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

MEMORANDUM

DATE: DEC 7 1998

TO: Margaret L. Neily, Directorate for Engineering Sciences,
Project Manager, Children's Sleepwear

Through: Alan Schoem, Assistant Executive Director *AKS*
Office of Compliance

Terri Rogers, Acting Associate Director *Rogers*
Recalls and Compliance Division

FROM: Marilyn Borsari, Compliance Officer *MB*
Chemicals, Clothing and Household Products Team

SUBJECT: Clarification of sleeve taper/short sleeve garments and
enforcement policy regarding sample size and tolerance

During the comment period the Compliance staff received several inquiries and comments from the industry regarding the design and style of short sleeves and their acceptability under the definition of tight-fitting garments. Specifically, inquiries focused on the location where measurements should be taken and CPSC's enforcement policy in terms of sample size and tolerance. The following provides the Office of Compliance's responses to these inquiries and comments.

1. Upper Arm Measurement and Tapering of Sleeve

Where should the upper arm measurement be taken if the sleeve does not extend to the point where the proposed technical changes indicates that the upper arm measurement is to be taken?

With the proposed technical changes (May 21, 1998), the point at which the upper arm would be measured would be moved from the armpit to a location that more closely approximates the true upper arm of the garment. The proposed location (approximately one quarter length down the sleeve) is a point between the armhole and the elbow. The actual maximum upper arm circumference dimensions would remain unchanged.

The original amendment defined a tight-fitting garment as a garment that "Has sleeves which do not exceed the maximum dimension for the upper arm at any point between the upper arm and the wrist, and which diminish in width gradually from the upper arm to the wrist;". In the original amendment, the upper arm was defined as "...a line perpendicular to the sleeve

extending from the outer edge of the sleeve to the arm pit." However, with the recent proposed technical changes the location for the upper arm measurement has moved downward from the shoulder towards the elbow from 2 1/8" (age 9-12 months) to 5 5/8" (size 14). These distances allow for short or cap sleeves on garments which could realistically end at a point above where the upper arm measurement is to be taken.

The intent of the sleeve tapering the full length from the upper arm to the wrist could now be confused. Since the proposed technical amendment changes the location of the upper arm, the language describing the sleeve tapering should be changed from "the sleeves must taper from upper arm to wrist" to "...from point "G" in diagram 1 of § 1615.1(o) and § 1616.2(m) to wrist". This clarification reflects the original intent of the amendment.

If the sleeve is a short sleeve which ends before the location of the upper arm measurement, it should still taper along the same lines as a long sleeve.

2. Enforcement Guidance

How will CPSC enforce the amendments in terms of sample size and tolerances?

Measurements defined in the tight-fitting amendment to the sleepwear standard refer to maximum dimensions at specified locations on garments. There are no positive tolerances specified in the proposed amendments. The Staff will consider enforcement of these measurements on a case by case basis and staff will exercise enforcement discretion where appropriate. The staff will consider the overall compliance of the garments and may base enforcement actions on more than one garment and/or dimensions exceeding the maximum measurement including the frequency and size of the dimensional difference(s).

Tab J

[Billing Code 6335-01]

DRAFT 12/29/98

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

FINAL TECHNICAL CHANGES; 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: Final Technical Changes.

SUMMARY: The Commission is amending the flammability standards for children's sleepwear in sizes 0 through 6X and 7 through 14 to make several technical changes that would correct the definition of "tight-fitting garment." The changes will clarify the points where garment measurements should be made.

DATE: The amendments will become effective on [insert date 30 days after publication].

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission administers two rules issued under section 4 of the Flammable Fabrics Act ("FFA"), 15 U.S.C. 1193, that prescribe flammability tests for children's sleepwear garments and fabrics intended for use in children's sleepwear. The first, issued in 1971 by the Secretary of Commerce, covers children's

sleepwear in sizes 0 through 6X. 16 CFR Part 1615. After responsibility for administration and enforcement of the FFA was transferred to the Consumer Product Safety Commission by provisions of section 30(b) of the Consumer Product Safety Act, 15 U.S.C. 2079(b), the Commission issued a flammability standard for children's sleepwear in sizes 7 through 14. The tests in that standard are substantially the same as those in the standard for children's sleepwear in sizes 0 through 6X. The flammability standard for children's sleepwear in sizes 7 through 14 is codified at 16 CFR Part 1616.

Both standards require that test specimens must self-extinguish when exposed to a small open-flame ignition source. Self-extinguishing fabrics and garments are those that stop burning when removed from an ignition source. Both standards require manufacturers of sleepwear garments to perform prototype tests on specimens of fabric, seams, and trim with acceptable results before beginning production of sleepwear garments. Both standards also require manufacturers of sleepwear fabrics and garments to group fabrics and garments into production units and to randomly sample and test products from each production unit. Neither standard requires that specific fabrics or flame-retardant treatments be used in the manufacture of children's sleepwear.

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" (1)

garments sized for infants nine months of age or younger and (2) tight-fitting sleepwear garments for children older than nine months. 61 FR 47634.

The Commission found that such tight-fitting sleepwear did not present an unreasonable risk of injury. Rather, the Commission's information showed that sleepwear incidents occurred with loose-fitting garments such as T-shirts. A review of literature for that amendment showed that fit can influence garment flammability. Garments that fit close to the body are less likely to catch fire in the first place and less likely to allow heat to develop between the fabric and the body, thus decreasing the likelihood of thermal injury. Id. The Commission concluded that garments fitting closely and that touch the body at key points should be exempt from the sleepwear standards as they do not present the same risk as loose-fitting garments. These amendments became effective on January 1, 1997. However, the Commission also issued a stay of enforcement for close-fitting garments which are labeled and promoted as underwear. That stay expired on June 1, 1998. 62 FR 60163.

The Commission defined tight-fitting garments as those that did not exceed certain measurements in the chest, waist, seat, upper arm, thigh, wrist, and ankle for each size ranging from over 9 months through children's size 14. In the amendments, the Commission specified maximum allowable measurements for each of these locations for each size garment. 61 FR 47644-47.

B. Statutory Provisions and the Proposed Rule

The FFA provides that the Commission can issue or amend a flammability standard when the standard may be needed to protect the public from an unreasonable risk of the occurrence of fire leading to death, injury or significant property damage. 15 U.S.C. 1193(a).

Section 4(g) of the FFA states that a proceeding "for the promulgation of a regulation under this section" shall be initiated by publication of an advance notice of proposed rulemaking ("ANPR"). 15 U.S.C. 1193(g). Due to the technical nature and narrow scope of this proceeding, the Commission concluded that an ANPR would be of no value to the public or the Commission.

