HISTORY

On November 25, 1977, the FAA published, for comment, a proposal to establish a control zone at Gillette, Wyo. (42 FR 60159). The only comments received expressed no objections.

THE RULE

This amendment to Part 71 of the Federal Aviation Regulations (FAR's) establishes a control zone at Gillette, Wyo.

Gillette, Wyo. has recently acquired communications capabilities supporting the establishment of a control zone to protect the VOR runway 15 standard instrument approach procedure.

DRAFTING INFORMATION

The principal authors of this document are Mr. Dave Laschinger, Operations, Procedures, and Airspace Branch, Air Traffic Division, and Mr. Daniel J. Peterson, Office of Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective March 23, 1978, as follows:

By amending Subpart F, 71.171 so as to establish the following control zone:

GILLETTE, WYO.

"Within a 5-mile radius of the Gillette-Campbell County Airport (latitude 44°20'52" N., longitude 105°32'34" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective time will thereafter be continuously published in the Airman's Information Manual.

(Sec. 307(a) Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.69).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Aurora, Colo., on January 11, 1978.

M. M. MARTIN,
Director,
Rocky Mountain Region.

[FR Doc. 78-3107 Filed 2-3-78; 8:45 am]

[6355-01]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER D—FLAMMABLE FABRICS ACT REGULATIONS

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

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

Final Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: In this document the Commission issues final rules amending the Standards for the Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71) and 7 through 14 (FF 5-74) and rules and regulations under those standards affected by the amendments. The amendments delete requirements for residual flame time (RFT) in FF 3-71 and revise the method of testing trim in both FF 3-71 and FF 5-74. The Commission issues these amendments to reduce the necessity for the use of chemical flame retardants on fiber and fabric used in children's sleepwear as a result of the recent national concern over the addition of the chemical tris (2,3 dibromopropyl) phosphate (TRIS), a potential carcinogen, to children's sleepwear fabrics and garments. In addition, the Commission issues these amendments because after considering the proposal, the oral and written comments and other relevant matter it believes the provisions deleted and revised are not needed to protect the public adequately against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage. The Commission is not amending FF 3-71 to delete requirements for garments under size 1.

EFFECTIVE DATE: The amendments shall take effect February 6, 1978.

FOR FURTHER INFORMATION CONTACT:

H. Elizabeth Jones, Directorate of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6617.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 26, 1977, by publication of a notice in the FEDERAL REGISTER (42 FR 56568), the Commission proposed amendments to the Standards for the Flammability of Children's Sleepwear for Sizes 0 through 6X (FF 3-71) (16 CFR Part 1615) and Sizes 7 through 14 (FF 5-74) (16 CFR Part 1616). These standards were issued as a result of deaths and burn injuries to children from fires involving sleepwear. The standards require that children's sleepwear in sizes 0-6X and 7-14 and fabric intended for such sleepwear meet certain flammability test requirements. The proposed amendments would have deleted the requirement for residual flame time testing and criteria in FF 3-71, exempted garments in sizes below size one from FF 3-71, and revised the method of testing trim in both FF 3-71 and FF 5-74.

Although the standards do not require that chemicals be added to garments or fabric to meet the standards, some manufacturers have added chemical flame retardants to some fibers or fabrics to ensure that sleepwear garments produced from these fibers or fabrics consistently comply with the standards. Because of recent national concerns over the addition of the chemical TRIS, a potential carcinogen, and Fyrol FR-2 to children's sleepwear garments and fabrics, the Commission expedited a previously planned but not started review of the standards for the flammability of children's sleepwear. The Commission's review led to the proposed amendments to the sleepwear standards which the Commission believed would reduce the need for adding chemical flame retardants to a number of fabrics and fibers used in children's sleepwear while generally maintaining the level of protection against fire afforded by these standards.

In seeking ways to reduce the need for the use of chemical flame retardants in children's sleepwear, the Commission does not mean to imply that chemical flame retardants as a general class are not safe. However, the issue of whether any chemical is or can be a carcinogen or a mutagen concerns a rapidly changing and developing area of technology. Chemicals that are assumed to be safe one day, may be shown later to be suspect as new and more sophisticated test methodologies are developed. The Commission believes that it is desirable and beneficial to take any action it can to reduce the need to add chemicals to children's sleepwear for purposes of flame retardancy if that action does not unduly reduce the level of safety afforded by the sleepwear standards. Such action could also make available to consumers a wider selection of fabric for children's sleepwear at a lower average cost.

The amendments were not proposed solely to reduce the need for adding chemical flame retardants to material used in children's sleepwear. In determining to propose the amendments, the Commission also considered other factors such as injury data pertinent

to the provisions of the standards that are affected by the amendments, the potential for injury if the standards are amended as proposed, the desirability of increasing consumer choice as to the types of fabric used in children's sleepwear garments, and the possibility of reducing the average cost of children's sleepwear garments. The Commission in balancing all of the factors considered, preliminarily determined that issuance of the proposed amendments would not result in an unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage and that the proposed amendments were reasonable and appropriate.

The Commission proposed an amendment to delete the requirements for residual flame time (RFT) from FF 3-71. That requirement, which does not appear in FF 5-74, addresses the situation where flaming material from a burning garment melts and falls or drips (melt drip) onto another portion of the garment or a different garment or textile item, and causes it to ignite; or falls on the individual wearing the garment, resulting in a burn. A requirement for residual flame time was not included in FF 5-74 on the basis that older children are better able than younger children to protect themselves in case of a garment ignition. The Commission proposed to delete this requirement from FF 3-71 because it expected that the deletion would not substantially affect the safety level now provided by the standard, would decrease the need for adding chemical flame retardants to a number of fibers and fabrics to comply with the standard and would increase consumer choice by making more types of fabrics available. The amendment would primarily affect man-made fibers, such as nylon and polyester, and would allow a number of fabrics produced from these fibers to pass the standard without the addition of chemical flame retardants.

