

Consumer Product Safety Commission

Thursday
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Part IV

**Consumer Product
Safety Commission**

**Flammability Standards for Children's
Sleepwear; Statement of Enforcement
Policy**

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Parts 1615 and 1616****Flammability Standards for Children's Sleepwear; Statements of Enforcement Policy****AGENCY:** Consumer Product Safety Commission.**ACTION:** Statements of policy.

SUMMARY: The Commission is reissuing, with minor modifications, an enforcement policy statement for the flammability standard for children's sleepwear in sizes 0-6X, originally published by the Federal Trade Commission in 1972. The Commission is issuing the same enforcement policy statement for the flammability standard for children's sleepwear in sizes 7-14. The two statements were published for comment on October 22, 1979. They contain the factors that the CPSC will consider in deciding whether to commence enforcement action on the grounds that particular fabrics or garments are covered by one of the two flammability standards and are not in compliance.

DATES: The enforcement policy statement for children's sleepwear in sizes 0-6X has been in effect since the FTC issued it in 1972. The statement issued below, reflecting minor modifications, will become effective on December 8, 1980. The enforcement policy statement for children's sleepwear in sizes 7-14 will become effective on December 8, 1980.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**I. Introduction**

For purposes of the Commission's flammability standards for children's sleepwear, most fabrics and garments are either clearly items of sleepwear or are not sleepwear. However, there are some "borderline" fabrics and garments that are not identified by the manufacturer (or importer) as sleepwear, but that resemble sleepwear items in design and appearance. These fabrics and garments may be perceived by the consumer as items of sleepwear. In view of this potential uncertainty about the scope of the sleepwear standards, the Commission believes the manufacturer should have prior knowledge of the factors the

Commission considers when examining borderline fabrics or garments to determine if they are subject to the standards.

The enforcement policy statements issued below provide the factors that the Commission will consider before deciding to take enforcement action on the ground that a particular noncomplying item falls within the scope of the flammability standards for children's sleepwear. The Commission need not have evidence on all of these factors before deciding that a fabric or garment is an item of sleepwear and before initiating an enforcement proceeding under the sleepwear standards. Rather, the factors are guidelines for Commission and industry decisions on which fabrics and garments are sleepwear items. In addition, the policy statements encourage manufacturers to place a warning label on a noncomplying fabric or garment if doubts remain after the factors are applied. The presence of such a label would be an additional factor that may affect the Commission's decision as to whether an enforcement action will be initiated against a fabric or garment. A label may tend to indicate that a fabric or garment is not a sleepwear item and does not fall within the scope of the standards. However, a warning label would not prevent the Commission from concluding that the fabric or garment is nevertheless an item of children's sleepwear, based on factors supporting that conclusion.

II. Background

The Standard for the Flammability of Children's Sleepwear: Sizes 0-6X (16 CFR 1615) was issued by the Department of Commerce under the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*) on July 29, 1971, with an effective date of July 29, 1972. The standard applies to any item of children's sleepwear in sizes 0-6X. "Item" is defined as "any product of children's sleepwear or any fabric or related material intended or promoted for use in children's sleepwear" (16 CFR 1615.1(c)). "Children's sleepwear" is defined as "any product of wearing apparel up to and including size 6X, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping" (16 CFR 1615.1(a)). Diapers and underwear are excluded from the definition.

Before the effective date of the 0-6X standard, certain questions were raised concerning the interpretation of the phrase "intended or promoted" in the definition of "item", and the phrase "intended to be worn primarily for

sleeping or activities related to sleeping" in the definition of "children's sleepwear". As a result, the Federal Trade Commission (FTC), the agency that enforced the FFA at that time, published an enforcement policy statement in the Federal Register on March 23, 1972 (37 FR 5982). That statement in essence provides that whether a particular fabric or garment falls within the scope of the standard is dependent upon (1) the nature of the product and its suitability for children's sleepwear, (2) the manner in which the product is distributed and promoted, and (3) the likelihood that the product will be used by children primarily for sleeping or activities related to sleeping in a substantial number of cases. The FTC policy also states that if there is a substantial question as to the applicability of these factors to a particular product, it would be advisable for the manufacturer to place a prominent warning on labels and tags attached to such product to warn the consumer that the product does not meet the flammability standard for children's sleepwear.