Thus, the Commission began this proceeding on May 21, 1998, with a notice of proposed rulemaking ("NPR"). 63 FR 27877 (corrected on June 11, 1998, 63 FR 31950). That notice explained that once manufacturers began to design tight-fitting sleepwear that would meet the amendments, they identified some problems with design and construction of these garments. After meeting with industry members and considering various suggestions, the staff concluded that some adjustments needed to be made to the locations for measurements specified in the amendments for some points on the garments. The staff believed that these adjustments would be needed for the point of measurement of the upper arm, the seat, and the thigh. The staff also examined possible changes to the sweep (bottom of the top of a two-piece

garment).

In order to better assess this need and to determine if the possible changes would result in practical, wearable garments, the staff conducted structured observations of some garments. As explained in the NPR, these observations demonstrated that garments made according to measurement locations contemplated by the staff were wearable, comfortable and suitable for sleeping and play. They also demonstrated that making changes to the sweep of the top of a two-piece garment by allowing an hourglass silhouette would allow the sweep to flare away from the body, exposing the bottom edge when a child raised her arms. Thus, the Commission did not propose making any changes to the sweep of the garments.

C. Comments on the NPR

In response to the proposal of May 21, 1998, six written comments were received. In addition, nine related comments and several oral inquiries were received. The significant issues addressed by these comments are discussed below.

1. Issuance of the amendments.

American Marketing Enterprises, Inc., an importer of childrenswear, commented that it agrees to a certain extent with the proposed amendments. Similarly, the National Cotton Council, representing cotton producers, believes that the proposed technical changes are an improvement.

The Safe Children's Sleepwear Coalition (SCSC), a group formed in response to the Commission's decision in 1996 to exempt

certain tight-fitting garments and garments intended for infants from the sleepwear flammability standards, commented that it opposes the 1996 amendments. SCSC stated that its members "do not believe any technical changes to the amendments can make the new requirements for children's sleepwear effective" and thus "it would be counter-productive and misleading" to comment on specific measurement protocols. Rather, SCSC would like the Commission to rescind the 1996 amendments. The Commission also received nine other letters from hospitals, public interest groups, and fire or emergency groups asking that the Commission reconsider the 1996 exemption for tight-fitting and infant garments.

Garments on children observed by the staff while it was developing the proposed technical amendments demonstrated that comfortable, practical, snug-fitting sleepwear could be produced with these slight changes in the standards. The purpose of the May 21, 1998 proposed rule was to propose necessary technical changes that would clarify the points where garment measurements should be made.

The proposed rule has a very narrow scope. The comments of the SCSC and the others mentioned above are responding to the broader 1996 rulemaking and are beyond the scope of the May 21, 1998 notice. However, as required by the recent appropriations bill enacted by Congress, Pub. L. 105-276, the Commission intends to propose for comment a revocation of the September 9, 1996 amendments to the standards for the flammability of children's

sleepwear and any subsequent amendments.

2. Consumer education campaign.

Letters received from hospitals, public interest and fire and emergency groups were critical of the consumer education campaign promised by the American Apparel Manufacturers Association at the time the exemption for tight-fitting sleepwear was published. These letters said that the "apparel industry has failed to agree on labeling or tight-fitting requirements or design and implement the promised educational campaign ... [and that] it is virtually impossible for consumers to judge the relative safety of such sleepwear garments in the marketplace."

These comments are beyond the scope of the proposed technical amendments, but the issue is an important one. AAMA has declined to initiate a comprehensive consumer information campaign as originally planned with a press conference. AAMA indicated that it is prepared to do so when the sleepwear amendments are final and it is satisfied that saleable, wearable, and comfortable snug-fitting garments can be produced.

Nevertheless, AAMA is actively distributing the art work for the hang tags and reproducing copies of the brochure developed to inform consumers about safety and the new snug-fitting sleepwear at the point of sale. Early in 1997, AAMA distributed the art work and brochure information to 40 organizations (AAMA members, non-members, and other interested parties.) Since March 1998, 13 companies have requested the art work for the hang tags. Approximately 3,500 brochures have been distributed by a major

retailer and two major AAMA member companies. On December 14, 1998 AAMA issued a holiday press release giving children's sleepwear safety tips about snug-fitting and FR sleepwear.

There is still no formal industry coordination of consumer information efforts at this time. However, at trade shows, meetings, and in other communications with industry members, the CPSC staff has encouraged the use of a consistent message on hang tags to facilitate consumer understanding. All known manufacturers of snug-fitting sleepwear are marketing their garments with the basic information from the AAMA hang tag. Some flame-resistant garments also carry a version of this information. The label states "Fabric and fit are important safety considerations for children's sleepwear. Sleepwear should be flame resistant or snug-fitting to meet U.S. Consumer Product Safety Commission sleepwear requirements." Labels further state that the garment attached is either flame-resistant or should be worn snug-fitting. Some retailers have expanded their use of this labeling to store displays and have informed their salespeople and customers through training courses and in-house publications.

Also, in November 1998 the Commission issued a video news release (VNR) warning about the use of loose-fitting garments, especially T-shirts, for sleepwear. The VNR also described the safer alternatives available under the existing sleepwear regulations -- flame-resistant and snug-fitting sleepwear -- and the hang tags that commonly identify them in retail stores.

3. Measurement standard

A major retailer commented that "the measurements proposed by the CPSC for sizes 7-14 are based on one university study, rather than generally accepted industry standards. Standards CS 53-48 (Girls) and CS 51-50 (Boys) should be the applicable measurement standards for children's sizes 7-14."

The standards recommended in the comment were incorrectly titled. The correct titles are CS 153-48 (Girls) and CS 155-50 (Boys). However, these are not the latest versions of the former National Bureau of Standards (NBS) sizing standards (last updated in 1970 and 1972 before the NBS was renamed the National Institute of Standards and Technology (NIST)). The most recent versions are NBS Voluntary Product Standards PS 54-72 (Girls) and PS 36-70 (Boys).

The snug-fitting dimensions for sizes 7-14 in the children's sleepwear standards are based on the latest NBS standards and data from the University of Michigan's study "Anthropometry of Infants, Children, and Youths to Age 18 for Product Safety Design." The majority of the CPSC snug-fitting dimensions match those of the NBS standards.

During an April 25, 1995 meeting with CPSC staff, sleepwear industry representatives indicated that they do not adhere to any consistent sizing standards. Therefore, CPSC staff developed the snug-fitting dimensions from the most current and reliable data available that pertain to typical body dimensions of children.

4. Upper arm dimensions.

Two commenters requested an increase in the upper arm dimensions of the snug-fitting requirements. Gap, Inc., a garment producer, recommends an increase of 1/4 inch in the upper arm dimensions of baby garments from size 9 months to 36 months (or size 3T) to improve comfort and fit. AAMA recommends all upper arm measurements be increased 2 inches. AAMA disagrees with Commission staff conclusions that saleable, wearable, and comfortable garments can be produced with current upper arm dimensions.

