U.S. Consumer Product Safety Commission
Public Hearing on Proposed Revocation of Amendments to Children's Sleepwear Standards

April 22, 1999
10:00 a.m.

OPENING STATEMENTS
Chairman Ann Brown
Vice Chairman Thomas H. Moore
Commissioner Mary Sheila Gall

PRESENTATIONS:

CONGRESSIONAL REPRESENTATIVE
The Honorable Rosa L. DeLauro, U.S. House of Representatives, 3rd District, Connecticut

FIRE SAFETY ORGANIZATIONS
Anthony O'Neill and John Hall, National Fire Protection Association
Andrew McGuire and MaryWeitzel, Trauma Foundation
Ernest Grant, Safe Children's Sleepwear Coalition

INDUSTRY REPRESENTATIVES
Phillip Wakelyn, National Cotton Council, and Joan Balfour, National Cotton Women's Committee
Stephen Lamar and Mary Howell (assisting), American Apparel Manufacturers Association
Bruce Navarro, American Association of Exporters & Importers
Julie and Marlaine Goldscheider, Impact Imports
Vivian Reisman, Baby Steps

LUNCH BREAK (approximately 1:00 p.m.)

HOSPITALS/BURN CENTERS/SURVIVORS
David Herndon, The American Burn Association and Shriners Hospitals for Children
Marcia Mabee, Coalition for American Trauma Care
Renee Henningsen, mother of a burn survivor, Fairfax County Fire & Rescue Department
David Borowski, a burn survivor

FIRE SERVICES
Hank Kim, International Association of Fire Fighters
Edward Stinnette, International Association of Fire Chiefs
Curtis Stilwell, Washington Regional Aluminum Cans for Burned Children

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Opening Statement of Chairman Ann Brown
Oral Presentations on Possible Revocation of Amendments
To Children's Sleepwear Standard

April 22, 1999

Good Morning. I would like to welcome all of you here today.

Before we begin, I would like to make a few comments about my views on the children's sleepwear issue, why we are here today, and what I expect out of this hearing.

It is widely acknowledged that the children's sleepwear standard administered for more than three decades by the CPSC was instrumental in reducing burn-related deaths and injuries related to flammable sleepwear. The standard required fabrics used in children's sleepwear to self-extinguish when exposed to a small open flame. In terms of safety, the regulation was working well. Before this longstanding standard was amended in 1996, it was credited with saving many lives and preventing countless burn-related injuries.

In 1995, the Commission staff recommended to the Commission that it amend the sleepwear standard to exempt tight-fitting garments. And, I can tell you most *emphatically* that the staff's recommendation to change the standard was not based on pressure from any outside interests. Rather, this recommendation was based on two principles: (1) safety and (2) enforcement.

The staff scrutinized this issue for several years, relying on laboratory and other analytical data, including injury and death data, to arrive at its conclusions and recommendations.

Based on this work, the staff concluded that "snug fitting" cotton garments would not pose a hazard to children because: (1) they fit closer to the body, thus trapping less air for combustion; and (2) there would be a reduced possibility for contact with an ignition source.

The staff also believed that this exemption eased enforcement by minimizing the artificial distinction between sleepwear, underwear and playwear. The staff believed that with a snug-fitting cotton sleepwear alternative, consumers could be less likely to place their children in loose-fitting cotton garments such as dangerous oversized T-shirts.

In 1996, a majority of the Commission voted to amend the children's sleepwear standard to exempt snug-fitting sleepwear and all infants' sleepwear up to size 9 months.

Although I understood the staff rationale, I did not agree with their conclusions. Therefore, I voted against the changes. At the time of the vote, I said:

> *There simply is no factual basis to conclude that by amending the sleepwear standards to allow the use of 100 percent cotton garments, parents will switch from loose-fitting cotton garments (e.g. T-shirts) to exempt tight-fitting sleepwear. There is no evidence of consumer demand for tight-fitting sleepwear. Indeed, it is just as likely consumers will purchase tight-fitting garments in larger sizes to increase comfort, and to allow a child to grow into a garment, thereby compromising any possible safety benefit staff has indicated might be achieved with tight-fitting garments. Further, I am concerned that any purchase of tight-fitting garments will be at the expense of garments that meet the children's flammability standards. If so, the level of safety afforded children will be reduced.*

I was particularly concerned with the Commission decision to exempt infants' sleepwear up to size 9 months.

In my dissenting statement on the vote I said:

> *...Children who wear these sizes may well be mobile and can come in contact with ignition sources. In 1978, the Commission also considered whether to exempt from the flammability standards garments for young children, at that time it was garments under size 1. At that time, the Commission reviewed 10 cases involving sleepwear garments. Four of the infants in these 10 sleepwear cases were protected by their garments from more serious burn injuries.*
>
> *Two of these garments were reported to be flame resistant, and one other was thought to be flame resistant. The four victims sustained burn injuries only to the exposed areas of the body, and all four survived. In five other cases, the garments ignited contributing to or causing the burn injury. All five victims sustained severe burns. Based on this information, the Commission rejected exempting garments under size 1. This same information leads me to conclude not to vote to amend the sleepwear standards to exempt garments under size 9 months.*

My views have not changed. I continue to believe that the changes made to the original standard did not improve or enhance the safety of children's sleepwear.

The current standard exempts all sleepwear for infants nine months and younger, and tight-fitting sleepwear in children's sizes up to 14, from flammability standards. This means they can be made from untreated cotton and cotton blends. These types of clothes can ignite easily from a stove, a spark, or any type of open flame. Frighteningly, cotton pajamas burn rapidly and flames spread toward a child's face.

I understand the reasoning behind the new rules: if a garment is tight, it is less likely to accidentally touch and open flame and is more difficult for flames to spread. But parents don't buy clothes that are tight. We have all bought clothes for a new baby, and when you're shopping you don't buy clothes that are tight. You buy clothes that are one or two sizes too big, so the child can grow into them. Many parents also dress children in hand-me-downs which may be far too big. This combination of non-flame resistance and large sizes is a serious step backward.

The new rules are intended to address the fact that parents sometimes put their children to sleep in large T-shirts. This is indeed a clear and present danger, but relaxing safety standards does not address the real problem. Would we repeal the seatbelt law if we found that people didn't want to wear seatbelts? No. We would educate people about the importance of wearing seatbelts. Rather than putting more dangerous pajamas on the marketplace, the CPSC should restore the stronger standard and plan an information campaign educating parents of the dangers of dressing children in large T-shirts.