On May 14, 1973, all FTC functions relating to the FFA were transferred to the Consumer Product Safety Commission by the Consumer Product Safety Act (15 U.S.C. 2079 (b)). The Consumer Product Safety Act also specifies that all determinations, rules, and regulations issued in the exercise of such functions continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission (15 U.S.C. 2079(e) (2)). The FTC enforcement policy statement therefore remains in effect.

On May 1, 1975 the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR Part 1616) became effective. This standard issued by the CPSC under the FFA, defines the terms "item" (16 CFR 1616.2(c)) and "children's sleepwear" (16 CFR 1616.2(a)) in the same manner as they are defined in the 0-6X sleepwear standard, except for the reference to size.

On October 22, 1979, the Commission proposed to reissue the FTC enforcement policy statement for children's sleepwear in sizes 0-6X and to issue the same policy statement for children's sleepwear in sizes 7-14. The proposal included certain clarifications as to the use of the enforcement policy statements.

III. Proposed Statements of Enforcement Policy

Like the FTC statement, the CPSC-proposed statements of policy provided that whether a particular fabric or

garment falls within the scope of the flammability standards for children's sleepwear is dependent upon (1) the nature of the product and its suitability for children's sleepwear, (2) the manner in which the product is distributed and promoted, and (3) the likelihood that the product will be used by children primarily for sleeping or activities related to sleeping in a substantial number of cases. The proposal also stated that, if there is a substantial question as to the applicability of these factors to a particular product, it would be advisable for the manufacturer to place a prominent warning on labels and tags attached to such product to warn the consumer that the product does not meet the flammability standards for children's sleepwear. The CPSC proposal further advised that such a disclaimer would not bind the Commission if, in its opinion, the item in question falls within the scope of the standards.

Like the FTC statement, the CPSC-proposed statements of policy provided that retailers also have an obligation to avoid selling "items" of "children's sleepwear" that violate the standards. Retailers were further advised to segregate fabrics and garments covered by the standards from fabrics and garments beyond the scope of the standards, and to utilize store display signs indicating the distinction.

The October 1979 proposal also provided that the policy would be applied in accordance with Chapter 2C—Letters of Advice/Notices of Noncompliance of the May 1979 CPSC Enforcement Policy and Procedural Guides. These procedures provide a firm with 10 days to present its views to the Commission before an enforcement action involving the firm or its products is initiated.

IV. Discussion of Public Comments

The Commission received 12 public comments on its October 1979 proposed statements of policy. Four of these came from individual garment manufacturers and four came from industry associations. The remaining comments came from a nationwide chain retailer, a city fire department and two members of the CPSC's National Advisory Council for the Flammable Fabrics Act.

The following discussion of the public comments is divided into five general topics.

A. Scope

Several commenters noted that the policy statements would include certain underwear, such as thermal underwear, as sleepwear subject to the standards, and they pointed out that the standards expressly exclude underwear. The

commenters believe this part of the policy statements expands the scope of the flammability standards for children's sleepwear to include underwear. They questioned this perceived expansion because they believe that injury data are not associated with underwear and because the Commission did not amend the standard in accordance with Administrative Procedure Act procedures. One commenter also stated that expanding the scope of the standards would adversely affect the cotton industry.

The policy statements do not expand the scope of the flammability standards for children's sleepwear to cover underwear or any other category of fabrics or garments not previously within the scope of the standards. They merely provide the factors that will clarify whether particular fabrics or garments fall within the scope of the standards. Thermal wear was mentioned in the October 1979 proposal as an example of a type of borderline garment that may or may not be primarily intended for sleeping or activities related to sleeping, depending upon the individual case facts.

The Commission acknowledges that it may not solely rely on the statements of policy to prove that a particular fabric or garment falls within the scope of the standards. In any enforcement action, the Commission will be prepared to prove that the fabric or garment in question is an item of children's sleepwear, as defined in the applicable flammability standard. At that time, any affected firm will be provided an opportunity to litigate the merits of the Commission's claim with respect to the particular fabrics or garments involved, and thus will be afforded due process. In addition, the 10-day procedure described above will precede any Commission enforcement.

The Commission stresses that the factors concerning scope of the standards re guidelines and do not create any new enforcement burden for the Commission. They are merely intended to assist the Commission and the industry in determining what fabrics or garments fall within the scope of the standards. It is not necessary that all of the factors be present for a fabric or garment to be an item of children's sleepwear as defined in the flammability standards. The evidence that will bear on proper classification of any particular fabric or garment will vary from case to case. The final policy statements have been modified to clarify this point.