The Commission is not persuaded that an increase in upper arm dimensions is needed to produce comfortable, functional garments. Previous presentations from AAMA in 1997, requesting an additional 2 inches in the upper arm dimension, were based on garments made with popular interlock fabrics that only had 55% stretch. No further technical support was provided with this most recent recommendation, and no substantiation was provided for the claim that such an addition to the upper arm dimension would not affect safety.

Fabrics with inadequate stretch are not appropriate for use in this style of garment where the fabric must be worn in the stretched condition. The best fabrics available for the 1997 staff observations worked well in this snug-fitting style with 65% - 85% stretch. Some of the newer fabrics being introduced to the snug-fitting sleepwear market since July 1998 stretch over

100% of their original dimension. This is more than enough to ensure comfort and accommodate a child's arm motion. Even the additional 1/4 inch increase in the upper arm dimension proposed by Gap appears unnecessary under these circumstances.

While AAMA believes that saleable garments cannot be produced with current upper arm dimensions, manufacturers estimate that snug-fitting cotton sleepwear accounts for 20 - 25% of total children's sleepwear sales. By these figures, there is a significant market for these garments. Manufacturers contacted by the staff were optimistic about this market as well.

5. Measurement method for upper arm.

Several commenters suggested that the current method for measuring the upper arm (three steps) is complicated and should be reduced to two. J.C. Penney commented that the "upper arm measurement is too complicated for factory inspection and will lead to controversy between manufacturers, retailers and CPSC enforcement staff." J.C. Penney, along with AAMA, suggests measuring down the under arm seam 2 inches for infants and toddler sizes (12 mos. to 4T) and 3 inches down for sizes 4 to 14 before measuring the upper arm. Gap also suggests a measurement along the underarm seam as easier to follow and less prone to error.

The Commission recognizes that the measurement method for the upper arm is more complicated than for other typical garment dimensions measured by the industry. This is because the upper arm of the body is defined as a point between the shoulder and

the elbow. Sleeves do not have elbows; and since some sleeve designs do not have a defined shoulder, the shoulder was defined by a logical extension of the side seam. The location of the upper arm can then be measured down the sleeve according to average body dimensions for each size. The CPSC staff observations described in the April 1998 briefing package showed this method to produce a fairly accurate match with the upper arm of the children wearing the garments.

AAMA and Gap suggested an easier way to measure the upper arm -- a specified distance along the underarm sleeve seam. CPSC staff evaluated a large sample of snug-fitting garment styles to determine the impact of the simplified measurement method. Because the style of the sleeves varied, so did the location for the upper arm to be measured by the suggested method. In some cases, the upper arm would be measured further down the sleeve than where the child's upper arm is, allowing the sleeve to be larger or fuller for more of the sleeve than currently specified. In other cases, the measurement would be closer to the armhole than measurement by the current proposed amendment. This would create even more restrictions in the upper sleeve design, already the area offering the greatest design challenge to manufacturers.

Even with the dimensional restrictions of the snug-fitting requirements, garment styles vary considerably. Manufacturers could, for various sizes of a particular style, determine the distance(s) down the underarm seam(s) that coincides with the point(s) where the measurement should be made by the standard

method. This could provide the simplicity of the industry measurement proposals and the accuracy and maximum allowance for the upper arm dimension provided by the standard method. Because of style variations among garments and manufacturers, CPSC would continue to use the standard method for measuring the upper arm.

6. Need for diaper/training pant ease.

J.C. Penney notes that the standard garment dimensions do not allow for diaper or training pant ease (an increase in the width of the garment in the seat area). An allowable increase in the rise (the length of the garment in the seat area) produces ill-fitting garments.

For garments made of woven fabrics or knits with little or no stretch, extra fabric or ease in the seat is necessary for a practical, wearable garment. However, with the use of fabrics that stretch adequately for this style of garment (85 to 100% stretch), diaper ease is unnecessary.

7. Thigh measurement.

AAMA recommended that the thigh measurement be taken 1 1/2 inches below the crotch seam for all sizes instead of 1 inch. Although no specific justification was given for the recommendation in this comment, AAMA designers provided rationale in an August 14, 1997, phone conference. They indicated that because of the changing dimension of the pant in this area, the lower measuring point would help with getting the correct stride in the pant.

The Commission is not persuaded to change this measurement

point further. In developing the proposed technical amendments, the staff received input from a wide variety of industry contacts, including childrenswear and actionwear design instructors. They indicated that it is typical industry practice to measure the thigh 1 inch down on the inseam. In August 1997, when AAMA members originally made this recommendation, they were still trying to design snug-fitting garments with interlock knits with inadequate stretch for this garment design. CPSC staff observations in 1998 showed that snug-fitting sleepwear on children could be made well following the industry practice of measuring 1 inch down the inseam. Again, the fabrics used in these successful observation garments had considerable stretch (65-85%).

8. Hourglass silhouette.

Two commenters requested that the bottom sweep (hem of the top) of a two piece garment be increased to the standard seat dimension rather than the waist dimension. Examples given by the J.C. Penney Company showed that the sweep of various sizes of boys and girls garments would have to stretch 14 to 28% of their original dimension to fit the hip. They noted other problems from their perspective: (1) a questionable pajama silhouette, (2) difficulty pulling the top over the head and shoulders, (3) the sweep would ride up to the waist with body movement, and (4) the fabric would be stretched loose (wrinkled) around the chest and waist.

Gap expressed similar concerns about the exaggerated

undersizing of the sweep to the waist dimension, especially when factories are already manufacturing garments toward a negative "tolerance". They observed bunching as the garment rides up towards the waist and are concerned that this is a safety hazard. They propose that the sweep be less than or equal to the standard seat dimension for girls sizes 7 to 14 and toddler sizes 2XL and 3XL (similar to 2T and 3T in the standards) for reasons of comfort and fit.

The snug-fitting garment silhouette is very different than the silhouette consumers have come to expect for pajamas. One reason the Commission wanted the industry to move forward with the consumer education campaign was to help consumers make the necessary adjustment in their expectations. These snug-fitting garments should be viewed realistically and appreciated for the safety of their design.

CPSC staff observed a variety of snug-fitting garments made of different fabrics and by different manufacturers during the development of the proposed technical amendments. None of the child models or parents, in the case of the infant, had difficulty putting on or removing the garments made to the proposed technical amendments.

The sweep is one of several dimensions for which commenters requested increased dimensions to improve fit and comfort. The sweep sized to the standard waist dimension has no problem stretching to fit the larger hip, if made of fabrics that stretch adequately. Even if the sweep is undersized one inch in

production (Gap's concern), the J.C. Penney examples discussed above must still only stretch approximately 14-28% of their original dimension. This is a small portion of the available stretch of the fabric.

