required by paragraph (a) is no longer required.

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(e) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(f) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Field Office, ANM-170H, Federal Aviation Administration, P.O. Box 50246, Honolulu, Hawaii 96850.

This AD supersedes AD 77-13-12, Amendment 39-2937.

This amendment becomes effective on May 17, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1566(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note:—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on April 29, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-12674 Filed 5-11-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 21022A; Reg. Notice No. 91-100]

Emergency Air Traffic Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Update of emergency air traffic regulations.

SUMMARY: Section 91.100 of the Federal Aviation Regulations (FAR) (14 CFR 91.100) requires aircraft operators to comply with emergency air traffic regulations issued under that section and covered by Notices to Airmen (NOTAMs) that are also issued under that section. This document provides notice of regulations already adopted that were immediately effective under § 91.100, for which the FAA has also issued NOTAMs. It adds, to Notice 91-100, emergency regulations implementing Special Federal Aviation Regulation (SFAR) No. 44, as amended, that were necessary to respond to a shortage in air traffic control personnel.

EFFECTIVE DATE: As stated in each regulation listed.

ADDRESSES: Send comments on the listed regulations, in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 21022A, 800 Independence Avenue SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, Room 915, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: B. Keith Potts, Airspace, Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 426-3731.

SUPPLEMENTARY INFORMATION:

Comments Invited

The regulations issued under § 91.100 and listed herein are emergency final rules involving immediate air traffic requirements throughout the United States. The need for immediate regulatory response under § 91.100 is stated at 46 FR 16666 *et seq.* (March 13, 1981). In issuing the regulations in this notice, the FAA has found that the conditions cited in § 91.100 exist or will exist and that the regulations are necessary in order to respond to those conditions in the public interest. Where necessary, these regulations may be supplemented or amended hourly, or even more frequently, as air traffic conditions change. Accordingly, good cause exists for making these regulations effective immediately, without prior notice and public procedure.

Comments are invited on any aspect of the listed regulations, individually or cumulatively, and on any aspect of the emergency air traffic control conditions they respond to. When § 91.100 was issued, the FAA noted that it was an emergency regulation under Executive Order 12291 and DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and had no cost impact in itself since it was only procedural. However, the FAA also stated (at 46 FR 16669; March 13, 1981) that the regulations distributed in accordance with § 91.100 will be evaluated individually, as appropriate, to determine whether they have cost impacts. To assist the FAA in determining, as soon as practicable after issuance, the cost impacts of the regulations issued under § 91.100, comments on economic impact are specifically invited.

Commenters wishing the FAA to acknowledge receipt of their comments in response to these rules must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 21022A." The postcard will be date/time stamped and returned to the commenter.

Effect of Publication

Publication, in the **Federal Register**, of emergency air traffic regulations issued under § 91.100 provides constructive legal notice of those regulations to all persons who may not have received the NOTAMs concerning those regulations or who otherwise may not have legal notice of the adoption of those regulations. This document provides this constructive legal notice of immediately effective emergency regulations that have already been adopted. Additional emergency rules will be published periodically if the need for their adoption continues.

Availability Prior to Publication: Preflight Requirement

Since there is a necessary time lag between the issuance of emergency air traffic regulations and NOTAMs under § 91.100 and the publication of these regulations in the **Federal Register**, and since these regulations and NOTAMs respond to emergency conditions that exist, or will exist, relating to the FAA's ability to operate the Air Traffic Control System, the NOTAMs concerning these regulations are available at operating air traffic facilities and Regional Air Traffic Division offices prior to **Federal Register** publication and as long as they remain effective. Under § 91.5 *Preflight Action* (14 CFR 91.5), each pilot in command is required to familiarize himself or herself with all available information concerning each flight.

Air Traffic Controller Shortage: SFAR No. 44, as Amended

The air traffic regulations listed in this amendment to Notice 91-100 follow the adoption of SFAR Nos. 44 through 44-6, in response to an organized air traffic controller job action. The emergency aspects of that action are described at 46 FR 39997, *et seq.* As a result, air

traffic control facilities have experienced staffing shortages that have reduced the level of air traffic that can be handled with the required levels of safety and efficiency. To ensure that these levels of safety and efficiency are fully maintained during this shortage of air traffic personnel, the emergency regulations listed in section 2 of this notice have been issued under § 91.100.

Regulatory Impact

The FAA has determined that the regulations listed in this notice are emergency regulations that are not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to these regulations, since they were issued in response to existing or expected emergency conditions relative to FAA's ability to operate the Air Traffic Control System. It has been further determined that the listed regulations are emergency regulations under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If these regulations are later determined to be significant, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 91

Air traffic control, Airspace, Aviation safety.

Notice of Adoption

Accordingly, pursuant to the authority delegated to me by the Administrator in § 91.100 of the Federal Aviation Regulations (14 CFR 91.100; 46 FR 16666, March 13, 1981) and that cited below, the following emergency air traffic regulations have been adopted and covered by NOTAMs under that secton.

(Secs. 307, 313(a), 601, 603, 902, 1110, and 1202, Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a), 1421, 1442, 1443, 1472, 1510, and 1522); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

In consideration of the foregoing, section 2 of Notice 91–100 is hereby amended by adding the following emergency regulations following the regulation numbered FDC No. 3/528.

Air Traffic Controller Shortage of 1981, and Related Emergency Conditions (SFAR–44, as Amended; Docket No. 21022A)

* * * * *

FDC 3/628 Emergency Flight Rules—April 29–May 5. Reservation/Flight Plan Filing Rule—Houston, Texas/Offshore Oil Technology Conference, effective March 25, 1983, 2155 Greenwich Time.

The Offshore Oil Technology Conference event is expected to add a significant number of IFR aircraft operations to the air traffic control (ATC) system. To accommodate this traffic without excessive delays, increased ATC staffing and IFR arrival/departure reservations will be required.

Current rules issued under Special Federal Aviation Regulations (SFAR) 44, as amended, do not provide the air traffic system with the flexibility to accommodate much of this added traffic. For example, only a departure reservation, regardless of destination, is required under the General Aviation Reservation (GAR) Rule. This precludes ATC facilities from effectively managing an above normal and concentrated arrival demand for a specific destination. Further, under the GAR Rule departure reservations cannot be obtained earlier than 24 hours prior to the estimated departure time. This program does not facilitate accommodation planning.

Pilots proposing nonscheduled general aviation flight to the designated Houston airports will be excluded from the GAR once they have obtained an IFR arrival reservation. Departure reservations for IFR flight from the designated Houston airports will also be required under this rule. The reservation requirements of this rule are in lieu of the GAR Rule to help facilitate accommodation planning.

Reservations for VFR flight will not be required. However, appropriately rated pilots should anticipate the possibility of instrument meteorological conditions and flight plan accordingly.