Trim is currently tested under both FF 3-71 and FF 5-74 in a vertical mode, which is the most stringent test position. The purpose of the trim test is to determine the flammability hazard associated with fabric/trim combinations to be used in children's sleepwear.

The proposed amendments to the trim testing requirements of both standards would provide a revised procedure for testing trim that is placed in a horizontal configuration on garments. Such trim would be tested in a horizontal position rather than a vertical position. The Commission proposed the amendments because mannequin and other laboratory tests indicate that when trim is used in a horizontal mode on the garment, testing in a horizontal rather than a vertical configuration is more representative of the burning exhibited by the garment. The Commission, therefore, concluded that trim used in a horizontal position on sleepwear garments should be tested in that position and that the revision of the trim testing requirement should increase consumer choice as to the amount and type of trim available on garments.

The Commission proposed the amendment to exempt sizes below one from FF 3-71 because burn injury data associated with garments in those sizes available at the time of proposal indicated that the safety level now provided by the standard would not be substantially reduced, the exemption would permit the use of more nonchemically treated fabrics, would increase consumer choice as to the types of fabrics available for use in those garments, and could result in reduced average retail prices for children's sleepwear garments in these sizes. The Commission in proposing the amendment also stated that it was considering requiring that noncomplying sleepwear in sizes below one be labeled to state that it does not comply with FF 3-71 and specifically asked for comment on this issue.

In addition, the Commission proposed that the three amendments be effective immediately and sought comment on this issue.

Comments on Proposal

Section 4(d) of the Flammable Fabrics Act (15 U.S.C. 1193(d)) requires that, in addition to providing an opportunity for making written submissions on a proposed amendment to a standard, the Commission shall provide interested persons with an opportunity for the oral presentation of data, views, or arguments. Oral presentations of behalf of 15 persons or organizations, on the proposed amendments, were heard by the Commission on November 16, 1977. In addition, 141 written comments were received by the end of the comment period on November 26, 1977, and more than 100 comments were filed after the end of the comment period. The late comments have been considered to the extent practicable.

The significant issues raised by the oral and written comments are discussed below.

Residual Flame Time

Comments concerning the proposed amedment to delete the requirement for RFT in FF 3-71 were received from individual members of the National Advisory Committee for the Flammable Fabrics Act, representatives of the textile and apparel industry, representatives of the medical profession, retailers, trade associations and consumers. A large majority of these comments supported the proposed amendment.

When a fabric made of a thermoplastic man-made fiber, such as nylon or polyester, is subjected to a flame, the material frequently ignites and/or melts. This material may fall away as a drop (melt drip) or as a section of fabric and may continue to burn. Residual flame time is defined in FF 3-71 as the time the flaming drip or fabric fragment continues to burn on the base of the test cabinet after the ignition source has been removed from the test specimen. Any individual specimen that exhibits an RFT of more than 10 seconds fails the test criteria in FF 3-71.

Those commenters supporting the amendment to FF 3-71 to delete the requirement for RFT generally did so on the grounds that the amendment would reduce the need for the use of chemical flame retardants on children's sleepwear and would not substantially affect the level of safety now provided by the standard. Those persons supporting the amendment also stated that it would increase consumer choice by making more fabrics available for use in sleepwear garments and would lower on the average manufacturing costs and thereby garment prices.

Those commenters opposing the amendment to FF 3-71 to delete the requirement for RFT did so for a number of reasons. Several of these commenters stated that when FF 3—71 was originally issued by the Department of Commerce in 1971, the provision for RFT was included in order to give the greatest possible protection to small children because they cannot protect themselves. These commenters argued that flaming melt drip is a hazard in that it can cause severe localized burns, and flaming melt drip can burn parts of the body that are not adjacent to the burning sections of the garment. In addition, they stated that flaming melt drip can serve as an ignition source for other fabrics or materials. They further contended that no new data or facts have been developed since FF 3-71 was originally issued that justify eliminating the requirement for RFT and that the elimination of RFT will lower the safety level now provided by the standard. These commenters also argued that elimination of RFT could result in the use of fibers in children's sleepwear garments that have particularly bad flaming melt drip characteristics.

Manufacturers of fibers referred to, by them, as inherently flame resistant argued that there are sufficient quantities of these fibers available to meet the demand for fabrics that comply with the RFT requirements of FF 3-71. They contended that elimination of the RFT requirement is not necessary to reduce the use of chemical flame retardants in children's sleepwear because inherently flame resis-

tant fibers are available in sufficient quantities. Thus, they contended there is no need for a trade-off in safety because there is no necessity for using chemical flame retardants. Further they contended that elimination of the RFT requirement would decrease consumer choice by driving out of the market the more expensive inherently flame resistant fibers.

The Commission recognizes that the provision for RFT was included in FF 3-71 to address the phenomenon of "flaming melt drip" whereby material from a burning garment made of manmade fibers could melt and fall or drip onto another portion of the garment, onto a different garment or textile item causing it to ignite, or on the individual wearing the garment, resulting in a burn. The Commission recognizes that flaming as well as nonflaming melt drip has the potential to cause injury.

