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■

CHILDREN'S SLEEPWEAR; SIZES 7 THROUGH 14

Proposed Labeling and Recordkeeping Requirements, Policy Statement, and Solicitation of Comments

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Ch. II]

CHILDREN'S SLEEPWEAR; SIZES 7 THROUGH 14 (FF 5–74)

Proposed Amendment and Withdrawal of Finding of Possible Need for Amendment

In the FEDERAL REGISTER of May 1, 1974 (39 FR 15228), the Consumer Product Safety Commission announced that amendments may be needed to the Standard for the Flammability of Children's Sleepwear, sizes 7 through 14 (FF 5–74) (39 FR 15214) and instituted proceedings for the determination of appropriate amendments. The Standard was issued by the Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.). The Standard, which becomes effective on May 1, 1975, requires that all items of children's sleepwear in sizes 7 through 14 manufactured on or after the effective date must comply with the Standard.

The purpose of this notice is to propose an amendment to the Standard to require that items of sleepwear in sizes 7 through 14 which are manufactured on or after the effective date of the Standard must be labeled with an affirmative label stating that the item complies with the Standard. Under the terms of the Standard, all such items must comply with the Standard. This proposed amendment was one of four issues the Commission listed in the May 1, 1974 Notice of Possible Need for Amendment of the Standard.

In addition, in this notice, the Commission withdraws its finding of possible need for amendment to the Standard as to the three other possible amendments mentioned in the FEDERAL REGISTER notice of May 1, 1974 (39 FR 15228). These possible changes for which the Commission is withdrawing its finding of possible need for amendment include:

A. The possible need to define the term "manufacture" as used in the Standard to clarify which items of children's sleepwear in the production/distribution chain on the effective date of the Standard must comply with the Standard.

B. The possible need to clarify for the purpose of the Standard which items are to be considered "in inventory or with the trade" on the effective date of the Standard and therefore are exempt from the Standard.

C. The possible need to allow, in special cases, an exception to testing under oven-dry conditions under the Standard.

The Commission has determined that it is not necessary to amend the Standard to define the term "manufacture" or to clarify which items are to be considered "in inventory or with the trade" on the effective date of the Standard. Instead, the Commission has published elsewhere in the FEDERAL REGISTER today, a policy statement on these two issues and has invited comment on the policy statement. The reasons for this determination are discussed below under headings 2 and 3.

In addition, the Commission has decided to withdraw the finding that there is a possible need to amend the Standard to allow exceptions to testing under oven-dry conditions. The reasons for this decision are discussed under heading 4 below.

Comments. A total of 33 comments were received in response to the May 1, 1974 Notice of Possible Need for Amendment. The major comments and the Commission's responses to the comments are discussed below.

1. *Affirmative labeling.* The Commission stated in the May 1, 1974 Notice that it may be necessary to amend the Standard to require items which comply with the Standard to bear affirmative labeling to enable consumers to distinguish complying from noncomplying items of children's sleepwear in sizes 7 through 14. The Commission suggested that the labeling be required from the effective date of the Standard until stocks of noncomplying items can reasonably be expected to be exhausted. Fifteen commenters specifically mentioned affirmative labeling. Of these, only one was opposed to the concept. The major issues raised by the commenters and the Commission's views on the basis of comments received to date are as follows:

a. *Duration of labeling required.* Commenters suggested various lengths of time during which affirmative labeling should be required. Two commenters stated that affirmative labeling should be required for an indefinite period of time, or permanently. Some commenters stated that such labeling could serve as an educational tool to make consumers more aware of the dangers of flammable fabrics in general. It was also stated that permanent affirmative labeling is necessary to protect consumers from noncomplying children's sleepwear which could be accumulated in large quantities before the effective date of the standard (stockpiled) and which could remain on the marketplace for many years.

Other commenters suggested various time periods over which affirmative labeling should be required. The time periods suggested included: (1) an indefinite period until satisfactory evidence is presented that all noncomplying articles have cleared the marketplace, (2) one year with a provision that the matter be reevaluated toward the end of the period to determine whether noncomplying items have cleared the market, (3) one year, (4) at least one or two years, (5) 18 months, (6) two years, (7) three years, and (8) five years.

Discussion. None of the commenters provided data to support their suggestions regarding the length of time affirmative labeling should be required and none provided data to show how long it will take for noncomplying items of children's sleepwear in sizes 7 through 14 to clear the marketplace after the effective date of the Standard.

The Commission believes affirmative labeling is necessary only until such time as it can reasonably be expected that noncomplying items will be out of the marketplace. At this time, the Commission believes that three years will be sufficient to clear the market of noncomplying goods and has therefore proposed this time limit. However, the Commission seeks comment that would indicate the expected life of these items in the marketplace, including all types of retail and wholesale facilities.

The Commision believes that labeling is necessary in order to enable consumers to distinguish complying from noncomplying items of children's sleepwear, but it does not at this time believe that it is necessary to require such labeling indefinitely. The educational value of the labeling, while important, may be better achieved through providing more detailed information to the public through both governmental and private channels.

b. *Applicability to fabric.* One commenter stated that affirmative labeling should apply to yard goods intended or promoted for use in children's sleepwear in sizes 7 through 14 as well as to garments.

Discussion. The Commission agrees and proposes that both garments and fabric intended or promoted for use in children's sleepwear in sizes 7 through 14 and manufactured after the effective date of the Standard be affirmatively labeled. The Commission believes this requirement is necessary to protect all consumers, including those who purchase fabric to make sleepwear garments in sizes 7 through 14.

c. *Labeling as to noncompliance.* Two commenters suggested that the Commission require noncomplying items of children's sleepwear in sizes 7 through 14 sold after May 1, 1975 to be labeled with negative labels stating that they are not in compliance, or, in the alternative, that retailer segregation of complying and noncomplying garments be required.

Discussion. The Commission believes this requirement is unnecessary because the affirmative labeling requirement would enable consumers to distinguish complying from noncomplying children's sleepwear. In addition, elsewhere in the FEDERAL REGISTER today, the Commission is proposing rules and regulations under the Standard to require that noncomplying and complying items of children's sleepwear be physically separated at the point of sale to consumers and that signs identifying these items be posted.

d. *Language of label.* A retailer suggested that the language of the affirmative label be prescribed to prevent confusion, to have a greater educational impact on consumers, and to avoid any temptation to expand and exaggerate in promotional claims the performance of flame retardancy. This commenter also suggested that the Commission develop wording that could be used uniformly on garments complying with any governmental flammability standard—State or federal.