Pursuant to SFAR 44, as amended, and Federal Aviation Regulations § 91.100, the following rule is effective immediately to provide for the safe, orderly handling and movement of IFR traffic:

1. No person may operate a nonscheduled general aviation flight under IFR into or out of the following airports (whether used as a primary or alternate) during the effective periods of this rule without a reservation issued under this rule: Houston Intercontinental, William P. Hobby.

2. The effective periods of this rule are May 2 through May 5, daily from 0700 to 2159 Central Daylight Time (CDT).

3. Each person planning IFR flights under this rule shall comply with, in lieu of the GAR Rule, the following requirements:

(a) Reservations may only be requested after 1400 GMT on April 29, 1983.

(b) An arrival reservation to the Houston Intercontinental and William P. Hobby Airports is required and may only be obtained from the Central Flow Control Facility (telephone (202) 382–6866).

(c) A departure reservation from the Houston Intercontinental and William P. Hobby Airports is required and may only be obtained from the Houston FSS (telephone (713) 644–8361).

(d) A flight plan may only be filed after receiving a reservation, but must be filed at least 4 hours prior to the proposed departure time.

4. Each person receiving a reservation number under this rule must include it in the remarks section of the appropriate flight plan as filed with ATC.

FDC 3/641 Emergency Flight Rules May 23–June 1. Flight Plan Filing—Indianapolis, Indiana/INDY 500 Reservation Rule, effective March 29, 1983, 1440 Greenwich Time.

The INDY 500 event is expected to cause approximately 1400 IFR aircraft operations to be added to the air traffic control (ATC) system. To accommodate this traffic without excessive delays and inconvenience to the public, increased ATC staffing and reservations will be required.

Current rules issued under SFAR 44, as amended, do not provide the air traffic system with the flexibility to accommodate much of this added traffic. For example, only a departure reservation, regardless of destination, is required under the General Aviation Reservation (GAR) Rule. This precludes ATC facilities from effectively managing an above normal concentrated arrival demand for a special designation. Further, under the GAR, departure reservations cannot be obtained earlier than 24 hours prior to the estimated departure time. This provision doesn't facilitate accommodation planning.

Pilots proposing nonscheduled general aviation flight to the Indianapolis area will be excluded from the requirements of the GAR once they have obtained an IFR arrival reservation. Departure reservations for IFR flight from the Indianapolis area will be required, and advance request and filing will be necessary.

Reservations for VFR flight will not be required; however, appropriately rated pilots should anticipate the possibility of instrument meteorological conditions and flight plan accordingly. Pilots who plan IFR return flights and obtain IFR departure reservations under this rule have the advantage of being able to know their return departure date and time prior to leaving their "home" for the Indianapolis area.

Pursuant to the Special Federal Aviation Regulation No. 44, as amended, and Federal Aviation Regulations Section 91.100, the following rule is effective immediately to provide for the safe, orderly handling, and movement of IFR traffic:

1. No person may operate a nonscheduled general aviation flight under IFR into or out of Indianapolis area during the effective periods of this rule without a reservation issued under this rule.

2. The Indianapolis area includes the airspace within a 30-nautical-mile radius of Indianapolis, Indiana, and includes the following airports:

Indianapolis International (IND)
Speedway (354)
Metropolitan (418)
Mt. Comfort (2IN2)
Brownsburg (I01)
Eagle Creek (I14)
Terry (I52)
Brookside (I21)
Skyway (5I1)
Lebanon (6I4)

The effective periods are as follows:

Arrivals: May 27, 1300 G.m.t. to May 29, 1600 G.m.t.—excluding the hours between 0300 and 1100 G.m.t.

Departures: May 29, 2000 G.m.t. to June 1, 0300 G.m.t.—excluding the hours between 0300 and 1100 G.m.t.

4. Each person planning IFR flights under this rule shall comply with, in lieu of the GAR, the following:

(a) Reservations may only be requested after 1400 GMT on May 23, 1983.

(b) An arrival reservation to the Indianapolis area is required and must be obtained from the Central Flow Control Facility (telephone (212) 382–3366).

(c) A departure reservation from the Indianapolis area is required and must be obtained from the Indianapolis FSS (telephone (317) 244–3316).

(d) Flight plans may only be filed after receiving a reservation, but must be filed at least 4 hours prior to the proposed departure time.

(e) Flight plans for flight from the Indianapolis area must be filed with Indianapolis FSS.

5. Each person receiving a reservation number under this rule must include it in the remarks section of the appropriate flight plan as filed with ATC.

FDC 3/671 Emergency Flight Rules —IFR Flight Plan Filing/General Aviation Reservation Rule effective April 1, 1983, 2145 Greenwich Time.

The IFR capacity of the enroute ATC system is increasing and permits relaxation of the General Aviation Reservation (GAR) Rule with respect to certain operations. On March 14, 1983, several ARTCC's were added to the lists that currently allow inter- and intra-ARTCC operations without requiring reservations under this rule. The situation is such now that more turboprop operations can be conducted without a reservation. However, existing restrictions under the GAR Rule remain in effect for operations from certain airports that are capacity controlled by SFAR 44 as amended.

Accordingly, pursuant to SFAR–44, as amended, and § 91.100 of the Federal Aviation Regulations, the following regulation is effective immediately, unless otherwise specified:

1. All aircraft operators planning a flight under IFR with a proposed departure/enroute pick-up time from 0600 local to 1959 local shall file a flight plan with and obtain a departure/enroute pick-up reservation from an FAA flight service station at least 30 minutes before but not more than 24 hours before his/her proposed departure/enroute time if any segment of the flight will enter ARTCC airspace.

2. ATC clearance must be requested not later than 1 hour after proposed departure/enroute pick-up time.

3. Multiple-Leg Flight Plans may be filed provided:

A. The conditions of paragraph 1 above are met.

B. The last proposed departure/enroute pick-up time does not exceed the 24-hour filing time limitation specified in paragraph 1 above.

C. The same departure/enroute pick-up point is not specified twice in the request.

D. The request does not involve more than three departure/enroute pick-up points.

4. The provisions of this regulation do not apply to the following operators and flights:

A. FAR Part 121 or Part 135 operators with FAA/ICAO-approved two-letter or three-letter call signs.

B. Military flights.

C. Medical emergency flights.

D. Presidential or Vice-Presidential flights.

E. FAA critical flights.

F. NASA flights supporting space shuttle launch and recovery operations during periods designated by the Director, Air Traffic Service.

G. Flights to or from Washington National, John F. Kennedy, LaGuardia, and O'Hare Airports during periods when reservations are required by Subpart K of FAR Part 93—High Density Traffic Airports.