B. Suggested Label

A few commenters addressed the warning label suggested in the proposed statements of policy. A nationwide

chain retailer stated that any label advising consumers that a thermal garment does not meet the standard may lead some consumers to believe that others do. The Commission does not expect this to be a problem because it expects all borderline garments to be labeled, and consumers would not expect to see such "negative" labels on non-borderline garments. A different commenter reported that the thermal underwear industry has taken voluntary action to use the word "underwear" on garment labels and packaging and in advertisements.

A comment from Louis Bates, a sleepwear manufacturer, discussed his then-pending petition for a labeling regulation (FP 79-2). Mr. Bates stated in the petition that decorated thermal wear garments have been marketed as children's sleepwear. To address confusion by consumers, he petitioned the Commission to require that such garments not meeting the sleepwear flammability standards bear a label stating:

Caution

This garment does not meet the Flammability Standards for Children's Sleepwear. It is not intended for and is not suitable for use as children's sleepwear.

On July 23, 1980 the Commission, by majority vote, granted the Bates petition and the staff is now preparing a proposed regulation that would require such a label for all children's thermal wear. If a final regulation is issued, children's thermal wear would have to be labeled in accordance with that regulation, and the label suggested in these enforcement policies would be superseded for thermal wear. However, this enforcement policy would still suggest a "negative" label for other borderline items, such as some infant clothing.

c. *Retail Responsibility.* An apparel trade association suggested certain changes in the statements of policy "to place the respective duties of apparel manufacturers and retailers in the proper perspective." While the proposed policy statements contained guidelines for the retail sale of borderline fabrics or garments, the suggested changes would use stronger and more specific wording.

The Commission agrees with the apparel association that some changes are necessary to isolate and clarify the responsibilities of retailers. The retailer and not the manufacturer of a fabric or garment should generally be subject to an enforcement action, if an item bears a manufacturer's negative label and retail marketing and promotion nevertheless results in a CPSC decision that the fabric or garment falls within

the scope of the standards. Changes have been made in the final enforcement policy to reflect this approach (at 16 CFR 1615.64(b) and (c) and 16 CFR 1616.65(b) and (c)). At the same time, the Commission notes that it may still enforce the sleepwear standards against the manufacturer of a fabric or garment bearing a negative label if it believes that the item was in fact intended or promoted by such firm primarily for sleeping or activities related to sleeping.

The Commission also believes that the policy statements should be modified to include more specific guidelines on retail promotion and advertisement of sleepwear and non-sleepwear fabrics and garments. Therefore, the final policy statements incorporate the advice that segregation of such fabrics and garments by retailers should be "by placement in different parts of a department or store" (16 CFR 1615.64(c) and 1616.65(c)). In addition, the guidelines indicate that store display signs distinguishing between sleepwear and non-sleepwear garments and fabrics should "[indicate] which are sleepwear items and which are not" (same sections).

Two other public commenters raised points about retailers:

1. One commenter suggested that two terms used in the policy statements be made more precise. The Commission agrees, and has made the suggested changes. "Manufacturer or importer" has been changed to "manufacturer, importer or other person (such as a converter) initially introducing an item subject to the standard into commerce" (16 CFR 1615.64(b) and (c) and 16 CFR 1616.65(b) and (c)). In addition, to include, as intended, all subsequent firms in the channels of distribution, the term "retailer" has been expanded to "retailers, distributors and/or wholesalers" (16 CFR 1615.64(b) and (c) and 16 CFR 1616.65(b) and (c)).

2. Another commenter suggested that the obligations of retailers be specified in existing regulatory provisions (§§ 1615.31(d) and 1616.31(c) of the sleepwear standards), rather than in new subsections, as proposed. However, the referenced existing provisions were issued to address the time period, just before and not very long after the effective dates of the sleepwear standard, when complying and noncomplying sleepwear items were sold at the same time. These requirements concern the identification and segregation of noncomplying sleepwear items from complying sleepwear items, in that particular situation. The Commission did not expect these requirements to place a permanent burden on the retailer, since

noncomplying sleepwear items manufactured prior to the effective dates of the standards were expected to clear the channels of distribution within one to three years after the effective dates. The Commission is aware of no evidence that any pre-standard sleepwear is now being sold.