Other commenters suggested the Commission clearly specify the wording to appear on the label and suggested the wording should be as brief as possible. Some commenters stated that the Commission should allow affirmative labels to reference either FF5–74 or the Standard for Flammability of Children's Sleepwear (for sizes 0–6X) (FF 3–71). Another commenter suggested the use of a symbol to indicate flame retardancy.

Discussion. The Commission agrees that it should specify the wording to be used on affirmative labeling of items of sleepwear subject to the Standard and that the label statement should be concise and understandable. Therefore, the Commission proposes that items be labeled "Flame-resistant. U.S. Standard FF5–74." Items of children's sleepwear in sizes 7 through 14 that comply with the standard for Children's Sleepwear (sizes 0–6X) (FF 3–71) in addition to FF5–74 may be labeled to that effect in addition to the proposed required labeling. However, the Commission believes at this time that it would be unnecessarily confusing to allow items of sleepwear in sizes 7–14 to bear labels stating only that they are in compliance with FF3–71.

e. *Permanency of label.* Several commenters suggested that the affirmative labels need not be permanently affixed because the purpose of the labels is to identify complying goods to consumers at the point of sale. One commenter suggested that if permanent labels were required, that permanent care instructions should be allowed to be placed on the same label. Some commenters suggested that temporary labels be allowed to be stamped on the garment or item, affixed to the garment or item, stamped or affixed on the package, or contained on a hang tag. One commenter suggested the affirmative label be required to be permanently affixed to draw consumers attention to the fact other unlabeled garments are flammable. Another commenter stressed that the labels should be prominent, permanent, conspicuous, and legible.

Discussion. The Commission believes the major purposes of the affirmative labels would be to enable consumers to distinguish complying from noncomplying items of sleepwear at the point of sale. In addition the labeling would assist the Commission in its efforts to enforce compliance with the Standard. Therefore, at this time the Commission does not believe it is necessary to require that labels be permanently affixed. The Commission proposes that label statements may appear on a hang tag, on the item itself, or on the package enclosing the item as long as the statements are prominent, conspicuous, and legible and readily visible at the point of sale to the ultimate consumer. The Commission does not believe that stamping the affirmative label statement on items of sleepwear will meet these requirements. More detailed proposed requirements for the labels are contained elsewhere in the FEDERAL REGISTER today in a notice of a proposed regulation under the Standard.

f. *Preemption.* One commenter asked the Commission to rule in the preamble to the amended Standard that any affirmative labeling required by the Commission under the Standard would preempt any state requirements for different wording on affirmative labels for children's sleepwear in sizes 7 through 14.

The commenter also suggested that the Commission state that even after the labeling requirement expires, any State labeling requirement would be inconsistent with the federal flammability standard.

Discussion. This comment, in effect, seeks a Commission interpretation of the meaning of section 16 of the Flammable Fabrics Act. That section provides: "This Act is intended to supersede any law of any State or political subdivision thereof inconsistent with its provisions."

The comment is premature because in the present document the Commission is proposing an amendment rather than issuing a final amended standard for children's sleepwear in sizes 7 through 14. However, at this time, the Commission believes that if an affirmative labeling requirement is issued, the requirement would supersede any affirmative labeling requirement for children's sleepwear in sizes 7 through 14 issued by a State or political subdivision thereof.

2. *Application of the Standard.* The Standard applies to all items of children's sleepwear manufactured on or after the effective date of the Standard. In the May 1, 1974 Notice of Possible Need for Amendment, the Commission sought views on whether the term "manufacture" should be defined to clarify which items of children's sleepwear in the production/distribution chain on the effective date of the Standard must comply with the Standard. The Commission received a number of comments suggesting different definitions of the term "manufacture" for the purpose of the Standard. No commenters objected to clarifying the term.

3. *Clarification of exemption.* In the Notice of Possible Need for Amendment to the Standard, the Commission sought views on the time at which items, particularly imported items, are to be considered "in inventory or with the trade" for purposes of the Standard. The Commission also sought views on whether, or in what circumstances, the exemption should be limited. Section 4(b) of the Flammable Fabrics Act provides that items in inventory or with the trade on the effective date of the Standard are exempt from the Standard, except that the exemption may be limited or withdrawn if the Commission finds such items are so highly flammable as to be dangerous when used by consumers for the purpose for which they are intended. A number of commenters addressed the issues of clarification of the term "in inventory or with the trade" and withdrawing the exemption. No commenter objected to clarifying the term.

Discussion of 2 and 3. The Commission believes it is necessary to clarify both the definition of the term "manufacture" and the term "in inventory or with the trade" for the purposes of the Standard. However, it is not necessary to amend the Standard for this purpose because such clarification would be an interpretative rule, general statement of policy, or rule of agency procedure or practice and therefore notice of proposed rulemaking is not required under the Administrative Procedure Act (5 U.S.C. 553 (b)(3)(A)).

Therefore, for administrative expediency and to better provide notice to the public of the Commission policy, the Commission withdraws its Notice of Possible Need for Amendment of the Standard as to these two issues, and elsewhere in the FEDERAL REGISTER today the Commission publishes a policy statement clarifying the definitions of the terms "manufacture" and "in inventory or with the trade." The comments on these issues received in response to the May 1, 1974 Notice of Possible Need for Amendment are discussed in the policy statement. Although the Administrative Procedure Act does not require publication of general statements of policy or interpretive rules for comment, the Commission will consider additional comment on the policy statement.

4. *Testing exceptions.* Section .5(b) of the Standard requires that specimens from children's sleepwear items be conditioned before testing by placing them in a drying oven at 105° C. for 30 minutes. In the Notice of Possible Need, the Commission sought comment as to the feasibility and necessity for allowing exceptions to testing under oven-dry conditions, suggestions as to defining in what circumstances exceptions should be allowed, and comment as to the maximum relative humidity which should be allowed for testing under exceptions.

a. *Need for exceptions.* A number of commenters supported the need for exceptions to oven-dry conditioning. A number of commenters contended that oven-dry conditioning is inappropriate in that it does not relate to real-life situations. These arguments generally addressed two questions: (1) Do household conditions exist that would cause fabrics to reach an "oven-dry" state? and (2) What effect does the human body have on the moisture content of a garment fabric? One commenter indicated that "the home is never bone-dry! Under the most adverse outdoor conditions, the inside humidity approaches 50 percent." Another commenter stated that "relative humidities in various parts of the country are rarely below 25 percent." Several others expressed concern that theoretical extrapolations of outdoor conditions to indoor conditions by the National Bureau of Standards (NBS) may be inaccurate in that they do not take into account moisture input from human activity and home furnishings. Two commenters stated or implied that moisture from the body raises the moisture content in garments so that oven-dry conditions would be unlikely to occur. It was suggested that the Commission initiate a study to determine actual humidity conditions in homes and the moisture content of fabrics when being worn.