H. Flights originating within the airspace areas of Anchorage and Honolulu ARTCC's.

I. Turbojet aircraft operations at FL 290 and above to a destination 200 nautical miles or more from the point of departure.

J. Nonstop flights destined for airports outside the continental United States.

K. Intra-ARTCC—

(1) effective immediately, flights in the Albuquerque, Atlanta, Boston, Denver, Jacksonville, Kansas City, Los Angeles, Memphis, Oakland, Salt Lake City, Seattle, or Washington, ARTCC's airspace;

(2) effective immediately, turboprop flights in the Ft. Worth or Houston ARTCC's airspace; and

(3) effective 0600 local time on the date specified, flights in any of the following ARTCC's airspace—

(a) April 4, 1983—Cleveland (turboprops only);

(b) April 11, 1983—Miami;

(c) May 16, 1983—Houston;

(d) May 16, 1983—Ft. Worth;

(e) June 20, 1983—Cleveland;

(f) July 1, 1983—New York City;

(g) August 22, 1983—Minneapolis;

(k) August 22, 1983—Chicago; and

(l) August 22, 1983—Indianapolis.

L. Inter-ARTCC—

(1) effective immediately, flights within the airspace of any of the following groups:

(a) Seattle, Salt Lake City, and Oakland; and

(b) Albuquerque, Kansas City, and Memphis.

(2) effective 0600 local time on the dates specified, flights within the airspace of any of the following groups—

(a) April 4, 1983—Cleveland and Boston (turboprops only);

(b) April 11, 1983—Atlanta, Jacksonville, and Washington;

(c) May 16, 1983—Seattle, Salt Lake City, Oakland, and Los Angeles;

(d) May 16, 1983—Atlanta, Jacksonville, Washington, and Miami;

(e) June 20, 1983—Albuquerque, Kansas City, Memphis, and Denver;

(f) July 1, 1983—New York City and Boston;

(g) July 25, 1983—Atlanta, Jacksonville, Washington, Miami, and Houston;

(h) September 1, 1983—Albuquerque, Kansas City, Memphis, Denver, and Ft. Worth; and

(i) September 9, 1983—Minneapolis, Chicago, Indianapolis, Cleveland, New York City, and Boston.

5. Notwithstanding 4K and 4L above, this rule applies to flights from airports that are capacity controlled by SFAR 44, as amended.

6. Limitations on obtaining an IFR clearance while airborne remain in effect in the Anchorage ARTCC area as specified in the pertinent regulatory NOTAM.

Cancel FDC NOTAM 3/528.

Issued in Washington, DC, on May 2, 1983.

R. J. Van Vuren,

Director, Air Traffic Service.

[FR Doc. 83-12447 Filed 5-11-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 249

[Economic Regulation Docket 33725; ER-1214A]

Preservation of Air Carrier Records

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Approval of Extension of Record Retention Requirements by the Office of Management and Budget.

SUMMARY: The Civil Aeronautics Board has extended the record retention requirements prescribed for air carriers in ER–1214 (46 FR 25414, May 6, 1981). The Office of Management and Budget approved the extension of these requirements through April 30, 1986, under OMB No. 3024–0006.

DATES: Effective: April 8, 1983. Adopted: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Linda K. Koman, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 249

Record retention requirements.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-12818 Filed 5-11-83; 8:45 am]

BILLING CODE 6320-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1610, 1615, and 1616

Standards for the Flammability of Clothing Textiles and Children's Sleepwear; Final Enforcement and Administrative Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: The Commission issues on a final basis rules for the enforcement and

administration of the Flammable Fabrics Act (FFA) regarding the use of tests other than the ones set forth in the flammability standards for clothing textiles (16 CFR Part 1610) and for children's sleepwear (16 CFR Parts 1615 and 1616) for purposes of supporting guaranties of items subject to those standards, and to demonstrate compliance with the pre-market testing requirements of the children's sleepwear standards. The rules interpret the phrase "reasonable and representative tests," as used in section 8 of the FFA, to include any alternate test utilizing apparatus or procedure other than those set forth in the flammability standards for clothing textiles or children's sleepwear, if the alternate test is as stringent as, or more stringent than, the test in the applicable standard. Additionally, the rules implementing the children's sleepwear standards provide that, subject to the same conditions, such alternate tests may also be used for purposes of complying with the requirements of the children's sleepwear standards for pre-market testing by manufacturers and importers of fabrics and garments subject to those standards. The purpose of these rules is to set forth conditions under which persons and firms required to perform testing to support guaranties of items subject to these standards, and for purposes of compliance with the children's sleepwear standards, may use test apparatus or procedures other than those set forth in the applicable standard.

EFFECTIVE DATE: The rules will become effective on June 13, 1983.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gomilla, Division of Regulatory Management, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492-6400.

SUPPLEMENTARY INFORMATION: The Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) and the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*) require that articles of wearing apparel and fabrics used or intended for use as clothing textiles must not exhibit "rapid and intense burning" when tested in accordance with that standard. The clothing textiles standard describes a test apparatus, and sets forth the procedure to be used for testing. The clothing textiles standard is generally applicable to all items of wearing apparel, and fabrics used for such apparel, for both children and adults.

However, children's sleepwear garments in sizes 0 to 14, and fabrics which are intended for use in making such garments, are subject to the more stringent requirements of the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR Part 1615) or the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (16 CFR Part 1616).

Both of the children's sleepwear standards require that garments and fabrics which are subject to their requirements must self-extinguish when exposed to an open flame ignition source.

In order to comply with the children's sleepwear standards, manufacturers, importers, and other persons (such as converters) initially introducing items subject to the children's sleepwear standards into commerce must regularly test items from current production. The sleepwear standards prescribe the apparatus and procedure to be used for performing tests of fabrics and garments subject to their provisions. See 16 CFR 1615.4(a), (f), and (g); and 16 CFR 1616.5. The standards prescribe pass/fail criteria at 16 CFR 1615.3(b), and 1616.3(b). Both standards require that persons and firms subject to their provisions must group items into production units, and test samples from each production unit. See 16 CFR 1615.4(b), (c), and (d); and 16 CFR 1616.4. The schedules for sampling and testing set forth in the sleepwear standards are called "sampling plans."

The manufacture for sale, importation into the United States, or introduction in commerce of any item of wearing apparel or fabric which fails to comply with an applicable flammability standard violates section 3 of the FFA (15 U.S.C. 1192) and section 5 of the Federal Trade Commission Act (FTCA, 15 U.S.C. 45). Such a violation may give rise to an administrative order to cease and desist from further violation of the FFA and FTCA, as well as to a civil action in the United States District Court under provisions of the FFA for injunction, or for seizure of items which fail to comply with an applicable standard of flammability.