A note about education campaigns -- the CPSC's decision to relax the fire safety standard was made with the understanding that pajama manufacturers would sponsor a substantial public awareness campaign so that consumers would understand the importance of dressing their children in tight-fitting clothes.

More than two years later, this campaign has failed to materialize. The industry did not spend one dime to educate parents. The tags on pajamas which are supposed to let parents know if garments are not flame resistant, and that they should be worn tight-fitting, are extremely confusing and actually imply that the garment meets fire safety standards when in fact no standard exists. I am dubious of the motives of an industry that has failed to live up to its agreement.

Some argue that there has been no increase in the number of burn injuries and deaths since the standard change. I would like to address that first by saying that it seems macabre for us to wait for children to be maimed or killed before reinstating a proven safety measure. One child hurt is one too many.

Furthermore, the claim is blatantly false. While problems in the reporting of burn injuries prevent us from having a nationwide number of how many children have been hurt, unfortunatley it is far too easy to prove that children are being hurt. You will hear later this morning from Dr. David Herndon, Chief of Staff of the Shriners Burns Hospital. Dr. Herndon will testify that since January 1997, Shriners Hospitals alone have treated 65 children who have received burn injuries involving pajamas, 14 of whom were infants. And keep in mind that Shriners Hospitals represent just four out of 135 burn centers in the United States.

We're not talking about data reports here. We're talking about real doctors who treat real children. The injuries these children suffered are unimaginable. David Borowski will testify today about how a burn injury changed his life. I reiterate -- one child burned is one child too many. We can't sit here waiting for the problem to be reflected in statistics. Let's look at statistics we do have. According to data from the National Electronic Injury Surveillance System, since flammability standards were adopted the number of deaths associated with sleepwear fell from 60 deaths per year to only four. Let's use these statistics which show how to keep children safe, rather than waiting for data to prove that children are being burned.

And so, we look to you, the Consumer Product Safety Commission, to act as you so often do to protect the health and safety of American children. As you consider your decision, please keep in mind the risks. Do we really want to wait for the number of children to rise before we go back to a standard proven to work? Would American parents choose to have pajamas that could potentially put their child at risk?

Please do not wait for one more child to be burned before you act to protect them. The strong fire safety standard has stood the test of time and protected a generation of American children from burn injuries. Now it's time to protect the next generation.

Thank you for your consideration and for the opportunity to testify before you.

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Testimony

of

Anthony R. O'Neill
Vice President – Government Affairs
National Fire Protection Association

to the

U.S. Consumer Product Safety Commission

Proposed Revocation of Amendments
to the
Standards for the Flammability of
Children's Sleepwear

for the

April 22, 1999
Public Hearing

(Submitted on April 15, 1999 per
CPSC Instructions)

Publishers of the National Fire Codes® and National Electrical Code®

A non-profit membership organization dedicated to promoting safety from fire, electricity, and related hazards through research, codes and standards, technical advisory services, and public education since 1896.

Good morning Chairman Brown and Commissioners Gall and Moore. My name is Tony O'Neill and I have the privilege of representing the National Fire Protection Association (NFPA) in Washington as Vice President of Government Affairs.

Thank you for this opportunity to present NFPA's views on the proposed revocation of the amendments to the children's sleepwear flammability standards.

Over the years, NFPA has worked very closely with the Consumer Product Safety Commission (CPSC) in a number of important safety initiatives. We value this cooperation and look forward to a continuing public/private partnership between CPSC and NFPA on many consumer safety issues.

On most issues we agree. But on some... we must respectfully disagree. The 1996 CPSC decision to amend the children's sleepwear flammability standards is one decision with which we must disagree.

NFPA believes its arguments opposing the 1996 decision were sound at the time. But developments in the last $2^1/_2$ years have actually reinforced the validity of NFPA's case and further demonstrates the weaknesses in the original decisions that led up to the relaxed standard. This open docket provides an opportunity to correct a mistake before that mistake results in significant harm to children.

We therefore, once again, urge CPSC to reinstate the previously successful 1972 and 1975 standards governing the flammability of children's sleepwear by revoking the September 1996 amendments (61 FR 47634) and subsequent technical amendments.

Public Policy Issues

NFPA believes strongly that CPSC, as a matter of public policy, had the burden to show that the net effect of the new standards on all affected children would be beneficial. That burden was never met. In other words, CPSC had the burden to demonstrate children's safety would improve, not worsen. We believe children's safety will decline.

This will be a brief summary of how we have arrived at this unsettling conclusion. (For the details, please refer to NFPA's position statement and response of March 22, 1999.)

It is important to note that the September 1996 amendments came about because of compliance problems in the marketplace in the early 1990s and not because of any scientific data that the old standards were ineffective for their intended use. My colleague, Dr. John Hall, will address the data and policy analysis issues. I, in turn, will address the assumptions and hypotheses that apparently formed the basis for CPSC's decision.

In our view, CPSC's decision-making process should have at least addressed NFPA's concerns and predictions head on. Instead, we assert that CPSC built their decision to change the flame resistant sleepwear standard on a

series of dubious assumptions and hypotheses. Then, CPSC relied on the willingness of industry to do the right thing... i.e., produce snug fitting sleepwear... and to permanently label the snug fitting sleepwear... and to deliver an Information and Education (I&E) campaign to convince parents to change buying habits from loose fitting T-shirts to snug fitting. Now, $2^1/_2$ years later, we find CPSC's reliance on industry promises to carry out public policy expectations to be misplaced.

Let's look at the record.

Compliance Problems

Sometime in the early '90s, suppliers of compliant flame resistant sleepwear discovered that certain non-sleepwear items such as long underwear were carrying brand names or other markings allegedly for the purpose of encouraging consumers to purchase these garments as sleepwear. CPSC was swamped with requests for retail store inspections.

Instead of strengthening compliance efforts and mounting an aggressive information and education (I&E) campaign for consumers, CPSC began to move away from mandatory flame resistant (FR) sleepwear standards; first, with a stay of enforcement and then with a belief that skin tight untreated cotton underwear garments were an acceptable alternative to FR sleepwear... and then with a belief that somehow parents would switch from more comfortable loose-fitting cotton T-shirts and underwear to tight fitting cotton sleepwear.