Very little injury data is available which focuses on flaming and nonflaming melt-drip. Data in the Flammable Fabrics Accident Case and Testing System (FFACTS) as of July 1975, when the system became inactive, shows 4,172 cases of which 714 involved sleepwear. Of the sleepwear cases, 312 involved children through the age of 12. In 12 of these cases it was reported that the sleepwear garment melted or dripped. In two of these cases it was stated that the melted fabric adhered to the skin of the victims, which contributed to or caused the burn injury. The garment in one of the two cases was chemically flame retarded. In two other cases, it was stated that the garment melted, adhering to the clothing worn underneath, but did not appear to contribute to the victim's injuries. In the eight remaining cases, the relationship of melt-drip to the injury was not specified.

Physicians treating children in burn centers in Boston, Mass. and Galveston, Tex., while acknowledging the potential for melt drip to cause burn injury stated in their comments on the proposal that they did not consider melt drip to be a significant factor in injury severity.

The lack of reported injury cases resulting from melt drip cannot necessarily be attributed to the RFT requirements in FF 3-71 as suggested by several commenters. The requirement does not eliminate flaming melt drip but rather limits the flame to 10 seconds. Thus, the RFT requirement does not eliminate the potential for injury from either non-flaming drips or molten polymer, both of which would result in burns on contact with the skin. Moreover, there is also a lack of reported injuries resulting from melt-drip in garments subject to FF 5-74, which has no requirement for RFT. Elimination of the RFT provision as in FF 3-71 is not expected to increase the number or severity of these injuries.

One industry commenter submitted to the Commission a number of questionnaire sheets filled out by attorneys handling clothing burn cases. The responses on a number of the questionnaires indicated that the garment involved in the litigation melted and dripped and that the melt drip aggravated the injury. In addition a number of the responses on the questionnaires stated that cotton garments melted and dripped thus aggravating the injury even though cotton garments from a technological standpoint cannot melt and drip. None of the responses to the questions were supported by any technical data.

Other data submitted to the Commission in response to the proposed amendments supported the conclusion that injuries caused by melt drip are not particularly severe and, therefore, do not present an unreasonable risk. In experiments conducted on anesthetized shaved rats and pigs, it was shown that the extent of the injury due to both flaming and non-burning melt drip was limited. In the experiments conducted on the shaved rats, the size of the injury never exceeded ½ to ¾ square inches and the severity did not exceed second degree burns. In the experiments with the pig skin, the area and severity of the burn were similarly limited.

These studies indicate that when a melt drip injury occurs, it is usually a localized second degree burn. Such burns, while causing painful localized trauma at the time of the burn, are not likely to cause long lasting physical and psychological damage.

An importer of inherently flame resistant fiber submitted a film to the Commission, purportedly demonstrating the hazard posed by melt drip. This film was designed to demonstrate the resistance of fabrics and garments produced from the inherently flame resistant fiber to both large and small ignition sources. The film accomplishes the purpose. Part of the film demonstrated the effect of a large sustained flaming ignition source on selected fabrics, including one sample of polyester. The polyester fabric shrank from the flame, melted and dripped. This is to be expected with the large, sustained ignition source used. The phenomenon depicted in the film however, has little relationship to the sleepwear fires being addressed by the standards, where the ignition source is usually a small flame such as that from a match or lighter, and of short duration.

In determining whether it is reasonable to delete the RFT provision in FF 3-71 addressing flaming melt drip, the Commission considers factors in addition to the reduction of hazard. It also considers such factors as manufacturing costs, retail prices, garment performance, consumer choice, and the supply of fabric that does not require the addition of a chemical flame retardant.

The Commission believes, on the basis of information provided in the comments and other available information, that amending FF 3-71 to delete the RFT requirement would result in an increase in the amount of untreated polyester and nylon fabric that could be used in garments subject to that standard. When the children's sleepwear standard was first promulgated, some polyester and nylon fabrics were found to occasionally fail the RFT requirement. This problem was overcome by treatment of these fabrics with chemical flame retardants. Elimination of the RFT requirement will permit many of these polyester and nylon fabrics to comply with the standard, without chemical flame retardant treatment.

Suppliers of inherently flame resistant fibers and yarn indicated that there are adequate quantities of inherently flame resistant material available to supply the children's sleepwear market with fabric that complies with FF 3-71. They therefore argue that no garments need be produced that have chemical flame retardants added. It is the Commission's view, however, that while inherently flame resistant fabric may indeed be available in adequate quantities to supply the children's sleepwear market, elimination of the RFT provision will allow the use of additional nonchemical flame retardant treated fabrics in children's sleepwear in those sizes subject to FF 3-71. It is the Commission's view, at this time, that any action it can take that would further reduce the necessity for adding flame retardant chemicals to children's sleepwear while, at the same time, making the widest possible selection of fabrics available without substantially affecting the level of safety afforded by the sleepwear standards, is desirable and beneficial. In this connection, the Commission notes that even fabric referred to in the trade as "inherently flame resistant" may have chemicals added for the purpose of flame retardancy at some stage of production of the fiber.

In considering whether to amend FF 3-71 to delete requirements for RFT, the Commission has also considered the potential effect of this action on the cost of sleepwear garments. Data before the Commission indicates that elimination of the RFT provision will allow garment manufacturers to use lower priced (untreated) fabric in their manufacturing process. This could result in lower average retail prices for children's sleepwear than would be the case without the amendment. While cost reduction alone is not, in the Commission's view, an adequate

reason to eliminate the RFT requirement in the standard, it is one of the factors considered by the Commission.