In addition to seeking an administrative order, or initiating civil actions for violation of an applicable flammability standard, the FFA, and the FTCA, the Commission may also proceed under section 7 of the FFA (15 U.S.C. 1196) to seek criminal penalties against any person who "willfully" violates the FFA.

Section 8(a) of the FFA (15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. (A guaranty does not provide the holder any defense to an administrative action for an order to cease and desist from further violation of the applicable standard, the FFA, and the FTCA, nor to any civil action for injunction or seizure brought under the FFA.)

Among the requirements established for a guaranty by section 8(a) of the FFA is that it must be based upon "reasonable and representative tests" conducted in accordance with the applicable standard. Section 8(b) of the FFA (15 U.S.C. 1197(b)) prohibits the issuance of a "false guaranty."

Application for Use of Alternate Test Apparatus

By letter dated July 11, 1975, the William Carter Company, a manufacturer of children's sleepwear, requested approval of an alternate test apparatus for use in testing fabrics and garments subject to the children's sleepwear standad for sizes 7 through 14 (16 CFR Part 1616) under provisions of § 16.16.5(a) of that standard. (2) [1] That section of the standard states:

§ 1616.5 Test procedure.

(a) *Apparatus.* The following apparatus shall be used for the test. Alternate test apparatus may be used only with prior approval of the Consumer Products Safety Commission.

The Carter application included a description of the alternate test apparatus, and a comparison of results from testing two types of fabrics using both the alternate test apparatus, and the apparatus described in the standard. Carter claimed that the comparative test data demonstrated that use of the alternate test apparatus produced results which were equivalent to, or more stringent than, the results obtained from testing using the apparatus described in the standard. The application from Carter also stated that use of the alternate test apparatus would reduce the time required for testing by one-half to two-thirds. (2)

After reviewing the data included in the Carter application, the Commission staff concluded that Carter's analysis of the equivalency of test results was correct with regard to the two specific fabrics which were the subject of Carter's comparative testing program. (5) However, the staff lacked the

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's public reading room, 1111 18th Street, NW., eighth floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492-6800.

resources needed to duplicate the apparatus described in the Carter application and verify that it would produce results equivalent to those obtained using the apparatus described in the standard on fabrics representative of the entire range used in the production of children's sleepwear. (8)

Related Petition

On July 8, 1980, Milliken Research Corporation submitted a petition (FP 80–3) requesting the Commission to amend the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) to allow use of an alternate test utilizing different apparatus and procedure, than those specified in the clothing textiles standard.(10)

Unlike the sleepwear standard, the clothing textiles standard does not require manufacturers, importers or other firms introducing items subject to that standard into commerce to test items from current production. All that is required for compliance with the clothing textiles standard is that any item subject to its provisions must not exhibit "rapid and intense burning" if tested by the Commission.

Although manufacturers are not required to perform testing in order to comply with the clothing textiles standard, if they issue guaranties of items subject to that standard, the guaranty must be based on "reasonable and representative tests" conducted in accordance with that standard. A memorandum of a telephone conversation on November 20, 1980, between a member of the Commission staff and the author of the Milliken petition indicates that Milliken desired to use the alternate test for purposes of supporting guaranties of fabrics subject to the clothing textiles standard. (13)

The Commisssion staff prepared a briefing package which recommended that the Commission grant the relief requested in the petition from Milliken by allowing persons and firms issuing guarantees to use alternate apparatus for testing to support guaranties if items subject to the clothing textiles standard, rather than by amending that standard to change the apparatus to be used for testing by the Commission. (9) The staff briefing package also recommended that the Commission act on Carter's application for approval of alternate test apparatus by issuance of a similar interpretation of the children's sleepwear standards and the FFA to allow use of alternate test apparatus and procedures under certain conditions. (9)

The sleepwear standard for sizes 7 through 14 makes provision for use of test apparatus other than the equipment specified in that standard, as noted above. The sleepwear standard for sizes 0 through 6X has no specific provision authorizing or prohibiting the use of alternate test apparatus or procedure by persons and firms required to perform testing under that standard.

In the **Federal Register** of February 6, 1978 (43 FR 4853), the Commission amended the sleepwear standard for sizes 0 through 6X to make its requirements for flame resistance of fabrics and garments substantively identical to those of the standard for sizes 7 through 14. (1) The Commission staff is aware that many firms which manufacture sleepwear produce fabrics and garments which are subject to both the standard for sizes 0 through 6X and the standard for sizes 7 through 14. For these reasons, after considering the request from Carter for approval of alternate test apparatus and the petition from Milliken Corporation, the staff recommended that the Commission authorize use of alternate test apparatus and procedures under the same conditions for persons and firms required to perform testing under the sleepwear standard for sizes 0 through 6X as well as the standard for sizes 7 through 14.

After consideration of the request of the William Carter Company, the petition from Milliken Research Corporation, the staff briefing package, and an oral briefing by the staff, the Commission voted to approve the staff's recommendations. (13, 14)

Proposed Rules

In the **Federal Register** of May 17, 1982 (47 FR 21081), the Commission published three proposed rules interpreting section 8(a) of the FFA and the flammability standards for clothing textiles and children's sleepwear to allow use of alternate apparatus and procedures by manufacturers and importers when testing to support guaranties of items subject to those standards, provided that a test utilizing such alternate apparatus or procedure is as stringent as, or more stringent than, a test utilizing the apparatus and procedure specified in the applicable standard. (17) The proposed rules interpreting the children's sleepwear standards also authorized use of alternate apparatus and procedures, subject to the same condition, for purposes of compliance with the requirements for pre-market testing in those standards.

The three proposed rules set forth the following provisions applicable to use of alternate test apparatus and procedures:

(1) Persons or firms desiring to use an alternate test apparatus or procedure must have in their possession test data or other information to demonstrate that a test using that apparatus or procedure is as stringent as, or more stringent than, a test using the apparatus and procedure specified by the applicable standard prior to use of such alternate apparatus or procedure to support guaranties or for purposes of compliance with the sleepwear standards.

(2) The Commission will consider a test utilizing alternate apparatus or procedure to be "as stringent as, or more stringent than" a test utilizing the apparatus and procedure specified by the applicable standard if, when testing identical specimens, a test utilizing the alternate apparatus or procedures yields failing results as often as, or more than, a test utilizing the apparatus and procedures specified in the applicable standard.

(3) Written application for Commission approval to use alternate test apparatus or procedures is not required, and the Commission will not act on any individual request for approval of an alternate test apparatus or procedure.