During the proposal's development, several manufacturers thought the hourglass silhouette option might be helpful for larger girls' sizes where the seat is considerably larger than the waist, but not helpful for other sizes. The staff included the hourglass option in the observations because it had the potential to reduce fabric bunching at the waist and/or produce a more functional garment.

For the CPSC staff observations, a girls' size 12 garment was constructed with a conservative hourglass silhouette; the sweep was equal to the smaller chest dimension required by the standard rather than the larger seat dimension. The top of the garment fit nicely while the model stood still; however, when she raised her arms or moved during the observation, the sweep flared away from the body significantly, exposing the bottom edge of the garment.

All of the garments observed on children by the staff showed some wrinkling or bunching of fabric at various points, most commonly around the waist, knees and elbows. None of the pajama tops pulled up to the waist as anticipated. The concept of snug-fitting was readily defeated with the flaring of the sweep of the hourglass silhouette in the 2-piece garment. For this reason, the Commission declines to increase the size of the bottom sweep.

9. Sewing tolerances.

Three commenters supported the addition of sewing tolerances to the standards. American Marketing Enterprises, Inc., commented that tolerances are currently used during sewing and manufacturing of knit garments. "It is impossible to not have 'plus or minus' tolerances in a size specification [In] CPSC's policy ... only minus tolerances are allowed." Manufacturers are forced to undercut these already snug fitting garments which results "in substandard garments." Not allowing for both a positive and negative tolerance is "asking the trade to operate outside of the normal manufacturing procedures."

AAMA commented that its manufacturers have to undercut garments to comply with the published measurements. "This yields a garment that is too tight and will force the consumer to buy a larger size creating new safety hazards from garments that are too long." Also, the National Cotton Council "strongly believes that there is a need for a sewing tolerance."

Plus or minus tolerances are normally used in the production of all garments and allow for permissible variations to the pattern specifications that can occur during cutting or sewing of the garment. However, a production tolerance that increases the garment dimensions specified in the sleepwear standards would result in a less than snug-fitting sleepwear garment. The snug fit is important because the ease of ignition increases when the wearer's clothing stands away from the body. Without a snug fit, if ignition occurs, the oxygen under the garment and the absence

of a heat sink increase the opportunity for sustained burning.

The garment dimensions specified in the standard are maximum dimensions for the seven body locations indicated. Manufacturers are allowed to sell snug-fitting sleepwear garments so long as the garment dimensions for a specific size are not exceeded. Knit fabrics are available with a sufficient degree of stretch that even if the manufacturer undercuts the fabric somewhat, the garment will still fit the intended size child.

Snug-fitting sleepwear garments acceptable to consumers have been available for purchase since the fall of 1997. Manufacturers are able to produce acceptable sleepwear garments through the selective use of specific knit fabrics that allow for necessary stretch and recovery. These garments hug the body. Through careful planning before and during the manufacturing process, manufacturers can build in acceptable tolerances to the pattern so that the finished garments will meet the required specification after assembly.

10. Shrinkage tolerances.

The National Cotton Council "strongly believes that there is a need for a ... 5% shrinkage tolerance."

The amount of shrinkage that occurs in a garment varies and is dependent on the fiber type (or types in the case of blends), quality of fiber, fabric construction and weight, method of manufacture, type of finishing process, and subsequent laundering conditions. The amendments to the children's sleepwear standards do not specify a particular fiber or fabric; therefore,

manufacturers may choose among a variety of fiber contents, fabric constructions, etc., for snug-fitting garments. A 5% tolerance for shrinkage may not be needed for all fabrics. Those garments with less than 5% shrinkage would be less than snug-fitting because they would exceed the maximum dimensions after laundering. In addition, with laundering required before measurements could be taken, it would be burdensome and impractical for the Commission's staff and others to determine compliance at the retail or manufacturing levels.

Difficulties in controlling shrinkage were previously cited by industry members as reasons for allowing positive manufacturing tolerances. Manufacturers of successful products this fall are using several methods to control the shrinkage of their snug-fitting garments: fabric compacting, garment washing, and fabrics made of more stable cotton/polyester blends. For these reasons, the Commission declines to add tolerances for shrinkage.

11. Fit and consumer preference.

The National Cotton Council commented that the proposed amendments "do not go far enough in correcting the garment fit problems and could be further improved without affecting the safety provided by the standard." SCSC is concerned that any changes may not help the situation because it believes parents will purchase larger sizes and defeat the tight fit intended by the rule.

Neither commenter provided data or other evidence to support

its position. CPSC staff observations from fittings with real garments and children were reported in April 1998. These showed that comfortable, functional garments that fit the size child intended can and are being produced with the measurement clarifications proposed, and that are being made final in this document.

12. Chest measurement.

Gap proposes that the chest measurement be taken 1 inch below the armpit to armpit line. "Because the armpit is a sewing point, the garment is prone to stretching in this area, compromising the accuracy of the measurement. The one inch modification will eliminate this inaccuracy."

Although other industry members have previously mentioned that this measurement could be shifted to 1 inch below the armpit, none indicated that it was troublesome to have the chest measured at the armpit. For that reason, it was not included in the staff observations of snug-fitting garments for developing the proposed technical amendments. During the CPSC fittings reported in April 1998, the staff observed no fit or function problems with garments made with chest measurements determined at the armpit.

13. Enforcement sample size and tolerances.

Gap commented that clarification of CPSC's enforcement policy is necessary to further set quality assurance guidelines. This is important, Gap believes, because of the high variability inherent in manufacturing knitted products. Specifically, Gap

requests the sample size and tolerance to be used by the Commission in enforcement testing.

Measurements defined in the tight-fitting amendments to the sleepwear standards refer to maximum dimensions at specified locations on garments. There are no positive tolerances specified in the proposed amendments. The staff will consider enforcement of these measurements on a case-by-case basis, and the staff will exercise enforcement discretion where appropriate. The staff will consider the overall compliance of the garments and may base enforcement actions on more than one garment and/or dimension exceeding the maximum measurement, including the frequency and size of the dimensional difference(s).

14. Sleeve taper clarification.

During the comment period for the NPR, the Compliance staff received several inquiries and comments from the industry regarding the design and style of short sleeves and their acceptability under the definition of tight-fitting garments. Several industry representatives requested clarification about the required tapering of a sleeve that is shorter than where the upper arm is to be measured.

With the proposed technical changes (May 21, 1998), the upper arm measurement point is moved from the armpit to a location that more closely approximates the true upper arm of a child wearing the garment. The proposed location (approximately one quarter length down the sleeve) is the midpoint between the shoulder and the elbow. The maximum upper arm dimensions remain

unchanged.

The original amendments of September 1996 (§1615.1(o)(3) and §1616.2(m)(3)) define sleeves of a tight-fitting garment "which diminish in width gradually from the upper arm to the wrist". The upper arm of the garment was measured from the armpit. However, in the proposed technical amendments, the upper arm measurement is made further down the sleeve. The change, if interpreted literally, allows for short or cap sleeves on garments that could realistically end at a point above where the upper arm measurement is to be made.

