleepwear (and clothing) to the flammability standards, the manufacturer must issue a children's product certificate (CPC) stating compliance with the applicable requirements, based on testing by a CPSC accepted and accredited third party conformity assessment body. The CPC must accompany the product when it enters commerce and be furnished to the retailer, whether sold on-line or in a traditional brick and mortar store, or distributor, 15 U.S.C. § 2063(a)(2) and 16 C.F.R. Part 1110. The CPSIA also requires that all children's products, including children's sleepwear, bear tracking labels, meet requirements for lead content and surface coatings (e.g., painted snaps or zipper pulls), and meet requirements for phthalates (sleepwear is considered to be a childcare article).

The manufacture for sale, the sale, offering for sale, importation, and/or distribution of garments in the United States that fail to comply with applicable flammability standards is a Prohibited Transaction under section 3 of the FFA, 15 U.S.C. § 1192, and a Prohibited Act under section 19(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2068(a)(1). In addition, any person who fails to comply with the requirements of section 14 of the CPSA (e.g., tracking label and certification requirements) is committing a Prohibited Act under section 19(a)(1) of the CPSA. Pursuant to sections 5(e) and 7 of the FFA, 15 U.S.C. §§ 1194(e) and 1196, and sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070, as a result of these violations, you could be subject to fines of up to \$100,000 for each violation not to exceed a maximum of \$15 million for any related series of violations, and imprisonment for not more than five (5) years, or both. The maximum penalty increases to \$15.15 million after January 1, 2012. Your firm could also be subject to injunctive action or the products could be subject to seizure to prevent further distribution of violative products.

Please contact Allyson Tenney at 301-504-7567 or atenney@cpsc.gov if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "AK", with a long horizontal line extending to the right.

Andrew Kameron