Now, six years after CPSC stopped enforcing the sleepwear FR standard, the record is clear that what started out as a compliance problem led to a proposal to abandon the mandatory flame resistant standard.

The "Skin Tight" Hypothesis

The difficulty in achieving compliance with the FR sleepwear standards led to the CPSC conclusion that "skin tight" cotton garments could deliver equivalent safety while better meeting the public's desire for cotton. Proponents of the relaxed standard had claimed that parents have been circumventing the old (FR) standard by dressing their children in cotton clothing not designed as sleepwear... NFPA not only disagrees with this marketplace conclusion, but also asks, "Is skin tight achievable?" We have never agreed with the hypothesis that parents would buy age-appropriate sleepwear... nor were we convinced that manufacturers would willingly produce skin tight sleepwear garments (now called "snug fitting"). We believe that events since 1996 are slowly but surely demonstrating that we are correct on both issues. The American tradition of hand-me-downs often places children in sleepwear designed for other ages... so does the common practice of buying clothing large enough for a child to grow into. And what about consignment shops and charity-sponsored clothing outlets for the poorer members of our population?

As to manufacturers willingly producing tight fitting garments, the record is clear that this continues to be a challenge for the industry... and there is no mandatory labeling requirement in the final amended sleepwear standards to

reinforce the tight fitting concept... Why?... Because manufacturers, importers, and the Cotton Council objected to the proposed labeling.

Information & Education (I&E) Campaign Assumption

Part of CPSC's decision-making process assumed that parents would switch from more comfortable loose fitting cotton garments (such as T-shirts) to "tight fitting" cotton sleepwear when parents and caregivers were educated on proper purchasing decisions. Key in this assumption is the requirement that parents must be educated. This is not happening.

Informal random surveys of children's clothing retail stores in Virginia, Kentucky, and North Carolina since November 1998 reveal that the industry's promised I&E campaign is practically non-existent. Other witnesses at today's hearing will elaborate on these findings.

But even if industry had fully cooperated on the I&E campaign, we remain convinced parents won't buy age-appropriate tight fitting garments.

And without mandatory labeling, parents won't know what they are buying or how much their child's safety depends on the tight fit.

Conclusions and Implications

If this trend continues, the untreated cotton children's sleepwear actually sold under the new standard will be no safer than what was offered before there were any standards. And this will be even more dangerous, because

the existence of a toothless CPSC standard will be worse than no standard at all, leading many parents to believe that unsafe garments are safe.

We are headed down a path that will lead to <u>no</u> flame-resistant sleepwear for children. Flame-resistant garments will be abandoned by manufacturers, who will find they cannot sell truly fire-safe sleepwear to parents, so long as the CPSC-amended standard holds out the false hope that their children can be protected by comfortable-fitting untreated cotton garments

Because of customer preferences and the use of hand-me-downs, cotton garments will not have a tight fit, even for the first wearers.

When NFPA opposed the change in standards, we described the landscape we saw of fire hazards and how they are created, of parents and how they receive and process information to make consumer choices and of special concerns of the poor and other high-risk groups.

We predicted the dynamics of garment selection and use would mean that sleepwear designed to be tight-fitting would not be tight-fitting in practice. Even we did not predict that manufacturer resistance to "snug" fit would lead to an erosion of the concept of tight fit before the garments even reached stores.

We predicted the targeted families -- those now using daywear as sleepwear -- would not be persuaded of the desirability of changing to tight-fitting cotton sleepwear. Even we did not predict that industry efforts to convince them to change would be so limited and in most retail sales floors... non-existent.

We predicted the other families -- those using sleepwear compliant with the old standards -- would be pushed out of their safe choices as the market for flame-resistant sleepwear collapsed. Even we did not expect that evidence of that collapse would start to appear in stores so quickly.

NFPA believes the direction of events and the weight of the evidence have become clearer with each passing month. Now is the time to reverse the action of 1996 and restore real safety to children's sleepwear.

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TESTIMONY

OF

Dr. John R. Hall, Jr.

Assistant Vice President -- Fire Analysis & Research

NATIONAL FIRE PROTECTION ASSOCIATION

TO THE

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Proposed Revocation of Amendments to the

Standards for the Flammability of

Children's Sleepwear (64 FR 2867)

April 22, 1999 Hearing

Pursuant to the requirements of

Public Law 105-276

Submitted in writing by NFPA on April 15, 1999

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Public Law 105-276

Submitted in writing by NFPA on April 15, 1999

I am Dr. John Hall, Assistant Vice President for Fire Analysis & Research at the National Fire Protection Association. On behalf of NFPA, I urge the Commissioners to reinstate the old children's sleepwear standard. You will hear from many people who believe as I do but who will cover other points. I will emphasize what I know best--issues of data, science, and policy analysis.

Consider the question of children's sleepwear as a program choice and ask these data questions: First, what is the problem to be solved? Second, what are the alternatives to solve it? Third, how will these programs work in theory? Fourth, how will these programs work in practice? Fifth, who are the different groups likely to be affected differently by these programs? And finally, which program is likely to produce the best results overall?

It is ironic that the advocates of the change in the standard and CPSC staff have demanded data from opponents of the change and dismissed opponents' arguments as emotional and not fact-based. As I will show, it is the supporters of the change who have ignored gaping holes in their own data and it is the opponents of the change who have made the good-faith effort to assemble available data and analyze its implications fairly and comprehensively.

First, what is the problem? In July 1995, the CPSC Hazard Analysis Division concluded clothing-fire burn deaths among children involved daywear far more than sleepwear, including some daywear worn as sleepwear. Sleepwear-fire burn deaths had declined sharply and were no longer considered a problem.

Second, what are the alternatives? If the problem is daywear used as sleepwear, we might have expected a compliance program or a consumer education program, but instead, manufacturers proposed changing the standard itself to permit tight-fitting cotton sleepwear. Now we had two program choices to consider.

Third, how will the programs work in theory? For the old standard, the logic was that children would sleep in sleepwear that had passed a flame resistance test and so would protect any child. For the new standard, the logic was that children would sleep in garments manufactured for age-appropriate tight fit. No data was provided on how tight a fit was necessary to achieve burn protection.