Several suppliers of inherently flame resistant fibers have expressed the opinion that if the RFT requirement is deleted, inherently flame resistant fibers will not be competitive with untreated polyester fibers because they will cost more and, therefore, will no longer be used in children's sleepwear. It appears to the Commission, on the basis of data submitted in the comments and other available information, that the share of the children's sleepwear market a fiber obtains and holds does not depend on the price of the fiber alone. Inherently flame resistant fibers have found their way into the children's sleepwear market during the last several years, even though their prices have been in the upper end of the prevailing price range for this market. Thus, anticipated price changes as a result of the elimination of RFT from FF 3-71 do not appear to be sufficient cause to exclude any fiber from the sleepwear market.

On the basis of the limited injury data available which can be directly attributed to melt drip, the relative low severity of such injuries, the likelihood of increasing the selection while reducing average retail prices of fabrics and garments that will be available to consumers if the requirements for RFT are deleted, and the likely availability of additional types of fabrics that can meet the requirements of FF 3-71 without the addition of chemical flame retardants, the Commission determines that the RFT requirement in FF 3-71 is not needed for the standard to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury or significant property damage. Accordingly, the Commission amends FF 3-71 to delete the requirement for residual flame time as set forth below. The Commission will monitor the results of this amendment to determine its effect on sleepwear burn injuries. If burn injury or other information is found indicating a reduction in the safety level of the standard as a result of elimination of the RFT requirement, the Commission will reevaluate this amendment and after evaluating the factors discussed above consider further amendment of FF 3-71 regarding RFT.

Section 1615.4(a) of the FF 3-71 concerning the test chamber provides that a piece of asbestos paper be used to catch any melt drip and that this paper be changed after each specimen which drips has been tested. In view of the Commission's decision to delete the requirement for RFT which addresses melt drip, this procedure is no longer necessary and therefore has been eliminated from the Standard.

Deletion of Coverage for Sleepwear in Sizes Below Size One

Comments concerning the proposal to amend FF 3-71 to exempt coverage of sleepwear in sizes below size one were received from individual members of the National Advisory Committee for the Flammable Fabrics Act, representatives of the textile and apparel industry, representatives of the medical profession, retailers, trade associations and consumers.

The Commission, on the basis of the oral and written comments, data compiled by the Commission staff concerning burn injuries involving children under 12 months of age, and other relevant material, voted 2-1 against issuing this proposed amendment.

The Consumer Product Safety Act provides that the Commission shall consist of 5 Commissioners and that 3 Commissioners constitute a quorum for transaction of business. There are currently 2 vacancies on the Commission. The internal voting procedure of the Commission presently requires that the Commission may not take action on a matter if there is a dissenting vote, although the Commission may act if two Commissioners vote to do so and one Commissioner abstains. Because the Commission voted 2 to 1 on the question of issuing the amendment exempting sleepwear garments in sizes less than one, no action can be taken to issue or withdraw the amendment at this time. This amendment may be further considered when additional Commissioners join the Commission.

Trim Testing

Comments concerning the proposed amendment to revise the method for testing trim in FF 3-71 and FF 5-74 were received from individual members of the National Advisory Committee for the Flammable Fabrics Act, representatives of the textile industry, representatives of the medical profession, retailers, trade associations and consumers. A large majority of these comments supported the proposed amendment.

The proposed amendment would allow manufacturers who are producing sleepwear garments with the garment trim in a horizontal configuration to test that trim for flammability in a horizontal mode on the test specimen, rather than in the more severe vertical configuration on the test specimen.

Those persons supporting the amendment to FF 3-71 and FF 5-74 to modify the method of testing trim did so generally on the grounds that the amendments would reduce the need for the use of chemical flame retardants in trim used on sleepwear and would not substantially affect the level of safety now provided by the standards. They also stated that the standards as modified would continue to address hazards presented by burning trim as it occurs in real life situations, and would increase consumer choice in garment design and fabric availability.

Those persons who opposed the proposed amendment did so generally on the basis that the amendment would decrease the level of safety now provided to consumers. Several commenters stated that the change was not necessary because inherently flame resistant fibers were available for trim that would comply with the standards when tested in a vertical test mode.

It is the view of the Commission that testing trim in a horizontal configuration rather than in a vertical configuration is more representative of the burning characteristics of trim used on sleepwear garments in a horizontal mode. The Commission on the basis of laboratory tests, conducted by Clemson University on behalf of a garment manufacturer believes that the level of safety afforded by the standards will not be affected by this amendment. In those tests nightgowns were constructed from fabric commonly used to make children's sleepwear. These nightgowns were trimmed with lace produced from nylon, polyester and cotton, and self fabric ruffle.

The garments were then burned to determine the effect of the trim on the flammability of the garments. Based on these tests, the flammability hazard for trim used in a horizontal configuration was judged to be small, much less than that of trim in a vertical configuration. Therefore, testing of trim in a horizontal configuration on the test specimen, where the trim is used horizontally on the sleepwear garment and in a vertical configuration on the test specimen when the trim is to be used vertically on the sleepwear garment appears to provide a better assessment of the flammability hazard involved than does the current procedure in the standard which requires all trim to be tested in a vertical configuration. Further, testing in this manner is expected to have a minimal effect on the level of safety provided by the standards.

While inherently flame resistant fibers may be available for use in trim, the amendment will result in an increase in the amount and type of trim available for use on sleepwear garments. It should also reduce the need for chemical flame retardant treatment of trim. This issue is discussed in more detail under the heading "Residual Flame Time" above.