Most children's non-sleepwear items in the marketplace would not be confused with children's sleepwear. Therefore, the Commission believes that it would be unnecessarily burdensome to apply the segregation and identification requirements of §§ 1615.31(d) and 1616.31(c) to all noncomplying children's items, as suggested. The guidelines for retailers will remain in §§ 1615.64(b) and (c) and 1616.65(b) and (c), as proposed.

D. *Ten-Day Period.* The proposed policy statements provided that firms will be informed by letter before they or their products are the subject of enforcement action. Before any such action is taken, the firms, will have 10 days within which to provide information, evidence or arguments indicating that the products are not violative or not covered by the standard, unless the Commission determines that the public health and safety require immediate action (16 CFR 1615.64(d) and 1616.65(d)).

One commenter suggested changing the "10 days" to "10 working days from the date of receipt of the Commission's [l]etter". Based upon its experience with this procedure, however, the Commission believes that the 10 days currently provided is sufficient time for an initial response from a firm. Additional response time may be negotiated, if necessary. The change has therefore not been adopted.

E. *FTC Exemption Policy.* Four commentator noted that the proposed statements of enforcement policy did not include the exemptions provided in the 1972 FTC policy statement. These exemptions apply to certain collars, cuffs, labels, vinyl soles, and other functional materials used on sleepwear garments. The commentators strongly urged inclusion of these exemptions in the CPSC policy statements because (1) data presented to the FTC indicated that the exempted portions of the garments presented very little hazard and (2) the industry has relied on the exemptions since 1972.

The commentators are concerned that the CPSC's failure to reissue the exemptions in the FTC policy statement signals a rejection of them. This is not the case. The reproposal of the FTC policy statement for the 0-6X sleepwear standard, and the proposal of the same policy for the 7-14 standard, were

directed solely at the issue of borderline fabrics and garments. A problem continued to exist and a solution became necessary. In contrast, exemptions currently involve no problems for enforcement of the sleepwear standards.

The CPSC believes it is unnecessary to reissue the exemptions as a published statement of policy. Rather, the CPSC enforcement staff has affirmed, in a recent Commission-approved compliance advisory letter, that it will apply the exemptions to sleepwear in sizes 0-14. Therefore, the industry should be assured that the CPSC has not signaled any change in its adherence to the exemptions.

V. Conclusion

Therefore, in accordance with provisions of the Flammable Fabrics Act (sec. 5, Pub. L. 90-189, 81 Stat. 569 (15 U.S.C. 1194)) and the Consumer Product Safety Act (sec. 30, Pub. L. 92-573 (15 U.S.C. 2079)), the Consumer Product Safety Commission amends the Code of Federal Regulations, Title 16, Chapter II, Subchapter D, as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X (FF 3-71)

Subpart C is amended by adding a new section as follows:

§ 1615.64 Policy to clarify scope of standard.

(a) The Commission makes the following statement of policy regarding (1) the phrase "intended or promoted" as used in the definition of "item" in § 1615.1(c), and (2) the phrase "intended to be worn primarily for sleeping or activities related to sleeping" as used in the definition of "children's sleepwear" in § 1615.1(a).

(b) For enforcement purposes, the meaning of these phrases will be interpreted by the Commission according to the following principles:

(1) *Sleepwear fabrics and related materials.* Whether fabric or related material is "intended or promoted" for use in children's sleepwear depends on the facts and circumstances present in each case. Relevant factors include (i) the nature of the fabric and its suitability for use in children's sleepwear, (ii) the extent to which the fabric or a comparable fabric has been sold to manufacturers of children's sleepwear for use in the manufacture of children's sleepwear garments and (iii) the likelihood that the fabric will be used primarily for children's sleepwear in a substantial number of cases. Wherever there is a substantial question

as to the applicability of the standard after the factors are applied to a particular fabric, it would be advisable for the fabric manufacturer, importer or other person (such as a converter) initially introducing the fabric into commerce to place a prominent warning on labels, shipping invoices, packages, etc., that the fabric in question does not meet the flammability standards for children's sleepwear, and is not intended for and is not suitable for use in children's sleepwear. However, any such disclaimer will not bind the Commission in an enforcement action against the fabric manufacturer, importer or other person (such as a converter) initially introducing the fabric into commerce, if in the Commission's opinion the fabric was in fact promoted by such firm for use in children's sleepwear garments and/or an enforcement action against a wholesaler, distributor or retailer, if in the Commission's opinion the fabric was in fact promoted by such firm for use in children's sleepwear.