In his public comments, Dr. Wakelyn of the cotton industry introduced another argument, which is completely inconsistent with the facts. He argues that sleepwear burns involve only garments that are both loose and flowing -- flowing to increase the likelihood of contact with an ignition source and loose to permit propagation of fire on a garment. He implies that loose, non-flowing sleepwear would be safe and thereby implies that one need not worry much about achieving a snug fit or proving its adequacy as protection against clothing fire burns. He has mischaracterized the findings of the studies he references, and his arguments, if taken seriously, would pull this discussion far away from a careful and conservative stewardship of the safety of children.

The new standard also added a new concern, in the form of the exemption for infants up to 9 months of age. The theory was that

infants are not mobile and so are not exposed to fire. This was asserted without supporting data and in the face of data showing that many infants are mobile and that fireplay by older siblings and playmates can and does bring fire near younger children.

Fourth, how will these programs work in practice? For the old standard, the only problem was non-use of compliant sleepwear. There have been assertions that many or even most families were using daywear as sleepwear, but no data. For the new standards, the problems are non-use of compliant sleepwear, compliant sleepwear that isn't tight enough to assure protection, compliant sleepwear in age-inappropriate use, and the lack of protection for infants. Supporters of the new standard have provided no data on these points.

In their public testimony, some supporters have tried to claim the lack of data as evidence for the new standards. The independent review by the Government Accounting Office (GAO) effectively demolished this argument and also reaffirmed the argument by NFPA and others that data on customer purchase and usage practices since 1996 would provide considerable insight into the effect of the new standards, without waiting for the burned bodies of children to be counted.

Fifth, who are the different groups likely to be affected differently? They are children who wear compliant sleepwear and children who wear other garments. A sleepwear standard saves lives by protecting children who wear compliant sleepwear and increasing the share of children who wear compliant sleepwear.

The old standard protected children even if families had no idea how it worked. The new standard is much more dependent on the level of knowledge and the consistency of safe usage by customers. Other speakers will describe the shortcomings of the industry's consumer education. But perhaps the best evidence of how badly the new standard has failed to meet this obligation came in a public comment intended to support the new standard.

Susan Francis wrote that she appreciated having consumer alternatives and that all the 8-year-old girls at a slumber party had worn large cotton T-shirts as sleepwear. This was not someone describing a problem the new standard might help solve. This was someone celebrating the legalization of cotton in children's sleepwear and completely oblivious to the enormous safety differences among cotton garments. On our most cynical day, the Safe Children's Sleepwear Coalition could not have invented such clear-cut data on the inadequacy of the educational campaign on safe usage. Along the same lines, Dr. Wakelyn speaks approvingly of the approach to children's sleepwear in Australia without citing the vastly superior labeling and related customer information provided there, which his own references document.

Many other public comments supporting the new standard and submitted for this hearing show a lack of understanding of other points of fact that no knowledgeable person disputes. If this is the case for the new standard, it collapses of its own weight.

Neither the new nor the old standard by themselves shift families from non-compliant to compliant sleepwear. That shift requires consumer information, which can be provided in support of either standard. Instead, the industry is giving families a mix of bad information, no information, hidden information, and information no ordinary person can understand. Again, the most credible data on this point has come from opponents of the new standard.

What will be the overall results? It is impossible for the new standard to be as effective in cases of improper use as the old standard. There is no evidence that the new standard will achieve a high rate of proper usage, and little evidence that the industry is doing much to raise the rate of proper usage over what will occur naturally. And there is no evidence that families previously using daywear as sleepwear are returning to sleepwear. It follows that the new standard is delivering less safety. Take no comfort from the lack of numerous burn cases so far, because our analysis of the situation is that most of the new sleepwear will take time to reach age-inappropriate users and burn cases will take time to surface, because USA tracking systems are sample-based with multi-year lag times.

The burden of proof is on supporters of the new standard to show all assumptions required for the new standard to work are proving true. They have not done so; they are not trying to do so; and the available facts clearly indicate they cannot do so. What they have done instead is try to shift the burden of proof to opponents of the new

standard and dismiss any data other than serious burns. This is not what a science- and data-driven safety agency ought to be doing.

Unproven specs for tightness of fit are data. Missing or inadequate consumer information campaigns are data. Continued use of daywear as sleepwear is data. And none of these data require us to accept badly burned or killed children in the name of an experiment.

Chairman Brown, I appeal to you to lead the Commission back to the old standard. It has been a privilege and an honor to stand with a passionate and committed champion of safety like yourself on this most important issue.

Commissioner Gall, I appeal to you to ask again whether the new standard met its burden of proof of safety. The industry wants its sales, and the public wants its comfort, but they both depend on you to tell them when the safety price is too high. Ask that question again.

Commissioner Moore, I appeal to you as the person who has talked most about data and about open questions that made your choice so difficult. When you voted, your statement actually had all the elements of a solid case against the new standard. The evidence of the past 3 years shows the points that made you nervous then are stronger now, and decisive in favor of a return to the old standard.

Chairman Brown, Commissioner Gall, Commissioner Moore, we have the facts and data on our side. We have the science and logic of safety on our side. I hope by day's end we also will have all of you on our side. Please repeal the 1996 changes and reinstate the old children's sleepwear standards.

WRITTEN TEXT OF ORAL TESTIMONY BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION
HEARING OF APRIL 22, 1999

Andrew McGuire
Executive Director
Trauma Foundation
San Francisco, California

The Trauma Foundation strongly supports revocation of the 1996 amendments to the children's sleepwear flammability standards because they will needlessly endanger children and because the Commission did not comply with the requirements of the Flammable Fabrics Act during its rule-making process.

The Flammable Fabrics Act, which contains the statutory authority for CPSC to amend an existing standard, requires that "each amendment . . . shall be based on findings that such . . . amendment . . . is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death [or] injury." The CPSC must demonstrate, with data, that the current state of affairs presents an unreasonable risk of fire, and that an amendment is necessary to protect the public. Once the Commission has shown the necessity of an amendment, it must then determine whether the amendment (not the existing standard) is "reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present unreasonable risks, and shall be stated in objective terms."

The original justification for the 1996 amendments was to expand consumer choice, not to address an unreasonable risk of burn injuries. When the Commission proposed the September, 1996 amendments, its stated aim was to provide consumers with more choices in sleepwear, not to reduce the number of sleepwear burn injuries, and the record compiled during the course of the following two years contains no evidence that the amendments will have the effect of reducing the number of children injured and disfigured in open flame sleepwear fires. Rather, the Commission inappropriately placed the burden on those of us who opposed the amendments to show that the marketing and sale of tight-fitting sleepwear will lead to an increase in death and injury. In so doing, the Commission did not follow its statutory mandate and therefore lacked the authority to issue these amendments.