All three proposed rules stated that the Commission will test fabrics and garments subject to the three standards using the apparatus and procedure specified in the applicable standard for purposes of determining compliance with the requirements of the FFA and the three standards. (17)

The proposals also solicited information responsive to the following questions:

1. Would manufacturers and importers use alternate apparatus or procedures for testing under the conditions set forth in the proposals?
2. If so, what savings in the costs or hours required for testing are anticipated?
3. Could the proposed rules be modified to increase savings in the dollar or hourly costs of testing? (17)

Comments

In response to the proposals of May 17, 1982, the Commission received eight written comments: three from manufacturers of items subject to flammability standards; four from associations of manufacturers of such items; and one from a public interest group.

Comments from two associations of manufacturers expressed agreement with and support for the proposals. (19, 23) These comments express the view that the proposed rules, if issued, on a final basis, would not reduce the level of protection afforded by the three flammability standards, and have the potential to reduce costs and time

required for testing. One comment observed that the rules would not impose any substantial burden on any new firm, because they allow use of the apparatus and procedures specified in the applicable standard if a firm elects to use them. (23)

The remainder of the comments expressed concern about or objection to one or more provisions of the proposed rules. The following issues were raised by those comments.

Economic Advantage to Larger Firms

Two manufacturers state that only the larger companies would be in a position to develop and implement tests using alternate apparatus or procedures. These commenters express concern that one effect of final rules based on the proposals would be to place smaller companies at a competitive disadvantage. (18, 21)

The Commission anticipates that larger firms most likely will be among the first to develop alternate apparatus and procedures for testing. However, economic information available to the Commission indicates that the cost advantage which larger firms may realize will be relatively small. (28) Additionally, the Commission believes that many small firms will be able to develop alternate test apparatus or procedures, or use alternate test equipment and procedures developed by larger firms, if such test methods could lead to a significant cost savings. (28) For these reasons, the Commission concludes that the possible cost advantage to larger firms which might result from issuance of final rules will have relatively little impact on competition within the affected industries.

Effect of Rules on Product Liability Actions

Comments from one manufacturer and one association of manufacturers oppose issuance of the proposed rules because the commenters believe the rules would weaken the position of garment manufacturers in product liability suits. (21, 25) These comments express concern that persons manufacturing garments from fabrics which are the subject of guaranties would not be able to determine if the guaranties were supported by tests using the apparatus and procedures specified by the applicable standards, or by tests using alternate apparatus or procedures.

Another association of manufacturers commented that issuance of the proposed rules on a final basis could create confusion in the defense of product liability actions. (22) This comment indicated that in view of the possibility of product liability actions, many manufacturers would continue to use only the apparatus and procedures specified by the applicable standard. This comment requests clarification about the effect of issuance of the rules on defense of product liability suits. (22)

These comments reflect a concern that items guarantied on the basis of tests using alternate apparatus or procedures will not necessarily meet the requirements of the applicable standard when tested using the apparatus and procedures specified in that standard. These comments seemingly overlook those provisions in the proposals which require that persons or firms using alternate apparatus or procedures must have test results or other information to demonstrate the equivalent stringency of tests using alternate apparatus or procedures with tests conducted with the apparatus and procedures specified in the applicable standard before such alternate apparatus or procedure may be used for the purpose of supporting guaranties or performing pre-market testing required by the children's sleepwear standards. (17)

Additionally, these comments apparently do not consider the possibility that use of alternate apparatus or procedures under the conditions specified in the rules could lead to increased testing of items subject to flammability standards if alternate tests could be performed more quickly or at less cost than tests using the apparatus and procedures specified by the applicable standard. In such an event, compliance with flammability standards might be improved. (28)

Like the proposals of May 17, 1982, the rules issued below state that for purposes of determining compliance with the three standards, the Commission will use the apparatus and procedures specified by the applicable standard. The rules issued below do not alter any requirement contained in the three standards.

Consequently, to the extent that compliance with the applicable standard may be an issue in a product liability suit, the resolution of that issue would require testing with the apparatus and procedure specified by that standard. The Commission observes that no provision of the rules issued below prohibits the purchaser of an item which is subject to a flammability standard to require as a condition of sale a guaranty which is supported by tests conducted with the apparatus and procedures specified in the applicable standard.

Commission Approval of Alternate Apparatus and Procedure

A comment from an association of manufacturers urges the Commission to modify the proposals to allow use of alternate test apparatus and procedures only when approved in advance by the Commission. (25) This comment observes that the sleepwear standard for sizes 7 through 14 contains explicit provisions for Commission approval of alternate apparatus prior to use by persons and firms subject to that standard. See 16 CFR 1616.5(a). This comment states that prior approval by the Commission would give greater assurance to garment manufacturers that the fabrics they purchase will meet the requirements of the applicable standard. This comment acknowledges that such an approach would add to the workload of the Commission. (25)

Similarly, comments from two manufacturers state that if any change to the test apparatus or procedure is made, it should be one to prescribe a single apparatus and procedure for use by all manufacturers. These comments express concern that a proliferation of alternate test apparatus and procedures may result if the proposed rules are issued on a final basis. (18, 20)

As noted above, the Commission began this proceeding after receiving two separate requests for approval of alternate test apparatus. (2, 10)

The basic problem with Commission approval of alternate apparatus or procedures for use by all manufacturers is that the Commission lacks the staff and monetary resources to perform the extensive testing necessary to assure that the alternate apparatus or procedure will yield results equivalent to those obtained using the apparatus and procedure specified in the standard when testing all of the fabrics currently in use which might be subject to the standard in question. (29)

The rules issued below place the burden of demonstrating equivalency of test results from the alternate apparatus on the person or firm that will derive the benefit from using the alternate apparatus or procedure. Additionally, that person or firm need not demonstrate that use of the alternate apparatus or procedure will produce equivalent results on the entire universe of fabrics or garments which may be subject to the standard. Instead, equivalency of test results must only be established with regard to the fabrics or garments being manufactured or guarantied by the person or firm desiring to use the alternate apparatus or procedure.

The Commission has taken an approach regarding use of alternate laundering procedures when testing fabrics and garments subject to the children's sleepwear standards which is similar to that of the proposed rules for use of alternate test apparatus or procedure. (29) This approach places responsibility on the person or firm desiring to use an alternate laundering procedure to develop test data to show equivalent stringency of the alternate laundering procedure for the fabrics of garments which that person or firm proposes to test using the alternate laundering procedure. See 16 CFR 1615.32 and 1616.32.

The Commission's rules for use of alternate laundering procedures have been in effect since 1977. Based on its experience with the rules governing use of alternate laundering procedures, the Commission concludes that the rules issued below regarding use of alternate test apparatus and procedures and practicable for both the Commission and the affected industries.

Enforcement of Standards

A comment from a public interest group expresses concern that the rules, as proposed, might weaken the Commission's ability to enforce the standards, particularly the clothing textiles standard (16 CFR Part 1610). (24)

All three proposals contained provisions to the effect that the Commission will continue to test fabrics and garments using the apparatus and procedure specified by the applicable standard. All three proposals had additional language stating that the Commission "may consider" failing results from compliance tests "as evidence" of a violation of the applicable standard and the FFA. (17) See proposed §§ 1610.40(g); 1615.35(e), 1615.36(d); 1616.35(f), 1616.36(d).