In view of the foregoing, the Commission concludes that FF 3-71 and FF 5-74 should be amended by revising the trim test procedures to allow testing of trim in a horizontal configu-

ration on a test specimen where the trim is to be used horizontally on the sleepwear garments. The Commission also concludes that a vertical test method for trim used on sleepwear garments in a horizontal position is not necessary to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or injury.

As in the case of the RFT and sizes below one amendments, the results of the trim test modification will be monitored to determine the effect of the amendment on sleepwear injuries. If burn injuries or other information are found indicating a reduction in the safety level of the standards as a result of the test modification, the Commission will reevaluate this amendment and after analyzing the factors discussed above, consider further amendment of FF 3-71 and FF 5-7 regarding trim testing.

Effective Date

Comments concerning when the proposed amendments should be effective if issued by the Commission were received from individual members of the National Advisory Committee for the Flammable Fabrics Act, representatives of the textile industry, representatives of the medical profession, retailers, and trade associations. In all but a few of the comments, it was recommended that the amendments be effective immediately after promulgation of the amendment. One commenter suggested that the amendments be effective three months after they are issued in order to allow industry to adapt to the amendments and to allow existing inventories of fabrics to be depleted. Another commenter suggested that the amendments be effective one year after promulgation in order to permit the industry to adapt to the amendments.

As discussed above, the Commission has determined that the provisions of the sleepwear standards affected by the amendments are not needed to adequately protect the public against an unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage. This determination is based in part on the expectation that the amendments are likely to result in the availability of additional types of fabrics for use in sleepwear garments that can meet the requirements of the standards without the addition of chemical flame retardants, and a possible decrease in the average cost of children's sleepwear, while maintaining the level of safety now provided by the standard.

In view of the foregoing, the Commission finds that it is in the public interest that the amendments be made effective upon their publication in the Federal Register. Therefore, on or after that date any sleepwear garment, no matter when manufactured or introduced into commerce, that complies with the standard as amended may be sold. Moreover, since the amendments relieve restrictions, or in the case of sizes below one, grant an exemption, the Commission finds, in accordance with 5 U.S.C. 553(d), that it is not necessary to delay the effective date of the amendments in order for the textile industry to adapt to them.

Environmental Considerations

In proposing the amendments to FF 3-71 and FF 5-74 the Commission concluded that the proposed amendments are expected to reduce the use of chemical flame retardants, and that this reduction should in general have beneficial impacts on the enviroments. The Commission received no comments on this issue and reaffirms the conclusion made in the proposal.

Other Comments

The Commission received a number of comments involving issues not directly related to the proposed amendments. These comments involve matters such as flammability standards in general and revisions to the sampling plan included in the standard. The Commission will consider these comments in the context of its fire-burn program and will take any action on the issues raised it considers appropriate.

Conclusion and Issuance

The Commission has considered the published proposal, the oral and written responses to the proposal and other relevant material. Based on its analysis as discussed above, the Commission amends the Standards for the Flammability of Children's Sleepwear, FF 3-71 and FF 5-74, to delete the requirement in FF 3-71 for residual flame time and to revise the method of testing trim in both FF 3-71 and FF 5-74.

Therefore, pursuant to provisions of the Flammable Fabrics Act as amended (Pub. L. 90-189, see 4(a), 4(b), 81 Stat. 569; U.S.C. 1193(a)(b), 1201, and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, sec. 30(b), 86 Stat. 1231; 15 U.S.C. 2079(b), 16 CFR 1615 and 1616 are amended as follows:

1. Section 1615.1 is amended as shown below:

Sections 1615.1 (e) is amended and (g) is reserved to read as follows:

§ 1615.1 Definitions.

* * * * *

(e) "Test Criteria" means the maximum char length which a sample or specimen may exhibit in order to pass an individual test.

* * * * *

(g) [Reserved].

§ 1615.3 [Amended]

2. Section 1615.3(a) is amended and (b) (3) is deleted as shown below:

(a) *Summary of Test Method.* Five conditioned specimens, 8.9 x 25.4 cm. (3.5 x 10 in.), are suspended one at a time vertically in holders in a prescribed cabinet and subjected to a standard flame along their bottom edge for a specified time under controlled conditions. The char length is measured.

(b) * * *

(3) [Deleted].

§ 1615.4 [Amended]

3. Section 1615.4(a) is amended as follows:

(a) *Apparatus—(1) Test Chamber.* The test chamber shall be a steel cabinet with inside dimensions of 32.9 cm. (12 15/16 in.) wide, 32.9 cm. (12 15/16 in.) deep, and 76.2 cm. (30 in.) high. It shall have a frame which permits the suspension of the specimen holder over the center of the base of the cabinet at such a height that the bottom of the specimen holder is 1.7 cm. (¾ in.) above the highest point of the barrel of the gas burner specified in paragraph (c) of this section and perpendicular to the front of the cabinet. The front of the cabinet shall be a close fitting door with a glass insert to permit observation of the entire test. The cabinet floor may be covered with a piece of asbestos paper, whose length and width are approximately 2.5 cm. (1 in.) less than the cabinet floor dimensions. The cabinet to be used in this test method is illustrated in Figure 1 and detailed in Engineering Drawings, Nos. 1 to 7.

4. Section 1615.4(b) (2) is amended as follows:

(b) * * *

(1) * * *

(2) Different colors or different print patterns of the same fabric may be included in a single Fabric or Garment Production Unit, provided such colors or print patterns demonstrate char lengths that are not significantly different from each other as determined by previous testing of at least three samples from each color or print pattern to be included in the Unit.