Discussion. A project was recently completed by NBS to determine the moisture content of garments in actual use in relation to the surrounding environment. The study included (1) determining the relative humidity garments normally encounter in the home, (2) reproducing these conditions and measuring the actual moisture content of the fabric, and (3) measuring the moisture content of

fabrics exposed to space heaters and open fires.

Indoor relative humidity was measured in three Washington area homes during a seven-day period between February and March, 1974. It was found that these actual measurements did not differ significantly from the theoretical values calculated for those outdoor conditions. The NBS study also cited a graphic representation of the frequency of occurrence of the hypothetical minimum indoor relative humidity for 25 major U.S. cities. This chart indicates that approximately 80 percent of the homes exhibit 40 percent RH or less during 7 months of the year and 75 percent of the homes exhibit 30 percent RH or less for 6 months. Actual measurements in homes indicated that relative humidities below 20 percent are not uncommon, especially during the heating season.

The second portion of the NBS study was devoted to measuring the surface moisture content of fabrics while being worn as compared to the relative humidity of the room. For natural fiber garments such as cotton and wool, it appeared from the data that the moisture content of close-fitting portions of a garment differ significantly from equilibrium room conditions. Loose-fitting portions, on the other hand, accurately reflect room conditions during wear. In the case of nylon and polyester garments, loose- and close-fitting configurations exhibit surface humidities close to the room conditions.

Another segment of the NBS study revealed that exposure to a commercial space heater for as little as five minutes can effectively "oven-dry" a garment. This heating can remove more moisture from flame retardant cotton and wool fabrics than the conditioning procedure of the Standard. About one-quarter of the FFACTS (Flammable Fabrics Accident Case and Testing System) apparel cases involve fabric ignitions by space heaters, gas stoves, and open fires. Since these accidents are often preceded by the victim warming himself in front of these heat sources, the conditioning requirements of the Standard do reflect real-life situations.

b. *Reasonableness of conditioning requirements.* Seven commenters supported testing exceptions for 100 percent wool and predominately wool textile products. These commenters indicated that oven-drying is an unreasonable conditioning requirement for wool because: (1) the oven-dry procedure would preclude the use of wool in children's sleepwear (sizes 7–14), (2) oven-drying removes moisture that is normally present in wool fibers, (3) wool has never been involved in a burn injury, and (4) oven-dry conditioning is unrealistic. They indicated conditioning at 65 percent RH and 70°F for 8 hours would be appropriate for wool products for several reasons: (1) the proposed standard required these conditions, (2) 65 percent RH and 70° F are standard for testing of textiles, (3) 65 percent RH, 70° F procedure gives excellent reproducibility, and (4) with today's technology, it is no problem to obtain the equipment for conditioning.

Discussion. The Commission is aware through testing in the Engineering Sciences Laboratory and at NBS that many natural wool fabrics do not meet the requirements of this Standard even if conditioned at 65 percent RH and 75°F. According to reports submitted by a wool industry representative, stabilizing treatments allow some washable wool fabrics to pass the test requirements when conditioned at relative humidities as low as 20 percent. The Commission concludes that wool fabrics are no different from others in that they require a flame retardant treatment in order to pass the vertical flammability test. The FFACTS contains eight cases of burn injuries involving wool and wool blend fabrics which make it clear that such injuries do occur. Just as 65 percent RH, 70°F is standard for some textile testing, so is oven drying a standard and reproducible procedure for determining moisture regain of textile materials.

One commenter representing cotton producers stated that FF 5–74 conditioning requirements are overly severe for cotton; that the oven-drying requirement is not representative of real life situations; and that it increases the cost of cotton products by requiring overtreatment. To take into consideration the high moisture regain of cotton, the cotton producers suggested amendment of FF 5–74 to allow testing of all fibers at 65 percent relative humidity or possibly 50 percent.

As previously stated, the Commission believes that oven-dry conditioning is representative of real-life conditions. In view of this, the Commission believes that testing exceptions for wool, cotton, and other fibers should not be allowed.

Further information regarding the studies mentioned in this Notice is available from the Office of the Secretary of the Commission.

On the basis of the foregoing, the Commission withdraws the Notice of Possible Need for Amendment as to the issue of testing exceptions and does not propose an amendment to the Standard on this issue.

5. *Other Topics.* (a) One commenter expressed concern that the word polymer had been added in paragraph .4(a)(4) of the Proposed and Final Standards. The Commission intended that production units of fabric dependent on chemical reactants to polymer, fiber, yarns, or fabrics should be tested after 50 launderings as required in FF 5–74. The Commission does not have the assurance that chemical reactants to polymers will remain effective through the lifetime of a garment.

(b) Another submission requested exempting close-fitting sleepwear, such as pajamas, from the requirements of FF 5–74. Data from accident cases show that a large number of burn injuries to children are caused by the ignition of pajamas. The data also shows that children encounter the same ignition sources regardless of whether their sleepwear is "close-fitting" like pajamas or "loose-fitting" like nightgowns. In view of the fact that pajamas do burn and are capable of causing burn injuries, the Commission has decided not to accept the exempting of close-fitting sleepwear such as pajamas from the Standard.

(c) One commenter representing Linen supply companies asked whether it may rent its inventories of noncomplying items of children's sleepwear in sizes 7 through 14 after the effective date of the Standard. Although the Commission is concerned that such action could endanger consumers, and urges companies not to rent noncomplying items, such rental of noncomplying items does not appear to violate the Flammable Fabrics Act.

(d) A number of commenters raised issues outside this proceeding. These issues include suggestions for amendment to the Standard for Flammability of Children's Sleepwear for sizes 0–6X (DOC FF 3–71), suggested provisions for rules and regulations under FF 5–74, and a recommendation that the Commission amend the procedure for issuing standards under the Flammable Fabrics Act. One commenter stated that consumers have difficulty in caring for garments that meet the Standard DOC FF 3–71 and suggested the Commission urge industry to develop flame retardant fabric that is safe, practical, and reasonably priced. Two commenters suggested that FF 5–74 apply to all clothing items.

The Commission believes it is inappropriate to address these issues in this proceeding.