In order to avoid flaring sleeves and maintain the desired safety of the tapering sleeve silhouette, the language describing the sleeve is changed to "which diminish in width gradually from the top of the shoulder (point G in diagram 1) [of sections 1615.1(o) and 1616.2(m)] to the wrist." If a short sleeve ends before the location of the upper arm measurement, the sleeve should still taper (rather than flare) toward the wrist along the same lines as a long sleeve. This clarification reflects the original intent of the amendment.

D. The Technical Changes

This final rule makes the technical changes that were proposed in the NPR. These changes alter some of the locations where measurements should be taken to determine if a sleepwear garment is tight-fitting.

Measurement of Upper Arm. As explained in the NPR, this change will allow manufacturers to measure sleepwear garments at

a location that better approximates the true upper arm of the garment. In an effort to simplify the definition of "tight-fitting garment" the 1996 sleepwear amendments called for measuring from the arm pit; however, this does not allow sufficient room at the upper opening of the sleeve. Under this correction, the upper arm will be measured from the shoulder to approximately one quarter the length of the arm.

The maximum upper arm dimensions for each size specified in the 1996 sleepwear amendments remain unchanged. The amendment only changes the location where the upper arm is measured.

Measurement of Seat. The 1996 sleepwear amendments stated that the seat should be measured "at widest location between waist and crotch." 16 CFR 1615.1(o) and 1616.2(m) (see footnotes to chart). If read literally, this describes a location immediately above the bottom of the crotch and is essentially the same location as specified for the thigh measurement. This is not where the seat/hip measurement is normally made under general industry practices. A literal reading of this direction results in a more constricted pant in the seat and thigh area.

During the staff observations of children wearing snug-fitting garments, the staff found that specifying the point of measurement as 4 inches above the crotch consistently matched the seat/hip location on the wearer. Specifying a uniform measurement for all sizes also has the advantage of being easier to apply both for manufacturers and for Commission enforcement. Thus, the Commission is specifying that the seat should be

measured 4 inches above the crotch for all sizes.

Measurement of Thigh. The 1996 amendments stated that the thigh measurement should be taken "at a line perpendicular to the leg extending from the outer edge of the leg to the crotch." 16 CFR 1615.1(o) and 1616.2(m) (see footnotes to chart). This calls for measuring the thigh right at the bottom of the crotch. This is not really the location of the thigh and means measuring at a point where bulky seams join. Typical practice in the garment design and manufacturing industry is to measure the thigh at a point one inch down the inseam from its intersection with the crotch seam. This provides a more accurate measurement of the thigh without interference from the bulky intersection of the seams. Thus, the Commission is now specifying that the thigh be measured at this point.

Sleeve Taper. As discussed with the comments above, changing the point where the upper arm should be measured may cause confusion in interpreting the requirement that sleeves taper from the upper arm. 16 CFR 1615.1(o)(3); 16 CFR 1616.2(m)(3). Because these technical changes will revise the definition of "upper arm," the tapering requirement needs to be clarified. Thus, the Commission is revising the tapering requirement so that it states that the sleeves must "diminish in width gradually from the top of the shoulder (Point G in Diagram 1) to the wrist."

E. Effective Date

Section 4(b) of the FFA provides that an amendment of a

flammability standard shall become effective one year from the date it is promulgated, unless the Commission finds for good cause that an earlier or later effective date is in the public interest and publishes that finding. 15 U.S.C. 1193(b). Section 4(b) also requires that an amendment of a flammability standard shall exempt product "in inventory or with the trade" on the date the amendment becomes effective, unless the Commission limits or withdraws that exemption because those products are so highly flammable that they are dangerous for use by consumers.

As explained in the NPR, the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. This provides adequate notice to the public and allows for the prompt initiation of these minor adjustments.

The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA. The Commission stated in the NPR that manufacturers could use the proposed points of measurement in making garments, and the staff would not take any enforcement action.

E. Impact on Small Businesses

As noted in the NPR, when an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the

Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

In the NPR, the Commission certified that the proposed amendments to the flammability standards for children's sleepwear would not have a significant impact on a substantial number of small businesses or other small entities. The Commission is not aware of any basis for changing this conclusion.

E. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, when the Commission issued the NPR, it assessed the possible environmental effects associated with the proposed amendments to the children's sleepwear standards. The Commission determined that neither an environmental assessment nor an environmental impact statement was required. The Commission is not aware of any information leading to a contrary conclusion.

F. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. These amendments would slightly modify the flammability standards for children's sleepwear under the FFA. The FFA provides that, generally, when a flammability standard issued under the FFA is in effect, "no State or

political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire" as the FFA standard "unless the State or political subdivision standard or other regulation is identical" to the FFA standard. 15 U.S.C. 1203(a). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the PPPA standard and (2) does not unduly burden interstate commerce.

Thus, the amendments modify the points specified for measuring garments exempt from the sleepwear flammability standards that preempt non-identical state or local flammability standards or regulations which are designed to protect against the same risk of occurrence of fire as the FFA flammability standards for children's sleepwear.

In accordance with Executive Order 12612 of October 26, 1987, the Commission certifies that the amendments do not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Parts 1615 and 1616

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

Conclusion

For the reasons stated above and pursuant to the authority of section 4 of the Flammable Fabrics Act (15 U.S.C. 1193) the Commission amends 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. Section 1615.1 is amended by revising the introductory language and paragraph (o) to read as follows:

§ 1615.1 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:

(o) *Tight-fitting garment* means a garment which:

(1) In each of the sizes listed below does not exceed the maximum dimension specified below for the chest, waist, seat, upper arm, thigh, wrist, or ankle:

Size 9-12 mos	Chest	Waist	Seat	Upper Arm	Thigh	Wrist	Ankle
Maximum Dimension							
Centimeters	48.3	48.3	48.3	14.3	26.7	10.5	13
(inches)	(19)	(19)	(19)	(5%)	(10½)	(4%)	(5%)
Size 12-18 mos							
Maximum Dimension							
Centimeters	49.5	49.5	50.8	14.9	28.3	10.5	13.1
(inches)	(19½)	(19½)	(20)	(5%)	(11%)	(4%)	(5%)
Size 18-24 mos							
Maximum Dimension							
Centimeters	52.1	50.8	53.3	15.6	29.5	11	13.6
(inches)	(20½)	(20)	(21)	(6%)	(11%)	(4½)	(5%)
Size 2							
Maximum Dimension							
Centimeters	52.1	50.8	53.3	15.6	29.8	11.4	14
(inches)	(20½)	(20)	(21)	(6%)	(11½)	(4½)	(5½)
Size 3							
Maximum Dimension							
Centimeters	53.3	52.1	56	16.2	31.4	11.7	14.9
(inches)	(21)	(20½)	(22)	(6%)	(12%)	(4%)	(5%)