5. Section 1615.4(c) (1) and (3) are amended as follows:

(c) * * *

(1) *Normal Sampling.* Select one Sample from the beginning of the first Fabric Piece (Piece) in the Unit and one Sample from the end of the last Piece in the Unit, or select a sample from each end of the Piece if the Unit is made up of only one Piece. Test the

two selected Samples. If both Samples meet all the Test Criteria of § 1615.3(b), accept the unit. If either or both of the Samples fail the 17.8 cm. (7.0 in.) average char length criterion, § 1615.3(b)(1), reject the Unit. If two or more of the individual specimens, from the 10 selected specimens fail, the 25.4 cm. (10 in.) char length, .3(b)(2), reject the Unit. If only one individual specimen, from the 10 selected specimens, fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select five additional specimens from the same end of the Piece in which the failure occurred, all five to be taken in the fabric direction in which the specimen failure occurred. If this additional Sample passes all the test criteria, accept the Unit. If this additional Sample fails any part of the test criteria, reject the Unit.

(2) * * *

(3) *Tightened Sampling.* The level of sampling required for acceptance shall be increased when a Unit is rejected under the Normal Sampling plan. The Tightened Sampling shall be the same as Normal Sampling except that one additional Sample shall be selected and cut from a middle Piece in the Unit. If the Unit is made up of less than two pieces, the Unit shall be divided into at least two Pieces. The division shall be such that the Pieces produced by the division shall not be smaller than 100 linear yards or greater than 2,500 linear yards. If the unit is made up of two Pieces, the additional Sample shall be selected from the interior end of one of the Pieces. Test the three selected Samples. If all three selected Samples meet all the test criteria of § 1615.3(b), accept the unit. If one or more of the three selected Samples fail the 17.8 cm. (7.0 in.) average char length criterion, § 1615.3(b)(1), reject the Unit. If two or more of the individual specimens from the 15 selected specimens fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), reject the unit. If only one individual specimen, of the 15 selected Specimens fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select five additional specimens from the same end of the same piece in which the failure occurred, all five to be taken in the fabric direction in which the Specimen failure occurred. If this additional Sample passes all the test criteria, accept the Unit. If this additional Sample fails any part of the test criteria, reject the Unit. Tightened Sampling may be discontinued and Normal Sampling resumed after five consecutive Units have all been accepted using Tightened Sampling. If Tightened Sampling remains in effect for 15 consecutive units, production of the specific fabric in Tightened Sampling must be discontinued until that part of the process or component which is causing failure has been identified and the quality of the end product has been improved.

* * * * *

6. Section 1615.4(c)(4)(iv) is amended as shown below:

(c) * * *

(4) * * *

(iv) Select and cut a Sample from each end of each adjoining Piece beginning adjacent to the Piece which failed. Test the two Samples from the Piece. If both Samples meet all the test criteria of § 1615.3(b), the Piece is acceptable. If one or both of the two selected Samples fail the 17.8 cm. (7.0 in.) average char length criterion, § 1615.3(b)(1), the Piece is unacceptable. If two or more of the individual Specimens, from the 10 selected specimens, fail the 25.4 cm. (10 in.) char length § 1615.3(b)(2), the Piece is unacceptable. If only one individual specimen, from the 10 selected specimens, fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select five additional specimens from the same end of the Piece in which the failure occurred, all five to be taken in the fabric direction in which the specimen failure occurred. If this additional Sample passes all the test criteria, the Piece is acceptable. If this additional Sample fails any part of the test criteria, the Piece is unacceptable.

* * * * *

7. Section 1615.4(c)(4)(vi) is amended as shown below:

(c) * * *

(4) * * *

(vi) Alternatively, individual Pieces from a rejected Unit containing three or more Pieces may be tested and accepted or rejected on a Piece-by-Piece basis according to the following plan, after removing the Piece or Pieces, the failure of which resulted in Unit rejection. Select four Samples (two from each end) from the Piece. Test the four selected Samples. If all four Samples meet all the Test Criteria of § 1615.3(b), accept the Piece. If one or more of the Samples fail the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), reject the Piece. If two or more of the individual Specimens from the 20 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(1), reject the Piece. If only one individual specimen, from the 20 selected specimens, fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select two additional Samples from the same end of the Piece in which the failure occurred. If these additional two Samples meet all the Test Criteria of § 1615.3(b), accept the Piece. If one or both of the two additional Samples fail any part of the Test Criteria, reject the Piece.

* * * * *

8. Section 1615.4(d)(2)(i) is amended as shown below:

(d) * * *

(2) * * *

(i) *Seams.* Make three Samples (15 specimens) using the longest seam type and three Samples using each other seam type 10 inches or longer that is to be included in the garment. Prior to testing, assign each specimen to one of the three Samples. Test each set of three Samples and accept or reject each seam design in accordance with the following plan:

(A) If all three Samples meet all the test criteria of § 1615.3(b), accept the seam design. If one or more of the three Samples fail the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), reject the seam design. If three or more of the individual Specimens from the 15 selected specimens fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), reject the seam design. If only one of the individual specimens from the 15 selected specimens fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), accept the seam design.

(B) If two of the individual specimens from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select three more Samples (15 specimens) and retest. If all three additional Samples meet all the test criteria of § 1615.3(b) accept the seam design. If one or more of the three additional Samples fail the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), reject the seam design. If two or more of the individual specimens from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2) reject the seam design. If only one of the individual specimens from the 15 selected specimens, fails the 25.4 cm. (10 in.) char length § 1615.3(b)(2) accept the seam design.