The comment under consideration states that under the FAA, a failing compliance test would be proof of failure, not just evidence. To correct this problem, this comment suggested alternative language for proposed § 1610.40(g) to the effect that the Commission will test fabrics and garments for compliance with the standard using the apparatus and procedures set forth in the standard, and will regard as irrelevant any evidence that the fabric or garment passed an alternate test. This comment states that the rules should provide that evidence of passing results from an alternate test will be considered by the Commission only with regard to issues of good faith, knowledge, or willfulness. (24)

The Commission observes that when it considers an alleged violation of the FFA, it takes into account all relevant evidence. As this comment suggests, the principal evidence of a violation will continue to be tests conducted by the Commission using the equipment and procedures specified by the applicable standard. Although the extensive language change requested by this comment does not appear to be necessary, the Commission agrees that its position in enforcement actions would be improved by changing the sections which are the subject of this comment to state that the Commission "will consider" failing results of compliance testing as evidence of a violation of the applicable standard and the FFA. That change appears in the rules issued below.

Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposal on small entities, including small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the proposal, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

In the notice of May 17, 1982, the Commission stated that it had certified that the proposed rules would not have a significant economic impact on a substantial number of small entities if issued on a final basis. In that notice, the Commission observed that the proposed rules would not add any new requirement for any person or firm issuing guaranties for items subject to the flammability standards for clothing textiles or children's sleepwear, or for manufacturers or importers of items subject to the children's sleepwear standards. Rather, the proposal would allow persons and firms currently subject to existing requirements for testing to use apparatus and procedures other than those specified in the applicable standard under the conditions specified in the proposals.

The Commission published the proposals after receiving requests from manufacturers who claimed that use of an alternate test apparatus would reduce their costs of testing. After the rules issued below become effective, those firms and any others currently required to perform testing in order to support guaranties or comply with the requirements of the children's sleepwear standards will have the option of using alternate apparatus or procedures under the conditions set forth in the rules.

However, if any person or firm concludes that use of an alternate apparatus or procedures, under the conditions specified in the rules, will not reduce testing costs or offer any other advantage, that person or firm is free to continue using the apparatus and procedures specified in the applicable standard.

The Commission received and considered comments to the effect that the rules issued below may give a competitive advantage to larger firms to the detriment of small firms. The Commission has concluded that any advantage to larger firms which may result from issuance of these rules will not be significant, for the reasons set forth in the discussion of comments.

Environmental Considerations

As stated in the notice of proposal, the Commission's environmental review procedures state at 16 CFR 1021.5(c)(1) that issuance, amendment or revocation of rules for product performance normally has little or no potential for affecting the human environment.

The Commission does not foresee any special or unusual circumstances surrounding the rules issued below. For this reason, neither an environmental assessment or an environmental impact statement is required.

List of Subjects in 16 CRR Part 1610

Clothing, Consumer protection, Flammable materials, Records, Textiles, Warranties.

List of Subjects in 16 CFR Parts 1615 and 1616

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

Conclusion and Promulgation

After consideration of written comments on the proposed rules, analysis of those comments by the Commission staff, and other relevant information, the Commission concludes that the rules authorizing use of alternate test apparatus and procedures should be issued on a final basis, with the modification discussed above, to become effective on June 13, 1983.

Therefore, in accordance with the 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, 86 Stat. 1231 (15 U.S.C. 2079)), the Commission hereby amends the Code of Federal Regulations, Title 16, Chapter II, Subchapter B as follows:

PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

Part 1610, Subpart B is amended by adding a new § 1610.40 to read as follows:

§ 1610.40 Use of alternate apparatus, procedures, or criteria for tests for guaranty purposes.

(a) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 the FFA. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) The Standard for the Flammability of Clothing Textiles (the Standard) prescribes apparatus and procedures for testing fabrics and garments subject to its provisions. See 16 CFR 1610.4. The Standard prescribes criteria for classifying the flammability of fabrics and garments subject to its provisions as "Normal flammability, Class 1," "Intermediate flammability, Class 2," and "rapid and intense burning, Class 3." See 16 CFR 1610.3. Sections 3 and 4 of the Flammable Fabrics Act, as enacted in 1953 and amended in 1954, prohibits the manufacture for sale, importation into the United States, or introduction in commerce of any fabric or article of wearing apparel subject to the Standard which exhibits "rapid and intense burning" when tested in accordance with the Standard. See 16 CFR Part 1609.

(c) The Commission recognizes that for purposes of supporting guaranties, "reasonable and representative tests" could be either the test in the Standard, or alternate tests which utilize apparatus or procedures other than those in the Standard. This § 1610.40 sets forth conditions under which the Commission will allow use of alternate tests with apparatus or procedures other than those in the Standard to serve as the basis for guaranties.

(d)(1) Persons and firms issuing guaranties that fabrics or garments subject to the Standard meet its requirements may base those guaranties on any alternate test utilizing apparatus or procedures other than those in the Standard, if such alternate test is as stringent as, or more stringent than, the test in the Standard. The Commission considers an alternate test to be "as stringent as, or more stringent than" the test in the Standard if, when testing identical specimens, the alternate test yields failing results as often as, or more often than, the test in the Standard. Any person using such an alternate test must have data or information to demonstrate that the alternate test is as stringent as, or more stringent than, the test in the Standard.

(2) The data or information required by this paragraph (d) of this section to demonstrate equivalent or greater stringency of any alternate test using apparatus or procedures other than those in the Standard must be in the possession of the person or firm desiring to use such alternate test before the alternate test may be used to support guaranties of items subject to the Standard.

(3) The data or information required by paragraph (d) of this section to demonstrate equivalent or greater stringency of any alternate test using apparatus or procedures other than those in the Standard must be retained for as long as that alternate test is used to support guaranties of items subject to the Standard, and for one year thereafter.

(Approved by Office of Management and Budget under control number 3041–0024)

(e) Specific approval from the Commission in advance of the use of any alternate test using apparatus or procedures other than those in the standard is not required. The Commission will not approve or disapprove any specific alternate test utilizing apparatus or procedures other than those in the Standard.

(f) Use of any alternate test to support guaranties of items subject to the Standard without the information required by this section may result in violation of section 8(b)), of the FFA (15 U.S.C. 1197(b)), which prohibits the furnishing of a false guaranty.