Size 4	Chest	Waist	Seat	Upper Arm	Thigh	Wrist	Ankle
Maximum Dimension							
Centimeters	56	53.3	58.4	16.8	33.0	12.1	15.9
(inches)	(22)	(21)	(23)	(6 $\frac{5}{8}$)	(13)	(4 $\frac{3}{4}$)	(6 $\frac{1}{4}$)
Size 5							
Maximum Dimension							
Centimeters	58.4	54.6	61.0	17.5	34.6	12.4	16.8
(inches)	(23)	(21 $\frac{1}{2}$)	(24)	(6 $\frac{7}{8}$)	(13 $\frac{3}{4}$)	(4 $\frac{7}{8}$)	(6 $\frac{5}{8}$)
Size 6							
Maximum Dimension							
Centimeters	61.0	55.9	63.5	18.1	36.2	12.7	17.8
(inches)	(24)	(22)	(25)	(7 $\frac{1}{8}$)	(14 $\frac{1}{2}$)	(5)	(7)
Size 6X							
Maximum Dimension							
Centimeters	62.9	57.2	65.4	18.7	37.8	13.0	18.7
(inches)	(24 $\frac{3}{4}$)	(22 $\frac{3}{4}$)	(25 $\frac{3}{4}$)	(7 $\frac{3}{8}$)	(14 $\frac{3}{4}$)	(5 $\frac{1}{8}$)	(7 $\frac{3}{4}$)

NOTE: Measure the dimensions on the front of the garment. Lay garment, right side out, on a flat, horizontal surface. Smooth out wrinkles. Measure distances as specified below and multiply them by two. Measurements should be equal to or less than the maximum dimensions given in the standards.

Chest - measure distance from arm pit to arm pit (A to B) as in Diagram 1.

Waist - See Diagram 1. One-piece garment, measure at the narrowest location between arm pits and crotch (C to D). Two-piece garment, measure width at both the bottom/ sweep of the upper piece (C to D) and, as in Diagram 3, the top of the lower piece (C to D).

Wrist - measure the width of the end of the sleeve (E to F), if intended to extend to the wrist, as in Diagram 1.

Upper arm - draw a straight line from waist/sweep D through arm pit B to G. Measure down the sleeve fold from G to H. Refer to table below for G to H distances for each size. Measure the upper arm of the garment (perpendicular to the fold) from H to I as shown in Diagram 1.

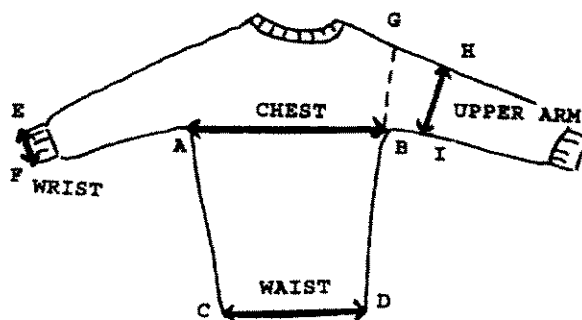


Diagram 1

Distance from shoulder (G) to (H) for Upper Arm Measurement for Sizes 9 Months through 6x								
9-12 mo	12-18 mo	18-24 mo	2	3	4	5	6	6x
5.8 cm 2 1/4"	6.6 cm 2 5/8"	7.4 cm 2 7/8"	7.4cm 2 7/8"	8.1 cm 3 1/4"	8.8 cm 3 1/2"	9.5 cm 3 3/4"	10.3cm 4"	11 cm 4 1/4"

Seat - Fold the front of the pant in half to find the bottom of the crotch at J as in Diagram 2. The crotch seam and inseam intersect at J. Mark point K on the crotch seam at 4 inches above and perpendicular to the bottom of the crotch. Unfold the garment as in Diagram 3. Measure the seat from L to M through K as shown.

Thigh - measure from the bottom of the crotch (J) 1 inch down the inseam to N as in Diagram 2. Unfold the garment and measure the thigh from the inseam at N to O as shown in Diagram 3.

Ankle - measure the width of the end of the leg (P to Q), if intended to extend to the ankle, as in Diagram 3.

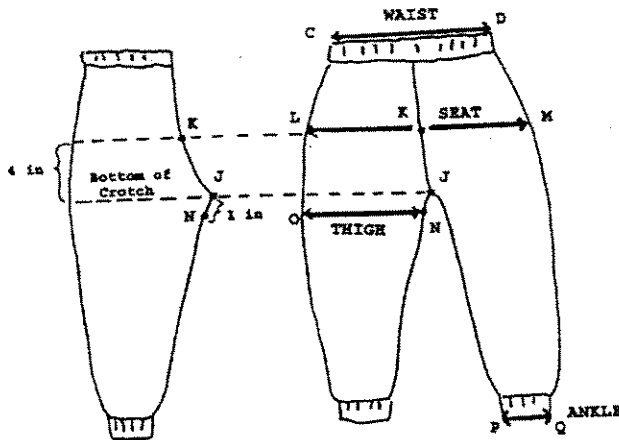


Diagram 2

Diagram 3

* * * *

(3) Has sleeves which do not exceed the maximum dimension for the upper arm at any point between the upper arm and the wrist, and which diminish in width gradually from the top of the shoulder (point G in Diagram 1) to the wrist;

**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 revising the introductory language and paragraph (m) to read as follows:

§ 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:

(m) *Tight-fitting garment* means a garment which:

(1) In each of the sizes listed below does not exceed the maximum dimension specified below for the chest, waist, seat, upper arm, thigh, wrist, or ankle:

Size 7 Boys¹	Chest	Waist	Seat	Upper Arm	Thigh	Wrist	Ankle
Maximum Dimension							
Centimeters	63.5	58.4	66	18.7	37.2	13.0	18.7
(inches)	(25)	(23)	(26)	(7½)	(14½)	(5½)	(7½)
Size 7 Girls							
Maximum Dimension							
Centimeters	63.5	58.4	67.3	18.7	38.7	13.0	18.7
(inches)	(25)	(23)	(26½)	(7½)	(15½)	(5½)	(7½)
Size 8 Boys¹							
Maximum Dimension							
Centimeters	66	59.7	67.3	19.4	38.4	13.3	19.1
(inches)	(26)	(23½)	(26½)	(7½)	(15½)	(5½)	(7½)
Size 8 Girls							
Maximum Dimension							
Centimeters	66	59.7	71.1	19.4	41.3	13.3	19.1
(inches)	(26)	(23½)	(28)	(7½)	(16½)	(5½)	(7½)
Size 9 Boys¹							
Maximum Dimension							
Centimeters	68.6	61.0	69.2	20	39.7	13.7	19.4
(inches)	(27)	(24)	(27½)	(7½)	(15½)	(5½)	(7½)

¹Garments not explicitly labeled and promoted for wear by girls must not exceed these maximum dimensions.