In justifying its decision to amend the existing standard, the Commission asserted that the existing standard was unnecessarily broad, and was not limited to fabrics determined to present unreasonable risks. When the original flammability standards were promulgated in the 1970s, the Commission determined that the appropriate way to reduce sleepwear-related deaths and injuries in children was a flammability test. The initial standard did not speak to specific fabrics. This approach has resulted in the dramatic reduction of sleepwear-related injuries and deaths. The old standard was working. When the Commission moved in 1996 to amend the standard and claim it was no longer necessary, it was required by the Flammable Fabrics Act to examine current data and make a finding that the existing standard was not working and that the then-current situation presented an unreasonable risk of the occurrence of fire leading to death or injury. The Commission made no such findings in its rule-making for the 1996 amendments. To the contrary, virtually everyone agrees that the flammability standards promulgated in the 1970s have dramatically reduced the number of children killed and

injured in open flame sleepwear fires. The public record contains no evidence that refutes the data on which the initial standard was based.

Furthermore, even if, for the sake of argument, we assume that the Commission properly showed the current flammability standard is not working, because children were burned while wearing t-shirts as sleepwear, CPSC presented no data to support the conclusion that parents who now put their children to bed in t-shirts will choose tight-fitting sleepwear instead. Therefore, the amendments are neither appropriate nor reasonable because there is no proof they will reduce the number of children burned while wearing t-shirts as sleepwear. In fact, what little evidence the record contains about tight-fitting sleepwear indicates parents will be unlikely to buy it. Some young children could not get it on and off without help and some found it uncomfortable. Meanwhile, parents indicated they would not buy sleepwear their children found uncomfortable. Therefore, the public record does not contain the required data to support the conclusion that parents who were choosing t-shirts will choose tight-fitting sleepwear once it is available in the marketplace.

The Flammable Fabrics Act sets forth very clear requirements for amending an existing flammability standard. In the case of the 1996 sleepwear amendments, these requirements were not met. There is no evidence the original standards were not effective, nor is there any evidence that the data on which they were based are no longer valid. The public record does not contain empirical data to support the conclusion that there was an unreasonable risk of injury or death under the old standard, nor does it support the conclusion that the amendments will reduce the number of children who wear t-shirts to bed. Therefore, we believe the 1996 rule-making failed to comply with the statutory requirements of the Flammable Fabrics Act. The act of Congress that has brought us all here today allows the Commission to revoke the amendments without the usual Flammable Fabrics Act and Administrative Procedure Act requirements. We urge you to do so.

The Trauma Foundation feels so strongly about this issue that we are prepared to file a lawsuit in federal court challenging the validity of the 1996 sleepwear amendments.

WRITTEN TEXT OF ORAL TESTIMONY BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION
HEARING OF APRIL 22, 1999

Mary M. Weitzel
Trauma Foundation
San Francisco, California

I am here to testify about the confusion consumers face when they go to purchase sleepwear. During the rule-making process for the 1996 amendments to the children's sleepwear flammability standards, manufacturers and retailers promised they would provide sufficient education and information to enable consumers to make informed purchases. However, there is tremendous confusion in the retail marketplace. It is difficult for buyers, be they parents, friends or family members, to understand what they are buying and how garments should fit.

I visited five large regional or national retailers in the San Francisco area (Nordstrom, Gap Kids, Gymboree, Target and Mervyn's) to determine what sleepwear they sell, how it is placed on the floor, whether there are any signs to help consumers identify sleepwear and whether there is clear consumer education about the need for untreated cotton sleepwear to fit skin-tight. What I found is disturbing. While some stores are making an effort to provide information to their customers, others have made little effort to help customers make safe sleepwear choices for the children in their lives. Even those retailers and manufacturers who provide signs or tags with fit or fiber content information have done so in ways that are often either inaccurate or unlikely to be noticed. Furthermore, the vast majority of this information is conveyed in English only, and therefore fails to reach the significant number of residents who speak little or no English.

Among the retailers I visited, the Gap and Gymboree sold 100% cotton sleepwear only, while the others sold both flame resistant polyester and cotton sleepwear. Nordstrom's cotton sleepwear was 95% cotton/5% spandex and approximately 90% of the sleepwear on its racks was cotton, not polyester. Well over half of the sleepwear at Target and Mervyn's was flame resistant polyester.

The first source of consumer confusion are signs in the stores. For example, in the boys department at Mervyn's there was a rack of sleepwear with a sign saying "character prints, flame resistant", and yet the Rugrats pajamas directly under the sign were 100% cotton, and approximately half of the garments on the rack were not flame resistant. At the Gap, the sign over the few racks of sleepwear was on a shelf about ten feet above the floor and was nearly impossible to read due to the glare of the overhead lights. There was a sale rack directly adjacent to the sleepwear rack, and garments on the two racks looked similar. I purchased a one piece "sleepwear" garment and a one piece "romper" from the adjacent sale rack. But how is a parent supposed to tell the difference?

Product placement is also a cause for confusion and an invitation for parents to unwittingly circumvent the sleepwear standards. In Nordstrom's boys department their 95% cotton, 5% spandex sleepwear was on a rack marked "Sleepwear." There was a sign atop the rack stating: "Our sleepwear is designed to be tight fitting as required by the U.S. Consumer Product Safety Commission". Next to that rack, about two feet away, was a rack marked "Playwear." Both the

sleepwear and the playwear were knit cotton with a sports theme. Although the salesperson told me the playwear did not comply with the CPSC standards, a parent who did not ask, or one who wanted something "more comfortable" need only turn around to the "Playwear" rack to purchase a looser fitting t-shirt and shorts set.

In the infant department at Target, sleepwear and non-sleepwear garments were intermingled on the same racks. Hanging next to each other, in size 12 months, were 100% cotton layettes, 100% polyester Pooh sleepwear, 100% cotton Pooh sleeping sacks, and cotton/polyester blend flowing Telletubbies shirt and shorts sets that look like sleepwear. How is a consumer supposed to know which garments are "sleepwear" and which are not? They all look like something you might put a child to bed in, and they are all on the same rack.