(g) The commission will test fabrics and garments subject to the Standard for compliance with the Standard using the apparatus and procedures set forth in the Standard. The Commission will consider any failing results from compliance testing as evidence that:

(1) The manufacture for sale, importation into the United States, or introduction in commerce of the fabric or garment which yielded failing results was in violation of the Standard and of section 3 of the FFA; and

(2) The person or firm using the alternate test as the basis for a guaranty has furnished a false guaranty, in violation of section 8(b) of the FFA.

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

Part 1615, Subpart B is amended by adding new § 1615.35 and § 1615.36 to read as follows:

§ 1615.35 Use of alternate apparatus, procedures, or criteria for testing under the standard.

(a) The Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (the Standard) requires every manufacturer, importer, and other person (such as a converter) initially introducing items subject to the Standard into commerce to group items into production units, and to test samples from each production unit. See 16 CFR 1615.4 (b), (c) and (d). The Standard prescribes an apparatus and procedure for performing tests of fabric and garments subject to its provisions. See 16 CFR 1615.4 (a), (f), and (g). The Standard prescribes pass/fail criteria at 16 CFR 1615.3(b).

(b)(1) By issuance of this § 1615.35, the Commission gives its approval to any person or firm desiring to use test apparatus or procedures other than those prescribed by the Standard for purposes of compliance with the Standard, if that person or firm has data or other information to demonstrate that a test utilizing such alternate apparatus or procedures is as stringent as, or more stringent than, a test utilizing the apparatus and procedures specified in the Standard. The Commission considers a test utilizing alternate apparatus or procedures to be "as stringent as, or more stringent than" a test utilizing the apparatus and procedures specified in the standard if, when testing identical specimens, a test utilizing alternate apparatus or procedures yields failing results as often as, or more often than, a test utilizing the apparatus and procedures specified in the Standard.

(2) The data or information required by this paragraph (b) of this section as a condition to the Commission's approval of the use of alternate test apparatus or procedures must be in the possession of the person or firm desiring to use such alternate apparatus or procedures before the alternate apparatus or procedures may be used for purposes of compliance with the Standard.

(3) The information required by this paragraph (b) of this section must be retained by the person or firm using the alternate test apparatus or procedure for as long as that apparatus or procedure is used for purposes of compliance with

the Standard, and for a period of one year thereafter.

(Approved by Office of Management and Budget under control number 3041-0027.)

(c) Written application to the Commission is not required for approval of alternate test apparatus or procedure, and the Commission will not act on any individual written application for approval of alternate test apparatus or procedure.

(d) Use of any alternate test apparatus or procedure without the data or information required by paragraph (b), of this section, may result in violation of the Standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

(e) The Commission will test fabrics and garments subjects to the Standard for compliance with the requirements of the Standard using the apparatus and procedures set forth in the Standard. The Commission will consider any failing results from compliance testing as evidence of a violation of the Standard and section 3 of the Flammable Fabrics Act (15 U.S.C 1192).

§ 1615.36 Use of alternate apparatus or procedures for tests for guaranty purposes

(a) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) Section 1615.31(f) of the regulations implementing the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (the Standard) provides that for purposes of supporting guaranties issued in accordance with section 8 of the FFA for items subject to the Standard, "reasonable and representative tests" are tests "performed pursuant to any sampling plan or authorized alternative sampling plan engaged in pursuant to the requirements of the Standard."

(c) At § 1615.35, the Commission has set forth conditions under which the Commission will approve the use of test apparatus or procedures other than those prescribed in the Standard for purposes of demonstrating compliance with the requirements of the Standard. Any person or firm meeting the requirements of § 1615.35 for use of alternate test apparatus or procedure for compliance with the Standard may also use such alternate test apparatus or procedures under the same conditions for purposes of conducting "reasonable and representative tests" to support guaranties of items subject to the Standard, following any sampling plan prescribed by the Standard or any approved alternate sampling plan.

(d) The Commission will test fabrics and garments subject to the Standard for compliance with the Standard using the apparatus and procedures set forth in the Standard. The Commission will consider any failing results from compliance testing as evidence that the person or firm using alternate test apparatus or procedures has furnished a false guaranty in violation of section 8(b) of the FFA (15 U.S.C. 1197(b)).

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

Part 1616, Subpart B is amended by adding new §§ 1616.35 and 1616.36 to read as follows:

§ 1616.35 Use of alternate apparatus, procedures, or criteria for testing under the standard.

(a) The Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (the Standard) requires every manufacturer, importer, and other person (such as a converter) initially introducing items subject to the Standard into commerce to group items into production units, and to test samples from each production unit. See 16 CFR 1616.4. The Standard prescribes an apparatus and procedure for performing tests of fabric and garments subject to its provisions. See 16 CFR 1616.5. The Standard prescribes pass/fail criteria at 16 CFR 1616.3(b).

(b) Section 1616.5(a) states that alternate test apparatus may be used by persons or firms required to perform testing under the Standard "only with prior approval" of the Commission.

(c)(1) By issuance of this § 1616.35, the Commission gives its approval to any person or firm desiring to use test apparatus or procedures other than those prescribed by the Standard for purposes of compliance with the Standard, if that person or firm has data or other information to demonstrate that a test utilizing such alternate apparatus or procedure is as stringent as, or more stringent than, a test utilizing the apparatus and procedure specified in the Standard. The Commission considers a test utilizing alternate apparatus or procedures to be "as stringent as, or more stringent than" a test utilizing the apparatus and procedures specified in the standard, if when testing identical specimens, a test utilizing alternative apparatus or procedures yields failing results as often as, or more often than, a test utilizing the apparatus and procedures specified in the standard.

(2) The data or information required by this paragraph (c) of this section as a condition to the Commission's approval of the use of alternate test apparatus or procedures must be in the possession of the person or firm desiring to use such alternate apparatus or procedures before the alternate apparatus or procedures may be used for purposes of compliance with the standard.

(3) The information required by this paragraph (c) of this section must be retained by the person or firm using the alternate test apparatus or procedures for as long as that apparatus or procedure is used for purposes of compliance with the standard, and for a period of one year there after.

(Approved by Office of Management and Budget under control number 3041-0027.)

(d) Written application to the Commission is not required for approval of alternate test apparatus or procedures, and the Commission will not act on any individual written application for approval of alternate test apparatus or procedures.

(e) Use of any alternate test apparatus or procedures without the data or information required by paragraph (c), of this section, may result in violation of the Standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

(f) The Commission will test fabrics and garments subject to the standard for compliance with the requirements of the standard using the apparatus and procedures set forth in the standard. The Commission will consider any failing results from compliance testing as evidence of a violation of the standard and section 3 of the Flammable Fabrics Act (15 U.S.C. 1192).

§ 1616.36 Use of alternate apparatus or procedures for tests for guaranty purposes.