Conclussion. The Consumer Product Safety Commission preliminarily finds that the following amendment to the Standard for the Flammability of Children's Sleepwear, sizes 7 through 14 (FF 5–74) is:

1. Needed for children's sleepwear in sizes 7 through 14 to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, personal injury, or significant property damage; and

2. Reasonable, technologically practicable and appropriate, and stated in objective terms; and

3. Limited to items of children's sleepwear in sizes 7 through 14 which currently present unreasonable risks of the occurrence of fire leading to death, personal injury, or significant property damage.

Therefore, pursuant to provisions of the Flammable Fabrics Act (sec. 4, 67 Stat. 112, as amended 81 Stat. 569–70, 15 U.S.C. 1193) and under authority vested in the Consumer Product Safety Commission by the Consumer Product Safety Act (sec. 30(b), 86 Stat. 1231; 15 U.S.C. 2079(b)), the following amendment is proposed to the Standard for the Flammability of Children's Sleepwear; sizes 7 through 14 (FF 5–74), (39 FR 15214). If finalized, the Commission intends that the amendment would become effective on the effective date of the Standard, May 1, 1975.

The provision of Section .6 of the Standard appearing after the title

thereof, Labeling requirements, is designated as paragraph (a).

A new paragraph is added to section .6, paragraph (b), to read as follows:

(b) All items of children's sleepwear complying with this Standard and manufactured on or after May 1, 1975 through May 1, 1978, shall bear the following label: "Flame-resistant. U.S. Standard FF 5–74." The label must be prominent, conspicuous, and legible and readily visible at the point of sale to ultimate consumers. The label statement may be attached to the item itself, on a hang tag attached to the item, or on a package enclosing the item. The label need not be affixed permanently.

Interested persons are invited to submit on or before February 19, 1975, written comments regarding these proposed amendments. Comments received after that date will not be considered. Comments and any accompanying material should be submitted, preferably in five copies, to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, Room 1025, 1750 K Street, NW, Washington, D.C., during working hours, Monday through Friday.

Dated: January 14, 1975.

SADYE E. DUNN,
Secretary,
Consumer Product Safety Commission.

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[16 CFR Part 302]

CHILDREN'S SLEEPWEAR, SIZES 7 THROUGH 14

Proposed Labeling, Recordkeeping, and Other Requirements Under Standard FF 5–74

In this document, the Consumer Product Safety Commission proposes to issue a regulation (16 CFR 302.21) under the Standard for the Flammability of Children's Sleepwear; sizes 7 through 14 (FF 5–74) (39 FR 15214). The proposed regulation would set requirements for:

1. Labeling of items subject to the Standard;

2. Displaying of items of children's sleepwear in sizes 7 through 14 when those items are offered for sale to consumers in retail establishments;

3. Recordkeeping by persons who market or handle items of children's sleepwear subject to the Standard; and

4. Testing for guaranty purposes under the Standard.

The proposed regulation and the Standard for the Flammability of Children's Sleepwear; sizes 7 through 14 are issued under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.). Functions under that Act were transferred to the Consumer Product Safety Commission effective May 14, 1973 by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)). Section 5 of the Flammable Fabrics Act authorizes this Commission to promulgate regulations for the enforcement and administration of the Flammable Fabrics Act.

The Standard FF 5–74 requires that all items of children's sleepwear in sizes 7 through 14 manufactured on or after May 1, 1975 comply with the Standard. The Commission intends that a final regulation issued under this Standard will become final on May 1, 1975, the effective date of the Standard.

The Commission administers, in addition to FF 5–74, the Standard for the Flammability of Children's Sleepwear for sizes 0–6X (DOC FF 3–71) (37 FR 14625, July 21, 1972), and the regulation issued thereunder (16 CFR 302.19; 39 FR 4852; February 7, 1974). The Commission also proposed an additional regulation under DOC FF 3–71 in the FEDERAL REGISTER of February 7, 1974 (39 FR 4855).

The regulation proposed in this document for children's sleepwear in sizes 7 through 14 is similar to the regulation and proposed amended regulation under the Standard for children's sleepwear in sizes 0 through 6X (DOC FF 3–71).

Paragraph .6 of the Standard for sizes 7 through 14 (FF 5–74) states that the Commission may establish rules and regulations governing the labeling of items subject to the Standard. The provisions of the proposed regulations which establish labeling requirements appear in § 302.21(b).

Elsewhere in the FEDERAL REGISTER today the Commission proposes to amend the Standard for sizes 7 through 14 to require that sleepwear subject to the Standard manufactured on or after May 1, 1975 through May 1, 1978 be affirmatively labeled to indicate compliance with the Standard. The proposed regulation published below at § 302.21(b)(8) would set requirements for items subject to the proposed amendment to the Standard. Neither the Standard for sizes 0 through 6X (DOC FF 3–71) nor the regulations under that Standard contain a provision of this kind.

The Standard applies to all items of children's sleepwear in sizes 7 through 14 manufactured on or after May 1, 1975. Experience with the flammability standard for children's sleepwear in sizes 0–6X indicates to the Commission that for some period of time after the effective date of FF 5–74 retail stores may continue to sell exempt items of children's sleepwear in sizes 7 through 14 which do not comply with the Standard, and at the same time begin to sell items which do comply with the Standard. Provisions of § 302.21(c) of the proposed regulation are intended to help consumers distinguish those items of children's sleepwear in sizes 7 through 14 which comply with the Standard from those which do not. This paragraph requires dealers who offer noncomplying items of children's sleepwear in sizes 7 through 14 for sale to consumers in retail establishments to segregate those items of children's sleepwear which comply with the Standard from those which do not, and to post clear and conspicuous signs at the location of the merchandise to identify displays of complying and noncomplying items of children's sleepwear in sizes 7 through 14.

Paragraph .4 of the Standard sets sampling and acceptance procedures and paragraph .5 of the Standard sets test procedures to be followed by those subject to the Standard. The purpose of § 302.21(d) of the proposed regulation is to establish recordkeeping requirements for manufacturers, importers, or other persons initially introducing items subject to the Standard into commerce. Generally, the regulation requires that the records establish a line of continuity through the process of manufacture of each production unit of items subject to the Standard to the sale and delivery of the finished items, and from the specific finished items back to the manufacturing records.

Provisions of proposed § 302.21(d)(1) set forth general requirements for records which must be maintained for both fabric production units and garment production units. Provisions of proposed § 302.21(d)(2) contain additional recordkeeping requirements applicable only to fabric production units; and proposed §§ 302.21(d) (3) and (4) contain additional recordkeeping requirements applicable only to garment production units.