* * * * *

9. Section 1615.4(d)(2)(ii) (A) and (B) are revised as shown below:

(d) * * *

(2) — * * *

(ii) *Trim* (A)(*1*) Make three samples (15 specimens) from each type of trim to be included in the garment. For trim used only in a horizontal configuration on the garment, specimens shall be prepared by sewing or attaching the trim horizontally to the bottom edge of an appropriate section of untrimmed fabric. Sleeve and neckline trim may not be tested in this manner. Where more than one row of trim is used on the garment, specimens shall be prepared with the same configuration (same number of rows and spacing between rows up to the limit of the specimen size) as the garment.

(*2*) For trim used in other than a horizontal configuration, specimens shall be prepared by sewing or attach-

ing the trim to the center of the vertical axis of an appropriate section of untrimmed fabric, beginning the sewing or attachment at the lower edge of each specimen.

(3) For either configuration, the sewing or attachment shall be made in the manner in which the trim is attached in the garment.

(B)(1) Sewing or otherwise attaching the trim shall be done with thread or fastening material of the same composition and size to be used for this purpose in the garment and using the same stitching or seamtype. Trim used in the horizontal configuration shall be sewn or fastened the entire width (smaller dimension) of the specimen. Trim used in other than the horizontal configuration shall be sewn or fastened the entire length (longer dimension) of the specimen.

(2) Prior to testing, assign each specimen to one of the three samples. Test the sets of three samples and accept or reject the type of trim and design on the same basis as seam design. A type of trim and design accepted when tested in a vertical configuration may be used in a horizontal configuration without further testing.

10. Section 1615.4(d)(3)(i)(A) is amended as shown below:

(d) * * *

(3) * * *

(i)(A) From each Unit select at random sufficient garments and cut three Samples (15 specimens) from the longest seam type. No more than five specimens may be cut from a single garment. Prior to testing, assign each specimen to one of the three Samples. All specimens cut from a single garment must be included in the same Sample. Test the three selected Samples. If all three Samples meet all the test criteria of § 1615.3(b), accept the Unit. If one or more of the three Samples fail the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), reject the Unit. If four or more of the individual specimens, from the 15 selected specimens, fail the 25.4 cm (10 in.) char length, § 1615.3(b)(2), reject the Unit. If three of less of the individual specimens, from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), accept the Unit.

* * * * *

11. Section 1615.4(d)(3)(i)(B)(3) is amended as shown below:

(d) * * *

(3) Test the three Samples. If all three Samples pass the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), and if three or less individual specimens fail by charring the entire specimen length, accept the Unit. If the Unit is not accepted in the above test, three Samples (15 specimens) of the longest seam type shall be made using fabric and thread from production inventory and sewn on production machines by production operators. The individual fabric sections prior to sewing must be no larger than 20.3 x 63.3 cm. (8 in. x 25 in.) and must be selected from more than one area of the base fabric. Test the three prepared Samples. Accept or reject the Unit as described previously in this subsection.

12. Section 1615.4(g)(2)(i) is amended as shown below:

(g) * * *

(2) Specimen Burning and Evaluation. (i) One at a time, the mounted specimens shall be removed from the desiccator and suspended in the cabinet for testing. The cabinet door shall be closed and the burner flame impinged on the botton edge of the specimen for 3.0±0.2 seconds. Flame impingement is accomplished by moving the burner under the specimen for this length of time, and then removing it.

12. Section 1615.4(g)(3) is amended as shown below:

(g) * * *

(3) *Report.* Report the value of char length, in centimeters (inches), for each specimen, as well as the average char length for each set of five specimens.

Subpart B—Rules and Regulations

Section 1615.31 is amended as shown below:

13. Section 1615.31(e)(1)(iii) is amended as shown below:

(e) * * *

(1) * * *

(iii) Test results and details of all tests performed, both prototype and production, including char lengths of each specimen tested, average char length of the samples required to be tested, details of the sampling procedure employed, name and signature of persons 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.

14. Section 1616.4(c)(2)(ii) (A) and (B) are revised as shown below:

§ 1616.4 Sampling and Acceptance Procedures.

* * * * *

(c) * * *

(2) * * *

(ii) Trim (A) Make three samples (15 specimens) from each type of trim to be included in the garment. For trim used only in a horizontal configuration on the garment, specimens shall be prepared by sewing or attaching the trim horizontally to the bottom edge of an appropriate section of untrimmed fabric. Sleeve and necking trim may not be tested in this manner. Where more than one row of trim is used on the garment, specimens shall be prepared with the same configuration (same number of rows and spacing between rows up to the limit of the specimen size) as the garment. For trim used in other than a horizontal configuration, specimens shall be prepared by sewing or attaching the trim to the center of the vertical axis of an appropriate section of untrimmed fabric, beginning the sewing or attachment at the lower edge of each specimen. For either configuration, the sewing or attachment shall be made in the manner in which the trim is attached in the garment.

(B) Sewing or otherwise attaching the trim shall be done with thread or fastening material of the same composition and size to be used for this purpose in the garment and using the same stitching or seamtype. Trim used in the horizontal configuration shall be sewn or fastened the entire width (smaller dimension) of the specimen. Trim used in other than the horizontal configuration shall be sewn or fastened the entire length (longer dimension) of the specimen. Prior to testing, assign each specimen to one of the three samples. Test the sets of three samples and accept or reject the type of trim and design on the same basis as seam design. A type of trim and design accepted when tested in a vertical configuration, may be used in a horizontal configuration without further testing.

* * * * *

(Sec. 4(a), 4(b) (15 U.S.C. 1193(a), 1193(b)), 81 Stat. 569; sec. 30(d), (15 U.S.C. 2079(b)), 86 Stat. 1231.)