Size 9 Girls	Chest	Waist	Seat	Upper Arm	Thigh	Wrist	Ankle
Maximum Dimension							
Centimeters	68.6	61.0	73.7	20	42.6	13.7	19.4
(inches)	(27)	(24)	(29)	(7 $\frac{7}{8}$)	(16 $\frac{3}{4}$)	(5 $\frac{1}{2}$)	(7 $\frac{5}{8}$)
Size 10¹ Boys							
Maximum Dimension							
Centimeters	71.1	62.2	71.1	20.6	41.0	14	19.7
(inches)	(28)	(24 $\frac{1}{2}$)	(28)	(8 $\frac{1}{8}$)	(16 $\frac{1}{2}$)	(5 $\frac{1}{2}$)	(7 $\frac{3}{4}$)
Size 10 Girls							
Maximum Dimension							
Centimeters	71.1	62.2	76.2	20.6	43.8	14	19.7
(inches)	(28)	(24 $\frac{1}{2}$)	(30)	(8 $\frac{1}{8}$)	(17 $\frac{1}{4}$)	(5 $\frac{1}{2}$)	(7 $\frac{3}{4}$)
Size 11¹ Boys							
Maximum Dimension							
Centimeters	73.7	63.5	73.7	21	42.2	14.3	20
(inches)	(29)	(25)	(29)	(8 $\frac{3}{4}$)	(16 $\frac{5}{8}$)	(5 $\frac{5}{8}$)	(7 $\frac{7}{8}$)
Size 11 Girls							
Maximum Dimension							
Centimeters	73.7	63.5	78.7	21	45.1	14.3	20
(inches)	(29)	(25)	(31)	(8 $\frac{3}{4}$)	(17 $\frac{3}{4}$)	(5 $\frac{5}{8}$)	(7 $\frac{7}{8}$)

Size 12 Boys¹	Chest	Waist	Seat	Upper Arm	Thigh	Wrist	Ankle
Maximum Dimension							
Centimeters	76.2	64.8	76.2	21.6	43.5	14.6	20.3
(inches)	(30)	(25½)	(30)	(8½)	(17½)	(5¾)	(8)
Size 12 Girls							
Maximum Dimension							
Centimeters	76.2	64.8	81.3	21.6	46.7	14.6	20.3
(inches)	(30)	(25½)	(32)	(8½)	(18½)	(5¾)	(8)
Size 13 Boys¹							
Maximum Dimension							
Centimeters	78.7	66	78.7	22.2	44.8	14.9	20.6
(inches)	(31)	(26)	(31)	(8¾)	(17½)	(5¾)	(8½)
Size 13 Girls							
Maximum Dimension							
Centimeters	78.7	66	83.8	22.2	47.6	14.9	20.6
(inches)	(31)	(26)	(33)	(8¾)	(18¾)	(5¾)	(8½)
Size 14 Boys¹							
Maximum Dimension							
Centimeters	81.3	67.3	81.3	22.9	46	15.2	21
(inches)	(32)	(26½)	(32)	(9)	(18½)	(6)	(8¾)

Size 14 Girls	Chest	Waist	Seat	Upper Arm	Thigh	Wrist	Ankle
Maximum Dimension							
Centimeters	81.3	67.3	86.4	22.9	49.5	15.2	21
(inches)	(32)	(26½)	(34)	(9)	(19½)	(6)	(8¼)

NOTE: Measure the dimensions on the front of the garment. Lay garment, right side out, on a flat, horizontal surface. Smooth out wrinkles. Measure distances as specified below and multiply them by two. Measurements should be equal to or less than the maximum dimensions given in the standards.

Chest - measure distance from arm pit to arm pit (A to B) as in Diagram 1.

Waist - See Diagram 1. One-piece garment, measure at the narrowest location between arm pits and crotch (C to D). Two-piece garment, measure width at both the bottom/ sweep of the upper piece (C to D) and, as in Diagram 3, the top of the lower piece (C to D).

Wrist - measure the width of the end of the sleeve (E to F), if intended to extend to the wrist, as in Diagram 1.

Upper arm - draw a straight line from waist/sweep D through arm pit B to G. Measure down the sleeve fold from G to H. Refer to table below for G to H distances for each size. Measure the upper arm of the garment (perpendicular to the fold) from H to I as shown in Diagram 1.

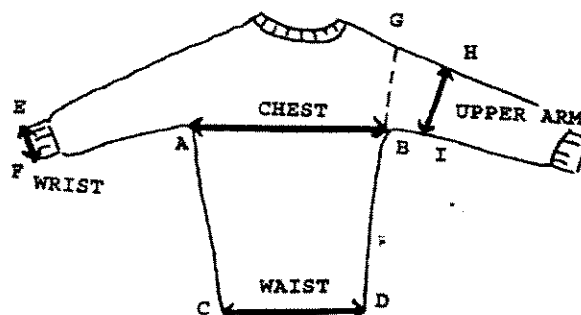


Diagram 1

Distance from shoulder (G) to (H) for Upper Arm Measurement for Sizes 7 through 14							
7	8	9	10	11	12	13	14
11.4 cm 4½"	11.7 cm 4¾"	11.9 cm 4¾"	12.5 cm 4¾"	12.8cm 5"	13.1cm 5¼"	13.7cm 5½"	14.2cm 5¾"

Seat - Fold the front of the pant in half to find the bottom of the crotch at J as in Diagram 2. The crotch seam and inseam intersect at J. Mark point K on the crotch seam at 4 inches above and perpendicular to the bottom of the crotch. Unfold the garment as in Diagram 3. Measure the seat from L to M through K as shown.

Thigh - measure from the bottom of the crotch (J) 1 inch down the inseam to N as in Diagram 2. Unfold the garment and measure the thigh from the inseam at N to O as shown in Diagram 3.

Ankle - measure the width of the end of the leg (P to Q), if intended to extend to the ankle, as in Diagram 3.