The records required for every production unit must relate that unit to a production unit identification number, letter or date, which is required to be placed on a permanent, accessible and legible label on all items in that production unit in accordance with the provisions of § 302.21(b)(7) of the proposed regulation.

Provisions of proposed § 302.21(e) prescribe recordkeeping requirements for persons subject to the Flammable Fabrics Act who market or handle items subject to the Standard but who do not initially introduce those items into commerce. Those persons would be required to maintain records for a period of three years to: (1) identify the items marketed or handled; (2) identify the source of those items; (3) establish the date those items were received; (4) identify the purchaser of those items, except ultimate retail purchaser; and (5) establish the date of sale to purchasers, except the date of sale to ultimate retail purchasers.

Provisions of § 302.21(f) of the proposed regulation prescribe the testing which is required for issuing guaranties for items subject to the Standard under section 8 of the Flammable Fabrics Act.

Proposed § 302.21(g) provides that persons subject to the Standard must comply with the regulation at § 302.21.

Pursuant to provisions of the Flammable Fabrics Act (section 5, 67 Stat. 112–13, as amended 81 Stat. 571; 15 U.S.C. 1194) and under authority vested in the Consumer Product Safety Commission by the Consumer Product Safety Act (Pub. L. 92–573, section 30(b), 86 Stat. 1231; 15 U.S.C. 2079(b)), the Commission proposes to issue 16 CFR 302.21 as follows:

§ 302.21 Children's sleepwear sizes 7 through 14 labeling, recordkeeping, retail display, and guaranties under FF 5–74.

(a) *Definitions.* For the purpose of this section, the following definitions apply:

(1) "Standard" means the "Standard for the Flammability of Children's Sleepwear; Sizes 7 through 14 (FF 5–74)," promulgated by the Consumer

Product Safety Commission in the FEDERAL REGISTER of May 1, 1974 (39 FR 15214).

(2) "Children's sleepwear" means "children's sleepwear" as defined in .2(a) of the Standard, that is, "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) "Item" means "item" as defined in .2(c) of the Standard, that is, "any product of children's sleepwear or any fabric or related material intended or promoted for use in children's sleepwear."

(4) "Market or handle" means any one or more of the transactions set forth in Section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

(5) The definition of terms set forth in .2 of the Standard shall also apply to this section.

(b) *Labeling.* (1) Where any agent or treatment is known to cause deterioration of flame resistance or otherwise causes an item to be less flame resistant, such item shall be prominently, permanently, conspicuously, and legibly labeled with precautionary care and treatment instructions to protect the item from such agent or treatment.

(2) If the item has been initially tested under .5(c)(4) of the Standard after one washing and drying, it shall be prominently, permanently, conspicuously and legibly labeled with instructions to wash before wearing.

(3) Where any fabric or related material intended or promoted for use in children's sleepwear subject to the Standard is sold or intended for sale to the ultimate consumer for the purpose of conversion into children's sleepwear, each bolt, roll, or other units shall be labeled with the information required by this section. Each item of fabric or related material sold to an ultimate consumer must be accompanied by a label, as prescribed by this section, which can by normal household methods be permanently affixed by the ultimate consumer to any item of children's sleepwear made from such fabric or related material.

(4) Where items required to be labeled or stamped in accordance with the paragraphs (b)(1), (b)(2), (b)(3), and (b)(7), of this section are marketed at retail in packages, and the required label or stamp is not readily visible to prospective purchasers, the packages must also be prominently, conspicuously, and legibly labeled with the required information.

(5) Samples, swatches, or specimens used to promote or effect the sale of items subject to the Standard shall be labeled in accordance with this section with information required by this section: except that such information may appear on accompanying promotional materials attached to fabric samples, swatches, or specimens used to promote the sale of fabrics to garment manufacturers. This requirement shall not apply, however, to samples, swatches, or specimens prominently, permanently, conspicuously, truthfully and legibly labeled: "Flammable. Sample only. Not for use or resale. Does not meet Standard for the Flammability of Children's Sleepwear; Sizes 7 through 14 (FF5–74)."

(6) The information required on labels by this section shall be set forth separately from any other information appearing on the same label. Other information, representations, or disclosures not required by this section but placed on the same label with information required by this section, or placed on other labels elsewhere on the item, shall not interfere with the information required by this section. No person, other than the ultimate consumer, shall remove, mutilate, or cause or participate in the removal or mutilation of any label required by this section to be affixed to any item.

(7) Every manufacturer, importer, or other person (such as converter) initially introducing items subject to the Standard into commerce shall assign to each item a unit identification (number, letter or date, or combination thereof) sufficient to identify and relate to the fabric production unit or garment production unit of which the item is a part. Such unit identification shall be designated in such a way as to indicate that it is a production unit identification under the Standard. The letters "GPU" and "FPU" may be used to designate a garment production unit identification and fabric production unit identification, respectively, at the option of the labeler.

(i) Each garment subject to the Standard shall bear a label with minimum dimensions of 1.3 centimeters (0.5 inch) by 1.9 centimeters (0.75 inch) containing the appropriate garment production unit identification for that garment in letters at least 0.4 centimeter (one-sixth of an inch) in height and in a color which contrasts with the background of the label, or shall have such information clearly, conspicuously, and legibly stamped on the garment itself in letters at least 0.4 centimeters (one-sixth of an inch) in height, in a color which contrasts with the background, and at least 2.54 centimeters (1 inch) in every direction from any other information. The stamp or label containing the garment production unit identification must be of such construction, and affixed to the garment in such a manner, as to remain on or attached to the garment and legible and visible at the point of sale and throughout its intended period of use.

(ii) The fabric production unit identification shall appear in letters at least 0.4 centimeters (one-sixth of an inch) in height against a contrasting background on each label that relates to such fabric and is required by the Textile Fiber Products Identification Act (15 U.S.C. 70–70k) and the regulations thereunder (16 CFR 303.1 through 303.45) or by the Wool Products Labeling Act of 1939 (15 U.S.C. 68–68j) and the regulations thereunder (16 CFR 300.1 through 300.36). When the information required by the Textile Fiber Products Identification Act or by the Wool Products Labeling Act of 1939 appears on an invoice used in lieu of labeling, the fabric production unit identification required by this section may be placed clearly, conspicuously, and legibly on the same invoice in lieu of labeling.