Another product placement practice that can cause confusion is intermingling of flame resistant and 100% cotton sleepwear. At all of the stores that sell both types of garments, the flame resistant and 100% cotton sleepwear were intermingled on the racks (even when there were signs to the contrary). For example, in the boys department at Mervyn's, flame resistant and 100% cotton garments were intermingled under the flame resistant sign. Next to the flame resistant Wormser Wear pajamas were 100% cotton Dr. Seuss pajamas with neither a hang tag nor an internal label warning parents the garment should be tight-fitting. At Target, the toddler sleepwear section was about 85% flame resistant polyester and 15% cotton or cotton/poly blend garments. They were all intermingled on the same racks. The flame resistant and 100% cotton Telletubbies pajamas were hanging next to one another and their hang tags were obscured by the price tags and brand advertising tags.

In the boys department at Target, there was a prominent sign atop the sleepwear rack stating, "Our sleepwear is sized to meet the **NEW** U.S. Consumer Product Safety Commission requirements. Our **cotton** sleepwear is sized to be a snug fit. Our **flame resistant polyester** sleepwear is seized to be a looser fit." However, the tags on the clothing make it difficult for parents to distinguish between cotton or cotton/poly blend sleepwear and flame resistant 100% polyester sleepwear. As with garments in other stores, hang tags are usually hidden underneath price tags and advertising tags that are as large as the hang tags. Furthermore, how are parents to know what constitutes a "snug fit"? And how are they to know that a skin tight fit is necessary for safety? The information conveyed does not speak to preventing burn injuries.

The signs and hang tags I observed may enable manufacturers and retailers to claim they are providing consumer education, but many of them are unlikely to have much impact. Carter's sleepwear provides an example of a manufacturer which provides information to consumers in a way they are unlikely to notice. Carter's puts hang tags on both its 100% polyester flame resistant and 100% cotton sleepwear. However, the tags have virtually identical cosmetics and the different information conveyed is unlikely to be noticed by consumers.

I also found an absence of staff training about sleepwear in some stores. I asked a salesperson in Gymboree whether they carried sleepwear. She said, "Yes," and directed me to a rack of 100% cotton two-piece sets of t-shirts and shorts. Although the internal label says "Not intended as sleepwear" on its back side, a parent who asks for sleepwear will be directed to a highly flammable garment.

Internal labels stay with a garment during its lifetime and can serve as a safety reminder to parents. However, most 100% cotton sleepwear says nothing about tight fit on its internal labels. About half of the 100% polyester flame resistant garments prominently state on their internal labels that they are flame resistant, and provide washing instructions for maintaining the garment's flame resistance. Carter's, unlike most manufacturers, does put information about the need for a snug fit on the internal labels of its 100% cotton garments. More typical are the Telletubbies 100% cotton pajamas which have no internal label message about tight fit. Telletubbies pajamas have a hang tag but it is unlikely many consumers will notice it because it is hidden behind the price tag and the Telletubbies tag which is as large as the sleepwear hang tag.

Not only is the education and information program of dubious value to native English speakers, but it will not reach non-English speakers. All of the hang tags I observed were in English exclusively. Some of the internal labels of flame resistant garments were in Spanish and English, but most were in English only. Carter's label stating that its 100% cotton garments should be worn snug fitting were in English only. According to the 1990 U.S. Census, thirty-one percent of California's residents do not speak English at home. Therefore, a significant number of residents will not be reached by the information contained in signs, hang tags or labels.

In conclusion, the retail marketplace is a confusing place. It is difficult to know what you are buying and how it should fit. Even consumers with the best of intentions may be confused by poor or misleading signs, poor retail staff training, intermingling of garments, product placement on the floor, and obscured hang tags. The 1996 sleepwear amendments were predicated on an effective information and education campaign that has not materialized. Instead, confusion abounds. On behalf of the Trauma Foundation, I urge the Commission to revoke the amendments and to focus its resources on enforcement of the old standard which prohibited the use of dangerous cotton garments as sleepwear.

POSITION STATEMENT

AND RESPONSE

OF

SAFE CHILDREN'S SLEEPWEAR COALITION

TO THE

U. S. CONSUMER PRODUCT SAFETY COMMISSION

Proposed Revocation of Amendments to the

Standards for the Flammability of

Children's Sleepwear (64 FR 2867)

January 19, 1999

Pursuant to the requirements of

Public Law 105-276

Submitted by Ernest J. Grant, RN, MSN

April 5, 1999

My name is Ernest Grant. I am a registered nurse, who for the past 18 years has worked at the North Carolina Jaycee Burn Center in Chapel Hill, North Carolina. I know first hand the tragedy and impact a burn injury has...not only on the patient, but also on his or her family. For the past 13 years, in addition to providing patient care at the bedside, I have served as the Outreach Clinician for our burn center. I have spent countless hours educating the public about fire and burn prevention issues. I am also a member of the Safe Children's Sleepwear Coalition, (SCSC) a coalition of fire, burn and children safety organizations seeking the return of the previous, more stringent standard. I wish to speak to you on the issue concerning the relaxation of children's sleepwear flammability standards. My focus today will address the labeling and education issues of the present standard. I wish to share with you, information that I discovered during an impromptu survey of stores, sales personnel and consumers in North Carolina in preparation for this hearing.

On Thursday, April 1, 1999, I was in Asheville, North Carolina, located in the western part of my state. I went into three different stores that sold children's sleepwear. These stores ranged in their offering to the consumer from the high-end market to lower retail or discount marketing. The stores visited were Dillard's® Department Store, Big-K® (K - Mart) and Wal Mart®. I developed a set of questions and criteria to evaluate the knowledge of sales personnel and consumers in regards to the issue of the sleepwear flammability standards.