(2) *Sleepwear garments.* Whether a product of wearing apparel is "intended to be worn primarily for sleeping or activities related to sleeping" depends on the facts and circumstances present in each case. Relevant factors include (i) the nature of the product and its suitability for use by children for sleeping or activities related to sleeping, (ii) the manner in which the product is distributed and promoted, and (iii) the likelihood that the product will be used by children primarily for sleeping or activities related to sleeping in a substantial number of cases. Wherever there is a substantial question as to the applicability of the standard after the factors are applied to a particular garment, it would be advisable for the garment manufacturer, importer or other person (such as a converter) initially introducing the garment into commerce to place a prominent warning on labels or tags attached to such product to warn the consumer that the product of wearing apparel in question does not meet the flammability standard for children's sleepwear, and is not suitable for use as children's sleepwear. However, any such disclaimer will not bind the Commission in an enforcement action against the garment manufacturer, importer or other person (such as a converter) initially introducing the garment into commerce, if in the Commission's opinion the garment was in fact intended or promoted by such firm primarily for sleeping or activities related to sleeping and/or an enforcement action against a wholesaler distributor or retailer, if in

the Commission's opinion the garment was in fact promoted by such firm primarily for sleeping or activities related to sleeping.

(3) For a particular fabric to be intended for use in children's sleepwear or for a particular garment to be children's sleepwear, it is not necessary that all of the relevant factors be present. The factors are guidelines rather than necessary elements of the definitions.

(c) Retailers, distributors and wholesalers, as well as manufacturers, importers and other persons (such as converters) initially 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 such fabric or garment for use as an item of children's sleepwear. As such, retailers, distributors and wholesalers are advised not to advertise or promote as an item of children's sleepwear any item upon which a manufacturer, importer or other person such as a converter initially introducing the item into commerce has placed a prominent warning that the item does not meet the requirements of the flammability standards for children's sleepwear and is not intended or suitable for such use. In addition, retailers are advised (1) to segregate, by placement in different parts of a department or store, fabrics and garments covered by the standard from all fabrics and garments that are beyond the scope of the standards, but which resemble items of children's sleepwear, (2) to utilize store display signs indicating the distinction between types of fabrics and garments, for example by indicating which are sleepwear items and which are not, and (3) to avoid the advertisement and promotion of a noncomplying fabric or garment in a manner that may cause the item to be viewed by the consumer as an item of children's sleepwear.

(d) The Commission, except as noted below, will apply this policy in accordance with Chapter 2C—Letters of Advice/Notices of Noncompliance of the CPSC Enforcement Policy and Procedural Guides, issued May 1979 and available from the CPSC's Office of the Secretary or from the Directorate for Compliance and Enforcement. Under the procedure described in this chapter, firms will be informed by letter before they or their products may be the subject of enforcement action. Before any such action is taken, the firms will have 10 days within which to provide information, evidence or arguments indicating that the products are not

violative or not covered by the standard. However, the Commission may take enforcement action without providing firms 10 days to provide information if it determines that the public health and safety so requires. In determining whether the public health and safety may necessitate acting before the 10-day period ends, the Commission will take into account the nature of the hazard presented by the fabric or garment in question and whether the firm continues to sell it during the 10-day period.

Effective Date: December 8, 1980.

Note.—The policy was initially published by the Federal Trade Commission on March 23, 1972, 1972 (37 FR 5982). It was revised and reissued by the Consumer Product Safety Commission on November 6, 1980.

PART 1616--STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14 (FF 5-74)

Subpart C is amended by adding a new section as follows:

§ 1616.65 Policy to clarify scope of the standard.

(a) The Commission makes the following statement of policy regarding (1) the phrase "intended or promoted" as used in the definition of "item" in § 1616.2(c), and (2) the phrase "intended to be worn primarily for sleeping or activities related to sleeping" as used in the definition of "children's sleepwear" in § 1616.2(a).