(a) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) Section 1616.31(e) of the regulations implementing the Standard

for the Flammability of Children's Sleepwear: Sizes 7 through 14 (the Standard) provides that for purposes of supporting guaranties issued in accordance with section 8 of the FFA for items subject to the Standard, "reasonable and representative tests" are tests "performed pursuant to any sampling plan or authorized alternative sampling plan engaged in pursuant to the requirements of the Standard."

(c) At § 1616.35, the Commission has set forth conditions under which the Commission will approve the use of test apparatus or procedures other than those prescribed in the Standard for purposes of demonstrating compliance with the requirements of the Standard. Any person or firm meeting the requirements of § 1616.35 for use of alternate test apparatus or procedure for compliance with the Standard may also use such alternate test apparatus or procedure under the same conditions for purposes of conducting "reasonable and representative tests" to support guaranties of items subject to the Standard, following any sampling plan prescribed by the Standard or any approved alternate sampling plan.

(d) The Commission will test fabrics and garments subject to the Standard for compliance with the Standard using the apparatus and procedures set forth in the Standard. The Commission will consider any failing results from compliance testing as evidence that the person or firm using alternate test apparatus or procedures has furnished a false guaranty in violation of section 8(b) of the FFA (15 U.S.C. 1197(b)).

(Sec. 5, Pub. L. 90–189, 81 Stat. 569, 15 U.S.C. 1194; Sec. 30(b), Pub. L. 92–573, 86 Stat. 1231, 15 U.S.C. 2079(b))

Dated: May 6, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. **Federal Register** notice amending Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, and Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14; 8 pages; February 6, 1978 (43 FR 4849).

2. Letter from the William Carter Company to Secretary, Consumer Product Safety Commission, requesting approval for use of alternative test apparatus for purposes of testing for compliance with children's sleepwear standard for sizes 7 through 14 (16 CFR Part 1616), with attachments; 38 pages; July 11, 1975.

3. Memorandum from Bernard Schwartz, OSCA, to Distribution concerning request from Carter for approval of alternate test apparatus; 1 page; August 14, 1975.

4. Memorandum from Margaret L. Neily, BESB, to Bernard Schwartz, OSCA, commenting on Carter request for approval of alternate test apparatus; 2 pages; September 12, 1975.

5. Memorandum from Ralph Madison, BESB, to Bernard Schwartz, SCAT, concerning Carter request for approval of alternate test apparatus; 1 page; September 12, 1975.

6. Log of telephone conversation between Bernard Schwartz, OSCA, and O. P. Beckwith, William Carter Company, concerning Carter request for approval of alternate test apparatus; 1 page; October 23, 1975.

7. Memorandum from Bernard Schwartz, OSCA, to Bureau of Engineering Sciences, requesting review of attached memorandum from Bureau of Economic Analysis, with attachments; 4 pages; May 25, 1976.

8. Memorandum from Margaret Neily, BESB, to Bernard Schwartz, OSCA, responding to memorandum of May 25, 1976, concerning economic analysis of Carter request for approval of alternate test apparatus, with attachment; 8 pages; August 26, 1976.

9. Staff briefing package prepared by Elaine A. Tyrrell, Office of Program Management addressing Milliken Petition, FP 80–3; 5 pages; December 11, 1980. The tabs to this package are listed separately.

10. TAB A, petition from Milliken Research Corporation (FP 80–3) requesting amendment of the Standard for the Flammability for Clothing Textiles to allow use of alternate test apparatus; 4 pages; July 1, 1980.

11. TAB B, memorandum from Stephen Lemberg, Assistant General Counsel to Office of the Secretary concerning FP 80–3; 2 pages; July 30, 1980.

12. TAB C, memorandum from Liz Jones, Division of Regulatory Management concerning FP 80–3; 4 pages; October 29, 1980.

13. Memorandum from Allen F. Brauninger, OGC, to Commission, transmitting staff briefing package on FP 80–3, with attachments; 5 pages; January 5, 1981.

14. Vote sheet concerning FP 80–3, from Allen F. Brauninger, OGC, to Commission; 2 pages; January 5, 1981.

15. Minutes of Commission meeting of January 14, 1981, recording Commission vote to grant FP 80–3; 2 pages; January 16, 1981.

16. Staff briefing package prepared by L. J. Sharman, Office of Program Management, concerning use of alternate test apparatus in flammable fabrics standards; 8 pages; February 14, 1983. The tabs to this package are listed separately.

17. TAB A, **Federal Register** notice proposing rules to allow use of alternate apparatus and procedures for testing under the flammability standards for clothing textiles and children's sleepwear; 13 pages; May 17, 1982 (47 FR 21081).

TAB B, comments on proposed rules:

18. Comment from the Jaunty Textile Corp., 1 page, June 21, 1982.

19. Comment from National Association of Hosiery Manufacturers; 2 pages; July 8, 1982.

20. Comment from Uniroyal, Inc.; 1 page; June 30, 1982.

21. Comment from Bates Nitewear Company; 2 pages; July 15, 1982.

22. Comment from National Knitwear Manufacturers Association; 1 page; July 15, 1982.

23. Comment from American Textile Manufacturers Institute; 1 page; July 16, 1982.

24. Comment from Citizens' Committee for Fire Protection; 2 pages; July 14, 1982.

25. Comment from American Apparel Manufacturers Association; 5 pages; July 29, 1982.

26. TAB C, chart summarizing comments; 2 pages; undated.

TAB D, Staff analysis of comments on proposed rules:

27. Memorandum from Liz Gomilla, CARM, to L. J. Sharman, OPM, concerning comments on proposed rules; 2 pages; September 14, 1982.

28. Memorandum from Dale Ray, ECCP, to L. James Sharman, OPM, concerning comments on proposed rules; 3 pages; September 24, 1982.

29. Memorandum from Pat Fairall, ESMT, to Margaret Neily, ESMT, concerning comments on proposed rules; 2 pages; October 1, 1982.

30. TAB E, draft **Federal Register** notice to issue final rules; 24 pages; undated.

[FR Doc. 83-12682 Filed 5-11-83; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Ch. 1

[FHWA Docket No. 83–4, Notice No. 6]

Truck Size Policy Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of modifications and cancellation of certain interim designated highways.

SUMMARY: The FHWA made an interim designation of each State's Federal-aid primary system highways on April 5, 1983. These roads were to be made available to certain size trucks from April 6 until issuance of the final regulation pursuant to the requirements of the Surface Transportation Assistance Act (STAA) of 1982. By this notice, the FHWA provides modifications to the interim designated highway networks for the States of Alaska, Arizona, Florida, Louisiana, Michigan, New Jersey, Oklahoma, Rhode Island, Texas, and Virginia.

EFFECTIVE DATE: The modification are effective May 12, 1983, and will expire upon designation of the final network.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Strickland, Office of Highway Planning, (202) 426–0153, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, Federal