(8) All items complying with Standard and manufactured on or after May 1, 1975, through May 1, 1978, shall bear the following label: "Flame-resistant. U.S. Standard FF 5–74." The label must be prominent, conspicuous, and legible and readily visible at the point of sale to ultimate consumers. The label statement may be attached to the item itself, on a hang tag attached to the item, or on a package enclosing the item. The label need not be affixed permanently. The letters of the label must be at least 0.4 centimeters (one-sixth of an inch) in height and in a color which contrasts with the background of the label.

(c) *Segregation of complying and noncomplying items by retailer.* Every person who sells non-complying items (as defined in paragraph .2(c) of the Standard and § 302.21(a)(3) of this section) at retail stores or other establishments open to the general public where goods are offered for sale shall:

(1) Display the items which comply with the Standard, and for which the seller has documentary evidence of such compliance, so that no other merchandise is intermingled with those items; and identify such complying items with at least one sign, with black letters at least 2.5 centimeters (one inch) in height against a solid white background, bearing the statement "Flame resistant. Complies with the Standard for the Flammability of Children's Sleepwear (FF 5–74)."

(2) Display all other items of children's sleepwear, sizes 7 through 14, at a separate location within the store and identify those items with at least one sign, with black letters at least 2.5 centimeters (1 inch) in height against a solid white background, bearing the statement "Flammable. Does Not Meet Standard for the Flammability of Children's Sleepwear (FF 5–74)."

(3) Segregate those items of children's sleepwear, sizes 7 through 14, which comply with the Standard, and for which the seller has documentary evidence of such compliance, so that they shall not be located within 91 centimeters (36 inches) of any other items of children's sleepwear, sizes 7 through 14, when displayed for sale to consumers.

(d) *Records—manufacturers, importers, or other persons initially introducing items into commerce*—(1) *General.* Every manufacturer, importer, or other person (such as a converter) initially introducing into commerce items subject to the Standard, irrespective of whether guaranties are issued under paragraph (f) of this section, shall maintain written and physical records as hereinafter specified. The records required must establish a line of continuity through the process of manufacture of each production unit of articles of children's sleepwear, or fabrics or related materials intended or promoted for use in children's sleepwear, to the sale and delivery of the

finished items and from the specific finished item to the manufacturing records. Such records shall show with respect to such items:

(i) Details, description and identification of any and all sampling plans engaged in pursuant to the requirements of the Standard. Such records must be sufficient to demonstrate compliance with such sampling plan(s) and must relate the sampling plan(s) to the actual items produced, marketed, or handled. This requirement is not limited by other provisions of this paragraph (d).

(ii) Garment production units or fabric production units of all garments or fabrics marketed or handled. The records must relate to an appropriate production unit identification on or affixed to the item itself in accordance with paragraph (b)(7) of this section, and the production unit identification must relate to the garment production unit or fabric production unit.

(iii) Test results and details of all tests performed both prototype and production, including char lengths of the samples required to be tested, details of the sampling procedure employed, name and signature of person conducting tests, date of tests, and all other records necessary to demonstrate compliance with the test procedures and sampling plan specified by the Standard or authorized alternate sampling plan.

(iv) Disposition of all failing or rejected items. Such records must demonstrate that the items were retested or reworked and retested in accordance with the Standard prior to sale or distribution and that such retested or reworked and retested items comply with the Standard, or otherwise show the disposition of such items.

(v) Fiber content and manufacturing specifications relating the same to prototype and production testing and to the production units to which applicable.

(vi) Data and test results relied on as a basis for inclusion of different colors or different print patterns of the same fabric as a single fabric or garment production unit under .4(a)(2) of the Standard.

(vii) Data and test results relied on as a basis for reduced laundering of fabric or garments during test procedures under .5(c)(4) of the Standard and any guarantees issued or received relating to laundering as well as details of the laundering procedure utilized.

(viii) Identification, composition, and details of application of any flame retardant treatments employed. All prototype and production records shall relate to such information.

(ix) Date and quantity of each sale or delivery of items subject to the Standard and the name and address of the purchaser or recipient relating such sale to the production unit or other unit identification.

(2) *Fabrics.* In addition to the information specified in paragraph (d)(1) of this section, the written and physical records maintained with respect to each fabric production unit shall include (i) finished fabric samples sufficient to repeat the fabric sampling procedure required by .4 of the Standard for each production unit marketed or handled; and (ii) records to relate the samples to the actual fabric production unit. Upon written request of any duly authorized employee or agent of the Commission, samples sufficient for the sampling and testing of any production unit in accordance with the Standard shall be furnished from these records within the time specified in the written request.

(3) *Garments—prototype testing.* In addition to the records specified in paragraph (d)(1) of this section, the following written and physical records shall be maintained with respect to the garment prototype testing required by the Standard:

(i) Specification; fiber content, and details of construction on all seams, fabrics, threads, stitches, and trims used in each garment style or type upon which prototype testing was performed, relating the same to such garment style or type and to all production units to which such prototype testing is applicable.

(ii) Samples sufficient to repeat the prototype tests required by .4 of the Standard for all fabrics, seams, threads, stitches, and trims used in such prototype testing, relating such samples to the records required by this paragraph (d), including the information required by paragraph (d)(3)(i) of this section. Upon the written request of any duly authorized employee or agent of the Commission, samples sufficient for the testing of any prototype specimens identical to those specimens that were actually tested pursuant to the Standard shall be furnished from these records within the time specified in the written request.

(iii) A complete untested garment from each style or type of garment marketed or handled.

(iv) Remains of all physical specimens tested in accordance with the prototype testing required by .4 of the Standard, relating such samples to the records required by this paragraph (d), including information required by paragraph (d)(3)(i) of this section.

(4) *Garments—production testing.* In addition to the records required by paragraph (d)(1) of this section, written and physical records shall be maintained and shall show with respect to each garment production unit:

(i) Source and fabric production unit identification of all fabrics subject to testing used in each garment production unit.

(ii) Identification and appropriate reference to all prototype records and prototype tests applicable to each production unit.

(iii) Any guaranty relied upon to demonstrate that the fabric utilized in such garments meets the laundering requirements of the Standard.

(iv) Data sufficient to show that tested samples were selected from the production unit at random from regular production.

(v) Written data that will enable the Commission to obtain and test garments under any applicable compliance market sampling plan.

(5) *Record retention requirements.* The records required by this paragraph (d) shall be maintained for 3 years, except that records relating to prototype testing shall be maintained for so long as they are relied upon as demonstrating compliance with the prototype testing requirements of the Standard and shall be retained for 3 years thereafter.