(b) For enforcement purposes, the meaning of these phrases will be interpreted by the Commission according to the following principles:

(1) *Sleepwear fabrics and related materials.* Whether fabric or related material is "intended or promoted" for use in children's sleepwear depends on the facts and circumstances present in each case. Relevant factors include (i) the nature of the fabric and its suitability for use in children's sleepwear, (ii) the extent to which the fabric or a comparable fabric has been sold to manufacturers of children's sleepwear for use in the manufacture of children's sleepwear garments, and (iii) the likelihood that the fabric will be used primarily for children's sleepwear in a substantial number of cases. Wherever there is a substantial question as to the applicability of the standard after the factors are applied to a particular fabric, it would be advisable for the fabric manufacturer, importer or other person (such as a converter) initially introducing the fabric into commerce to place a prominent warning on labels, shipping invoices, packages, etc., that the fabric in question does not

meet the flammability standards for children's sleepwear, and is not intended for and is not suitable for use in children's sleepwear. However, any such disclaimer will not bind the Commission in an enforcement action against the fabric manufacturer, importer or other person (such as a converter) initially introducing the fabric into commerce, if in the Commission's opinion the fabric was in fact intended or promoted by such firm for use in children's sleepwear garments; and/or an enforcement action against a wholesaler, distributor or retailer, if in the Commission's opinion the fabric was in fact promoted by such firm for use in children's sleepwear garments.

(2) *Sleepwear garments.* Whether a product of wearing apparel is "intended to be worn primarily for sleeping or activities related to sleeping" depends on the facts and circumstances present in each case. Relevant factors include (i) the nature of the product and its suitability for use by children for sleeping or activities related to sleeping, (ii) the manner in which the product is distributed and promoted, and (iii) the likelihood that the product will be used by children primarily for sleeping or activities related to sleeping in a substantial number of cases. Wherever there is a substantial question as to the applicability of the standard after the factors are applied to a particular garment, it would be advisable for the garment manufacturer, importer or other person (such as a converter) initially introducing the garment into commerce to place a prominent warning on labels or tags attached to such garment adequate to warn the consumer that the garment in question does not meet the flammability standard for children's sleepwear, and is not intended for and is not suitable for use as children's sleepwear. However, any such disclaimer will not bind the Commission in an enforcement action against the garment manufacturer, importer or other person (such as a converter) initially introducing the garment into commerce, if in the Commission's opinion the garment was in fact intended or promoted by such firm primarily for sleeping or activities related to sleeping; and/or an enforcement action against a wholesaler, distributor or retailer, if in the Commission's opinion the garment was in fact promoted by such firm primarily for sleeping or activities related to sleeping.

(3) For a particular fabric to be intended for use in children's sleepwear or for a particular garment to be children's sleepwear, it is not necessary that all of the relevant factors be

present. The factors are guidelines rather than necessary elements of the definitions.

(c) Retailers, distributors, and wholesalers, as well as manufacturers, importers and other person (such as converters) initially 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 such fabric or garment for use as an item of children's sleepwear. As such, retailers, distributors and wholesalers are advised not to advertise or promote as an item of children's sleepwear any item upon which a manufacturer, importer or other person (such as a converter) initially introducing the item into commerce has placed a prominent warning that the item does not meet the requirements of this standard and is not intended or suitable for such use. In addition, retailers are advised (1) to segregate, by placement in different parts of a department or store, fabrics and garments covered by the standard from all fabrics and garments that are beyond the scope of the standards, but which resemble items of children's sleepwear, (2) to utilize store display signs indicating the distinction between types of fabrics and garments for example by indicating which are sleepwear items and which are not, and (3) to avoid the advertisement or promotion of a noncomplying fabric or garment in a manner that may cause the item to be viewed by the consumer as an item of children's sleepwear.

(d) The Commission, except as noted below, will apply this policy in accordance with Chapter 2C—Letters of Advice/Notices of Noncompliance of the CPSC Enforcement Policy and Procedural Guides, issued in May 1979 and available from the CPSC's Office of the Secretary or from the Directorate for Compliance and Enforcement. Under the procedure described in this chapter, firms will be informed by letter before they or their products may be the subject of enforcement actions. Before any such action is taken, the firms will have 10 days within which to provide information, evidence or arguments indicating that the products are not violative or not covered by the standard. However, the Commission may take enforcement action without providing firms 10 days to provide information if it determines that the public health and safety so requires. In determining whether the public health and safety may necessitate acting before the 10-day period ends, the Commission will take into account the nature of the hazard

presented by the fabric or garment in question and whether the firm continues to sell it during the 10-day period.

Effective Date: December 8, 1980.

Dated: October 31, 1980.

Sadye E. Dunn,
Secretary, Consumer Product Safety
Commission.

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