The first question was asked to sales personnel in each of the stores. The question asked was "Are you aware that the flammability standards for children's sleepwear has been changed?" All six sales persons (two at each stores) were not aware of the standard change. The next question addressed the issue of the store providing an education campaign to the consumer or its personnel about this issue. Again, all six sales personnel stated that their respective stores had not provided education about this issue, nor did they have any ideas if such a campaign were forth coming. I

asked to view the display of children's sleepwear at each stores. The following is a result of my findings:

Dillard's® Department Store – Hendersonville Highway, Biltmore Square Shopping Center

There were no signs or other displayed information to inform the consumer about flame resistant sleepwear versus non-flame resistant sleepwear. A look at the sleepwear garments indicated that both types shared the same display racks, causing easy confusion among the consumers, also the patterns, prints and hang tags pictures were confusing. Some displayed clouds, sheep, moons or other picturesque items associated with sleep, even though the garment may display a label that it was not intended for sleepwear. Flame resistant garments were almost always comprised of 100% polyester or blend, and garments that were not, were non - flame resistant comprised of 100% cotton. Hangtags, if present, provided no easy visible indication that the garment(s) were flame resistant or not. **A close examination of the inside neck labels of garment's that were comprised of 100% cotton displayed in very fine print..."this garment is not intended for sleepwear".** This was usually written in among the laundry instructions. It was not written in very bold letters or any other manner that would call attention to the consumer prior to purchase. This was noted in children's sleepwear from toddler to size 12. My next step was to randomly ask consumers questions relating to the sleepwear issue. The first question was..."Are you aware that the flammability standards for children's sleepwear has been changed?" Ten out of ten consumers **were not** aware of the standards change. In fact, the most frequent response I received to this question was..." I thought all children's clothing had to be flame resistant". When asked if they would purchase the new "snug fitting or tight fitting" garments that had to be age/size specific to meet the relaxed standard the results of the survey were 2 yes and 8 nos. A majority of the consumers indicated that they would purchase clothing that was larger than the child's actual size, allowing room for growth. Again, the majority (8 out of 10) reported that this decision was an economic issue more than a comfort issue. One statement that stuck out in particular was from a consumer who stated "I'm not rich...I can't afford to purchase new clothing

every few weeks…this kid grows like a weed". Garments looked at were: Alexus®, Tele Tuby®, Kid Duds®, K-Deez®, Wormer Wear® and Joe Boxer®.

My next stop was at Wal Mart – located on Tunnel Road, Asheville, NC

My findings reflect pretty much the same as mentioned above. Garments that were both sleepwear and day wear were displayed on the same racks, again causing easy confusion among the consumer. Sales personnel were not aware of the relaxed standards, nor have they received education. Of special note at this particular Wal Mart was that there was a complete rack of toddler sleepwear that was all 100% polyester. This was displayed separately from other sleepwear garments. Random consumer questions were again asked. The results of which were that 10 out of 10 consumers were not aware of the relaxed standards. Ten out of 10 stated that they would not purchase the snug or tight fit garments specific for size because of the economic issue. Another statement that stood out was the comment from one consumer…"everyone knows that you buy children clothing larger than their actual size so they can grow into them". Garments observed at this store were: Mickey for kids®; TeleTuby®; Mc Baby®; Little Precious® and Cozy Cuffs® brands.

The third stop on this trip was to K-Mart, located on Tunnel Road in Asheville, NC

Again, there were no signage indicating clothing sold met the new-relaxed standards. Sales personnel again confirmed they were unaware of the relaxed standards. They further mentioned they had no indication if the store would provide education to staff or the consumer about the standards change. Garments were again displayed in a confusing manner for the consumer, and scattered in various locations. Closer inspection of garments revealed what has been previously described. Consumers asked regarding the standard for a third time indicated the lack of education or notification of the standards change. Again, 10 out of 10 consumers stated they

were unaware of the change. Ten out of 10 indicated they would not purchase the new relaxed standard snug or tight fitting clothing. The reason given was one of an economic issue…it would cost more to purchase clothing more frequently as the child grew as opposed to purchasing larger garments and having a longer period of wearing the garment.

On Saturday, April 3, 1999, I went to three other stores in the Durham, Chapel Hill area of North Carolina. The results of my search and survey were almost identical to what I found in the western part of the state. Stores visited were: Hudson Belk® (a locally owned chain store similar on scale to Hecht's®), Dillard's® Department store and J. C. Penney®. All are anchor stores located at the South Square Mall in Durham, NC.

Hudson-Belk® Department store findings:

Staff again reported their lack of knowledge of relaxation of flammability standards, and that they have received no education from the store's management about the issue. This particular store had a special sleepwear section to draw the consumer's attention. This area was identified by stars and clouds and the words "Children's sleepwear". There was no signage to alert the consumer of the standards change. The majority of the clothing offered for sale was produced by "Carter's" and were all identified as flame resistant both on the hangtag and inside labels of the garments. I proceeded to the infants and toddler's section of sleepwear. I found displayed among clothing identified as sleepwear, clothing with the Beatrix Potter® label and "Little Me® label that had an inside label reading "Not intended for sleepwear", although these articles of clothing could easily mislead the consumer into thinking they were sleepwear, because of their location, style and patterns. Again, this information was displayed on the inside label in small print. I asked consumers who were standing near by if they thought it was sleepwear or day wear. Three separate times I received the answer of "sleepwear". A survey of ten consumers revealed the

same answers as previously noted...all ten were unaware of the relaxed standards, and all ten would purchase larger garments to allow for growth room.

This same scenario was exhibited at Dillard's® Department store and at J. C. Penney's®. Staff were unaware of the relaxed standards and no staff education or signage was noted to alert the consumer of the standards change. Mixed in and among garments specifically identified as sleepwear garments were garments, which again could easily cause the consumer to think they were sleepwear garments, even though they were intended for daywear. The inside labels would reveal "not intended for sleepwear", but again, this was in small print, and not on the hangtags. Ten out of ten consumers at each stores again verified not knowing about the relaxed standards and that they would purchase larger sized garments.

In summation for this impromptu survey, I conclude the following:

- Sales clerks at six different stores in two regions of North Carolina were unaware of the changes in the children's sleepwear flammability standards. As a result of this, how can these individuals assist the consumer in making an informed decision to purchase flame resistant or tight fitting sleepwear when there is a lack of knowledge on their part?
- Department stores have failed to provide information to its employees or the consumer about the relaxed standards. No staff education has been reported by any of the sales clerks interviewed, and no signage alerting the consumer to the standards changes were visible.
- Clothing that is manufactured for "day-wear" has conspicuous patterns such as clouds, stars, sheep and other imagery associated with sleep. These items makes the consumer thinks that he or she is purchasing sleepwear. These garments are frequently mixed in with sleepwear garments, making it difficult for the consumer to make the correct choice.

- The aforementioned items of clothing does not carry a hangtag indicating its intended use – daywear only. Usually, the only reference for its use is located in the inside label of the garment, mixed in amongst the washing instructions. This is usually in small print.
- An impromptu survey of 60 consumers in two different regions of the state revealed they were unaware of the changes in the relaxed standards. A frequent response when asked about their awareness was "I thought all children's sleepwear had to be flame resistant".
- Fifty-eight out of 60 of those surveyed stated that they would purchase larger sized garments for their children. Mostly, this was attributed to an economic issue...the inability to purchase children's sleepwear on a more frequent basis as the child grew.