(e) *Records—persons not subject to paragraph (d) of this section.* Any person not subject to paragraph (d) of this section who markets or handles items subject to the Standard shall keep and maintain for 3 years records to show the source, date of receipt, and identity of items marketed or handled; the identity of purchasers (other than ultimate retail purchasers); and the date of sale (other than the date of sale to ultimate retail purchasers).

(f) *Tests for guaranty purposes.* Reasonable and representative tests for the purpose of issuing a guaranty under section 8 of the Flammable Fabrics Act (15 U.S.C. 1197) for items subject to the Standard shall be those tests performed pursuant to any sampling plan or authorized alternative sampling plan engaged in pursuant to the requirements of the Standard.

(g) *Compliance with this section.* No person subject to the Flammable Fabrics Act shall manufacture, import, distribute, or otherwise market or handle any item subject to the Standard, including samples, swatches, or specimens used to promote or effect the sale thereof, which is not in compliance with this section 302.21.

(section 5, 67 Stat. 11–13, as amended 81 Stat. 571; 15 U.S.C. 1194)

Interested persons are invited to submit on or before February 19, 1975, written comments regarding the matters proposed herein. Comment received after this date will not be considered. Comments and any accompanying material should be submitted, preferably in five copies, to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, Room 1025, 1750 K Street, NW, Washington, D.C., during working hours, Monday through Friday.

Dated: January 14, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

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CONSUMER PRODUCT SAFETY COMMISSION

CHILDREN'S SLEEPWEAR; SIZES 7 THROUGH 14 (FF 5–74)

Policy Statement and Solicitation of Comments

The purpose of this notice is to announce and invite comment on a two part policy statement, regarding the applicability of the Standard for the Flammability of Children's Sleepwear; Sizes 7 through 14 (FF 5–74). The Standard was issued by the Consumer Product Safety Commission on May 1, 1974 (39 FR 15210) under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.). on May 1, 1975 and applies to children's sleepwear. It becomes effective garments in sizes 7 through 14 and to fabric or related material intended or promoted for use in such children's sleepwear.

In the FEDERAL REGISTER of May 1, 1974, the Commission issued a Notice of Finding of Possible Need for Amendment to the Standard in four different respects (39 FR 15228). Elsewhere in the FEDERAL REGISTER today, the Commission proposes an amendment to the Standard, and withdraws the Notice of Possible Need for Amendment as to three of the items mentioned in the Notice.

The Commission has determined that two of the possible amendments mentioned in the May 1, 1974 Notice should be treated as policy statements rather than as amendments to the Standard. In this Notice, the Commission discusses the comments on these two possible amendments received in response to the May 1, 1974 Notice of Possible Need for Amendment, states the Commission policy on these issues, and invites further comment on the policy.

1. *Application of the Standard.* The Standard applies to all items of children's sleepwear in sizes 7 through 14 manufactured on or after May 1, 1975, the effective date of the Standard. In the May 1, 1974 Notice, the Commission stated it believed that the term "manufacture" should be defined to clarify which items of children's sleepwear in the production/distribution chain on the effective date of the Standard must comply with the Standard, so that all affected parties will know which items are subject to the Standard. Comment was invited on the necessity for clarification and suggested definitions were sought.

Comments. Eight commenters presented views on this issue. No commenter objected to clarifying the term "manufacture." One commenter stated that retailers consider manufacture to end with the completion of the last productive act on the article and that therefore storing, packing, and preparing goods for distribution and sale are not part of the manufacturing process.

Other commenters suggested the Commission focus on the beginning rather than the end of the manufacturing process because when fabric is cut, materials have been committed to the manufacture of children's sleepwear. Therefore, these commenters suggested that the Standard should be applicable to all items of sleepwear for which the manufacturing process begins after the Standard's effective date and manufacture should be defined as beginning when the fabric is cut to make garments. Another commenter agreed that the manufacturing process begins with cutting fabric and stated the process ends with placing garments in a warehouse for shipping.

One commenter assumed definition of the term "manufacture" would apply only to garments and not to fabric intended or promoted for use in children's sleepwear.

One commenter stated the term "manufacture" should be defined to include as many garments as possible within the protective framework of the Standard and that therefore the end of the manufacturing process should be defined at as late a time as is reasonably supportable. Another commenter suggested that a garment must be constructed, labeled, and packaged in a form suitable for immediate delivery to the seller of the goods before May 1, 1975 in order to be outside the scope of the Standard. This commenter stated that this definition would not preclude a retailer from being able to affix promotion and price labeling or to repackage individual items of sleepwear after the effective date of the Standard. However, the commenter stated that the addition of buttons or other functional materials, the assembly of cut pieces of sleepwear, or the packaging for commercial shipping should be considered part of the manufacturing process.

Discussion. The Commission believes the term "manufacture" must be defined as to both garments and fabric intended or promoted for use in children's sleepwear in sizes 7 through 14 to avoid any questions as to which items must comply with the Standard. The term "manufacture" must be defined in a manner consistent with the generally understood meaning of the term and in a manner that allows the Standard to be effectively enforced.

The term manufacture is generally understood to encompass the process of producing a final object or assembling materials into a final form. Therefore, the Commission believes that for the purposes of the Standard the manufacturing process ends when an item has been completely assembled, when all permanently affixed labels have been attached, and when all functional materials have been affixed. Until these actions have been completed, an item of children's sleepwear will not be deemed to have been "manufactured."

The Commission believes the operative time in the manufacturing process for the purposes of determining which items are covered by the Standard is the end of the manufacturing process.

The Standard was issued on May 1, 1974 but it will not go into effect until May 1, 1975. Therefore, there is a one year period for manufacturers and others subject to the Standard to come into compliance. The Commission believes that this time period will be sufficient for planning purposes and that it would not serve the public interest to allow manufactures to complete the manufacturing process for noncomplying sleepwear in sizes 7 through 14 after the effective date of the Standard. Therefore, the Commission will define the term as of the end of the manufacturing process of both garments and fabric.

The Commission does not believe that the packaging of items or their labeling with temporary hang tags or other sales or promotional materials come within the definition of the term "manufacture," because these actions are not an integral part of the manufacturing process.

Policy. It is the policy of the Commission that all items of children's sleepwear in sizes 7 through 14 (including garments and fabric intended or promoted for use in such children's sleepwear) are subject to the Standard FF 5–74 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 intended or promoted for use in such sleepwear) does not affect the date on which the manufacturing process is deemed to end.