Effective date: February 6, 1978.

Dated: February 2, 1978.

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

[FR Doc. 78-2339 Filed 2-3-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE

[T.D. 78-46]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Entry of Antiques

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Under the Tariff Schedules of the United States, ethnographic objects and other antiques may be imported free of Customs duty. However, an additional duty, besides regular duties which may be applicable, is assessed on ethnographic

objects and other antiques imported for sale and later found not to be authentic in respect to the antiquity claimed as a basis for free entry. This rule amends the Customs Regulations to reflect the current rate of this additional duty.

EFFECTIVE DATE: February 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Lindmeier, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5727.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Ethnographic objects (objects relating to a specific culture) made in traditional aboriginal styles at least 50 years before entry and other antiques made prior to 100 years before entry generally may be imported into the United States free of Customs duties under item 766.20 or item 766.25, Tariff Schedules of the United States (TSUS). However, if the importer of an ethnographic object or other antique imported for sale claims free entry under item 766.20 or item 766.25, TSUS, and the article later is found not to be an authentic antique, the article is subject to a special duty under item 766.30, TSUS, in addition to any other duty imposed by the TSUS. The purpose of this additional duty is to deter false claims for free entry.

Before the modifications of certain duty rates by Presidential Proclamation No. 3822, published in the FEDERAL REGISTER on December 16, 1967 (32 FR 19002), as a result of the Kennedy Round of tariff negotiations, the rate of additional duty assessed under item 766.30, TSUS, was 25 percent ad valorem (that is, 25 percent of the dutiable value) regardless of the country from which imported. Paragraphs (h) and (i) of § 10.53 of the Customs Regulations (19 CFR 10.53 (h) and (i)) and footnote 50 to Part 10 (footnote 50 to 19 CFR Part 10) reflect this rate. However, Presidential Proclamation No. 3822 modified this rate by stages so that, effective January 1, 1972, the additional rate assessed under item 766.30, TSUS, is 12.5 percent ad valorem for articles imported from all countries other than the Communist countries listed in General Headnote 3(e), TSUS. The additional rate under item 766.30, TSUS, for articles from Communist countries remains 25 percent ad valorem.

It is necessary, therefore, to amend paragraphs (h) and (i) of § 10.53 and footnote 50 to Part 10 to reflect the modification of the rate applicable to countries other than Communist countries from 25 percent to 12.5 percent ad valorem.

Because these amendments merely conform the Customs Regulations to the current additional column 1 rate of duty under item 766.30, TSUS, notice and public procedure thereon are unnecessary, and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Norman W. King, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development, both on matters of substance and style.

AMENDMENTS TO THE REGULATIONS

Paragraphs (h) and (i) of § 10.53 and footnote 50 to Part 10 of the Customs Regulations (19 CFR 10.53 (h), (i); and footnote 50 to 19 CFR Part 10) are amended as follows:

§ 10.53 [Amended.]

(1) Paragraphs (h) and (i) of § 10.53 are amended by substituting "12.5 percent or 25 percent, as appropriate" for "25 percent".

(2) Footnote 50 to Part 10 is amended to read to follows:

"[50] Any article imported for sale and claimed to be classifiable under item 766.20 or item 766.25, and thereafter determined to be not authentic in respect to the antiquity claimed as a basis for classification thereunder * * * a [column 1] duty of 12.5 percent ad val. * * * [or] a [column 2] duty of 25 percent ad val. in addition to any other duty imposed on such article under these schedules." (Item 766.30, Tariff Schedules of the United States.)

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: January 25, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-3120 Filed 2-3-78; 8:45 am]

[3810-70]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

Subchapter B—Personnel; Military and Civilian

[DOD Directive 1304.19]

Part 65—NOMINATION OF CHAPLAINS FOR THE ARMED FORCES

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule establishes Department of Defense policy regarding minimum education and ecclesiastical endorsement requirements for appointment in the chaplaincy of the Armed Forces.

EFFECTIVE DATE: November 2, 1977.

FOR FURTHER INFORMATION CONTACT:

Samuel G. Powell, Chaplain, Colonel USAF, Executive Director, Armed Forces Chaplains Board, OASD(MRA&L), The Pentagon, Washington, D.C. 20301, telephone, 202-697-9015.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

Dated: February 1, 1978.

Accordingly Part 65 reads as follows:

Sec.
65.1 Reissuance and purpose.
65.2 Applicability.
65.3 Policy.

AUTHORITY: The provisions of this Part 65 issued under sec. 3293, 5576, and 8293 of 10 U.S. Code and Executive Order 11390.

§ 65.1 Reissuance and purpose.

This Part establishes minimum education and ecclesiastical endorsement requirements for appointment in the chaplaincy of the Armed Forces.

§ 65.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense and the Military Departments.

§ 65.3 Policy

(a) It is Department of Defense policy that the following education requirements for chaplain appointments be met. The applicant shall:

(1) Possess 120 semester hours undergraduate credits (or the equivalent) from a college or university listed in Part 3 of the Higher Education, Education Directory (hereafter referred to as the "Directory") published by the Department of Health, Education, and Welfare; or

(2) Have completed 120 semester hours credit or the equivalent at a school not listed in the Directory, but from which course credits could be transferred to a listed school; and

(3) Possess a Master of Divinity or an equivalent theological degree, or have completed the equivalent of 3 resident years of graduate level study in theology or related subjects, leading to ordination and ecclesiastical endorsement which qualify the applicant to perform professional functions as a chaplain. All educational requirements must be fulfilled in a theological school listed in the Official Catholic