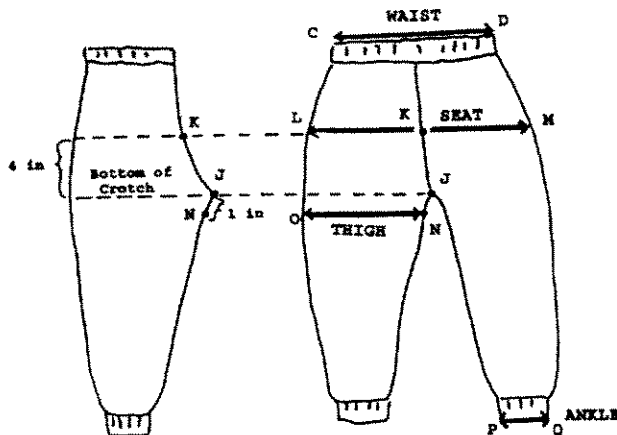


Diagram 2

Diagram 3

★ ★ ★ ★ ★

(3) Has sleeves which do not exceed the maximum dimension for the upper arm at any point between the upper arm and the wrist, and which diminish in width gradually from the top of the shoulder (point G in Diagram 1) to the wrist;

Dated: _____

Sadye E. Dunn, Secretary
Consumer Product Safety Commission

References

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland:

1. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering, to the Commission, "Children's Sleepwear Flammability Standards -- Technical and Enforcement Policy Amendments -- Analysis of Public Comments and Proposed Final Rules," _____, 1998.
2. Memorandum from Michael A. Greene, Ph.D., Directorate for Epidemiology and Health Sciences, "Update to the Proposed Technical Changes To Sleepwear Standard Briefing Package," December 18, 1998.
3. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering, to File, "Analysis of Public Comments on Proposed Technical Amendments to the Children's Sleepwear Amendments," November 30, 1998.
4. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, ES, "Sleepwear Market," December 10, 1998.
5. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, ES, "Revisions to the Children's Sleepwear Amendments," December 10, 1998.
6. Memorandum from Carolyn Meiers, ESHF, to Margaret Neily, ES, "Response to Comments on Notice of Proposed Rulemaking Regarding Changes to the Amendments for Children's Sleepwear," December 3, 1998.
7. Memorandum from Linda Fansler, Division of Engineering, to Margaret L. Neily, ES, "Response to Comments on Technical

Amendments to the Children's Sleepwear Standards," November 25, 1998.

8. Memorandum from Marilyn Borsari, Compliance Officer, to Margaret L. Neily, ES, "Clarification of sleeve taper/short sleeve garments and enforcement policy regarding sample size and tolerance," December 7, 1998.

9. Memorandum from Marilyn Borsari, Compliance Officer, to Margaret LO. Neily, Project Manager, "Clarification of Proposed Clarification of Statement of Policy," December 7, 1998.

Tab K

UNITED STATES GOVERNMENT
Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207-0001

Date: DEC 7 1998

To: Margaret L. Neily, , Project Manager, Children's Sleepwear, Directorate for Engineering Sciences

Through: Alan Schoem, Assistant Executive Director, Office of Compliance *AK*
Terri Rogers, Acting Associate Director, CCH *Rogers*

From: Marilyn Borsari, Compliance Officer - Ext. 1370 *MB*

Subject: Clarification of Proposed Clarification of Statement of Policy

On May 21, 1998 staff published a notice in the Federal Register concerning a proposed clarification of policy involving children's sleepwear.

The Commission became aware that some garment manufacturers were concerned about current policy statements in 16 C.F.R. 1615.64(d) and 1616.65(d). These statements suggest segregation of items covered by the children's sleepwear standards (flame resistance garments) from other fabrics and garments that are beyond the scope of the sleepwear standards.

As a result of the September 9, 1996 final rule, garments sized nine months and under, and tight-fitting garments in sizes above nine months can be sold and used as sleepwear. Because of this change in the standard, the Commission proposes to modify the policy to allow garments exempted from the standard (garments sized under nine months and tight-fitting garments) to be marketed and sold as sleepwear along with complying (flame resistant) sleepwear.

The modified policy allows infant garments as defined by § 1615.1(c), and tight-fitting garments as defined by § 1615.1(o) and § 1616.2(m) which are exempt from the standard which requires flame resistance, to be marketed as sleepwear.

The Commission received only one comment regarding this policy statement. This comment, received from the National Cotton Council of America, was in agreement with the revised policy statement. The Commission staff recommends finalizing this proposed enforcement policy amendment.

Tab L

Draft 12/7/98

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

FINAL CLARIFICATION OF STATEMENT OF POLICY; 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: Final Clarification of Statement of Policy.

SUMMARY: The Commission amends the policy statements at 16 CFR 1615.64(d) and 1616.65(d) so that infant garments (sized for a child nine months and under) and "tight-fitting" garments (as defined in the sleepwear standards) can be marketed and promoted with other sleepwear.

DATE: This clarification of statements of policy shall become effective [insert date of publication of this notice in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0400, extension 1370.

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 47,634. The Commission found that such tight-fitting garments did not present an unreasonable risk of injury. Rather, the Commission's information showed that many severe incidents occurred with loose-fitting garments such as oversized t-shirts used inappropriately as sleepwear. The Commission concluded that garments fitting closely and that touch the body at key points should be exempt from the sleepwear standards because they do not present the same risk as loose-fitting garments. These amendments became effective on January 1, 1997. However, the Commission also issued a stay of enforcement for close-fitting garments which are labeled and promoted as underwear. That stay expired on June 9, 1998.

B. Clarification

The Commission has become aware that the garment industry is concerned about the policy statements in 16 CFR 1615.64(d) and 1616.65(d), which suggest segregation of items covered by the children's sleepwear standards from all fabrics and garments that are beyond the scope of the children's sleepwear standards. The

purpose of the September 9, 1996 final rule was to allow garments sized for a child nine months and under and tight-fitting garments in sizes above nine months to be sold and used as sleepwear. Therefore, the Commission proposed on May 21, 1998 (63 FR 27885) to modify the policy statements at 1615.64(d) and 1616.65(d) to provide that infant garments (defined in the amended sleepwear standard at 16 CFR 1615.1(c)(1) as sized for a child nine months and under) and "tight-fitting" garments (defined in the amended sleepwear standard at 16 CFR 1615.1(o) and 1616.2(m)) can be marketed and promoted with other sleepwear.

One comment was received on the proposed clarification to the sleepwear segregation policy. This comment, from the National Cotton Council, supported the proposed clarification. The comment stated that the amendment is necessary to prevent confusion to the consumer that would come from not allowing infant and tight-fitting sleepwear to be marketed and promoted as sleepwear. The Commission is unaware of any reason not to issue the amendments, and thus, by this notice, the amendments are issued, as they were proposed, in final form.

C. Effective date

Because this document issues statements of policy, the requirement of 5 U.S.C. 553(d) that the effective date of substantive rules shall not be less than 30 days from their date of publication is not applicable. Consequently, these amended policy statements shall become effective upon their publication in the Federal Register.

D. Issuance

For the reasons stated above, and pursuant to the authority of Section 4 of the Flammable Fabrics Act (15 U.S.C. 1193), the Commission amends 16 CFR 1615.64 and 1616.65 to read 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. 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. "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:

* * * * *

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

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

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

2. 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. "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:

* * * * *

Dated: _____

Sadye E. Dunn, Secretary
Consumer Product Safety Commission