2. *Clarification of Exemption.* Section 4(b) of the Flammable Fabrics Act provides that products, fabrics, or related materials subject to a Standard, which are "in inventory or with the trade" on the effective date of the Standard, are exempt from the Standard, except that the exemption may be limited or withdrawn if the Commission finds that any such items are so highly flammable as to be dangerous when used by consumers for the purpose for which they are intended. In the May 1, 1974 Notice of Possible Need for Amendment to the Standard, the Commission sought views as to the time items, particularly imported items, are to be considered "in inventory or with the trade." The Commission also sought views as to whether or in what circumstances, the exemption should be limited.

Comments. Nine commenters addressed this issue. One commenter stated that goods are "in inventory or with the trade" when the manufacturer has completed the final production process. Thus, goods being stored, packaged, or prepared for shipment or distribution by a manufacturer, importer, or someone else would be "in inventory or with the trade." Other commenters stated that goods manufactured outside the United States are "in inventory or with the trade" when they have cleared customs, or when they have entered this country for consumption under the customs regulations. Others said that goods should be considered in inventory when they are delivered to the ship or other carrier by the foreign manufacturer, since that is

the time when the American company gains possession of the goods, and this time is easily documented.

One commenter stated imported items should be considered in inventory when they are shipped from the original FOB point. Another commenter stated the time should be when the garments are manufactured or ordered, whichever is earlier since at each of these times the manufacturer cannot reasonably change the flame retardant characteristics of the items.

Two commenters suggested withdrawing the exemption for items "in inventory or with the trade," on the ground that the Commission's findings in issuing the Standard on May 1, 1974 provide a basis for withdrawing the exemption. These commenters state that most manufacturers are now able to comply with the Standard and that no producer would be caught by surprise with noncomplying goods if such action were taken because there has been a one year lead time before the effective date of the Standard.

One commenter believes the exemption should apply only to items in the inventory of retailers or wholesalers, to protect wholesalers and retailers from hardship over which they may have little control. The commenter stated that manufacturers do not fall within the exemption because they are protected by provisions of the Flammable Fabrics Act which provide a one year hiatus before the effective date of a Standard and because a manufacturer has more control over its inventory than a retailer or distributor. This commenter also stated that section 9 of the Flammable Fabrics Act precludes importation of goods that do not comply with a standard in effect on the date of entry of the merchandise and therefore suggests that imported goods with an entry date on or after May 1, 1975 be excluded from the United States if they do not comply with the Standard FF 5–74.

One commenter suggested that the Commission take action under section 30(d) of the Consumer Product Safety Act to apply the provisions of section 9(d)(2) of that Act to items subject to FF 5–74. Section 9(d)(2) of that Act allows the Commission by rule to "prohibit a manufacturer of a consumer product from stockpiling any product to which a consumer product safety rule applies, so as to prevent such manufacturer from circumventing the purpose of such consumer product safety rule."

Discussion. The Commission has decided not to withdraw the exemption for items "in inventory or with the trade" on the effective date of the Standard because the Commission believes it may be unfair to manufacturers, distributors, retailers, and others who are marketing or handling noncomplying items manufactured in good faith prior to the effective date of the Standard. Moreover, the Commission does not believe it is necessary for the protection of consumers to withdraw the exemption for items subject to the Standard that are "in inventory or with the trade" on the effective date of the Standard. If the Commission amends the Standard to require affirmative labeling of complying items for three years after the Standard's effective date, consumers will be able to distinguish complying from noncomplying items of children's sleepwear. Proposed regulations under the Standard published elsewhere in the FEDERAL REGISTER today would require segregation of complying and noncomplying items at the point of sale to consumers.

In addition, for the foregoing reasons and because it is not clear that those subject to the Standard will be engaged in stockpiling children's sleepwear in sizes 7 through 14, the Commission declines to reach the issue of whether it can or should take action under section 30(d) of the Consumer Product Safety Act to apply the anti-stockpiling provisions of section 9(d)(2) of that Act to items subject to the Standard.

The Commission believes, as to domestically manufactured items, that they are "in inventory or with the trade" on the effective date of the Standard and thus subject to the exemption if they have been manufactured before May 1, 1975.

The definition of the term "manufacture" and the reasoning behind the definition are set forth in the previous section of this policy statement. The Commission has found no support in section 4(b) of the Flammable Fabrics Act or the legislative history of the Act for the contention that the exemption for items "in inventory or with the trade" is unavailable to manufacturers, and the Commission believes it may be unfair to prevent manufacturers from selling noncomplying items manufactured in good faith before the effective date of the Standard.

As to imported items, the Commission believes that section 9 of the Flammable Fabrics Act clearly requires that an imported item that fails to meet a Standard in effect on the date of entry of the item should not be allowed admission into the United States. The Commission recognizes that its policy as to imported goods must be somewhat different than the policy for domestically manufactured goods because the Commission's compliance staff is less able to verify the date manufacture of foreign-made goods has been completed. It is the Commission's policy that domestic manufacturers and importers must be subject to the same or similar requirements wherever possible under the laws the Commission administers. Thus, both foreign and domestically made goods must have been "manufactured" prior to May 1, 1975 to be considered "in inventory or with the trade" on the effective date of the Standard.

The Commission believes the exemption in section 4 of the Flammable Fabrics Act for items "in inventory or with the trade" on the effective date of the Standard was intended to apply to items in the United States, because the purpose of the Act is to protect consumers in the United States. This interpretation is consistent with section 9 of the Act. In addition, the Commission believes that there will have been sufficient lead time for compliance with the Standard when the Standard becomes effective on May 1, 1975. Therefore, the Commission believes that imported items should be considered "in inventory or with the trade" on the date the goods have been entered into the United States.

Policy. All items of children's sleepwear in sizes 7 through 14 (including garments and fabric 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 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.

Solicitation of Comments. This policy statement reflects the Commission's views as to two aspects of enforcement of the Standard for the Flammability of Children's Sleepwear, sizes 7 through 14. This matter is considered a general statement of policy, interpretative rule, or rule of agency procedure or practice and therefore exempt from the notice and public procedure provisions of 5 U.S.C. 553 (Administrative Procedure Act). However, the Commission has decided to allow public comment on the policy.

Therefore interested persons are invited to submit, on or before, February 19, 1975, written comments regarding the proposal. Comments received after that date will not be considered. Comments and any accompanying material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, Room 1025, 1750 K Street, NW, Washington, D.C. during normal working hours.

Dated: January 14, 1975.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

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