It is this last statement that I would like to particularly address. In its comments regarding the sleepwear standards revocation, the National Cotton Council (NCC) sites data from the National Purchase Diary (NPD) and Cotton Incorporated Analysis. This data is from a database comprised of reports on the purchasing habits of 16,000 US families who represent the US demographic. I would like to make a few observations to that statement. I question if this data captures every American family demographically. The poorest families in American are probably well under represented in this data bank, or not represented at all. They also tend to be representatives of ethnic minority. These are families that have the tendency to purchase sleepwear garments that are larger in size, and or purchase garments at garage sales, and utilize hand-me-down clothing etc, because of the economic factor. These are also families that tend to have a higher incidence of fire and burn injuries. I ask, are these individuals or families of less importance than those of more affluent means who may have the opportunity to make a well informed decision about sleepwear, or who can afford to purchase garments on a more frequent basis? I think not. Another important factor to consider in this debate is the fact that labeling (both hangtags and inside labels) are predominately written in the English language. This factor will affect purchasing decisions by individuals whose primary language is not English. These individuals

may not comprehend the flammability standards, but may purchase one of the aforementioned garments that resembles sleepwear based on its presentation or imagery, i.e., stars, clouds, moons, etc. This again emphasizes the importance of a consumer education campaign. A campaign that was promised to the CPSC by the AAMA industry has failed to happen. How can the American consumer make an informed decision when there is no guiding information? **It would appear there is no mandatory labeling requirements, and no mandatory education campaign**. The CPSC states that its job is the protection of the public from unreasonable risk of injury or death, and has done a remarkable job of protecting the American consumer. However, in this case the lack of a mandatory labeling or education campaign, does not allow the consumer to make an informed decision.

Although my emphasis in this response has been on the absence of an information and education campaign, I want to emphasize that an information and education campaign, even if it were in place is no substitute for mandatory F.R. standards for children's sleepwear.

The last item I wish to address concerns the tight-fitting requirements in order to meet the new standard. As mentioned in my impromptu survey, 58 out of 60 consumers indicated that they would not purchase these garments. The consumers considered the economics this issue presents and overwhelmingly would make the decision to purchase clothing larger than the child's actual size.

Conclusions

There is basis to return to the previous standard that was working. Data proved a dramatic reduction in fire, burn and death injuries upon its enactment. The implementation of the new standard has resulted in the following:

1. No mandatory labeling requirements.
2. No mandatory education campaign of sales personnel or the consumer.
3. Clothing that is manufactured for daywear has conspicuous patterns that make it difficult for the uninformed consumer to make the correct decisions.
4. The consumer has expressed an overwhelming desire not to purchase tight fitting garments. Primarily as an economic reason.
5. Labels and hangtags are predominately written in the English language. This make it very difficult for non-English speaking individuals to make proper informed decisions.

Testimony of Phillip J. Wakelyn, Ph.D.
National Cotton Council
Before the US Consumer Products Safety Commission,
April 22, 1999; Public Hearing,
Amendments of Children's Sleepwear Flammability Standards
Possible Revocation

I am Phillip Wakelyn, Senior Scientist with the National Cotton Council. I have been involved with flammability issue since 1963. The National Cotton Council (NCC) is the central trade association of the American cotton industry, whose members include producers of over 75% of the US cotton and cotton processing industries. NCC and the US cotton industry have a long history of deep commitment to the safety of consumers. NCC has participated in all the rulemakings involving the Children's Sleepwear Flammability Standards.

NCC appreciates the opportunity to testify on this rulemaking and urges CPSC to maintain the amendments to the Children's Sleepwear Flammability Standards that exclude infant garments sized 9 months of age or younger and snug-fitting garments.

NCC supports the 1996 CPSC amendments because there is no indication from technical data (mannequin research, etc.), and from burn injury and fatality incidence data, from the US, Canada, and other countries, that these garments present an unreasonable risk or that these amendments diminish the protection provided by the Children's Sleepwear Flammability Standards. These garments never should have been included in the original Children's Sleepwear Flammability Standards. There never have been data to support the coverage of these garments under the Children's Sleepwear Flammability Standards.

I. Introduction

At the outset I would like to say that it is unfair that anyone would suggest that a professional and dedicated agency like CPSC would do anything that would cause children harm. Or that Canada and other countries in the world that have standards and that also do not cover infant sizes and snug-fitting garments are not concerned about children's safety. Or that the cotton industry would support anything that would harm children.

Those opposed to the amendments use emotion and innuendo to unduly malign this decision by the CPSC, a regulatory agency that is committed to the safety of children and all consumers and whose decisions, according to the Commissioners, are based on data and science. I challenge them to supply substantive data that show that the data in the various data bases (FFACT, NIESS, IDIs, ITT) are incorrect. The burn unit should build a data base similar to the CPSC data base.

Over five years, CPSC went through complete notice and comment rulemaking on the Children's Sleepwear Flammability Standards. The CPSC briefing packages explained the rationale for all decisions at all steps and the Commissioners voted at each step. Over $7 million was spent on this effort which continues to review all pertinent data. All data since 1965 indicate that CPSC made the correct decision for the correct reasons. NCC agrees with CPSC that the GAO's investigation has shown that available data do not support the notion that the 1996 amendments have caused burn injuries to children.

Many that oppose the amendments do not appear to understand the purpose of the standards and the burn scenario risk these standards were designed to prevent. They also do not appear to know what "fire retardant" and "flame resistance" mean.

Let me explain. The original standards promulgated in 1971 and 1974 were designed to address what was determined to be an unreasonable risk to children in sleepwear when they were up moving about and could get into fire sources, such as space heaters and fireplaces, and when they were playing with matches and lighters. These standards were justified on anecdotal epidemiological data collected from 1965 to about 1972 (580 cases by Nov. 1971; 1964 cases by Dec. 1972). (Cases were investigated in the Denver area, the Boston area, the state of Iowa and 99 from other areas by FDA; FFACT.) All data since 1965 indicate that loose fitting garments, loose nightgowns, robes, nightshirts, loose pajamas, etc., are the garments involved in burn incidence cases. There were no data to justify including infant garments sized 9 months of age or younger and tight-fitting garments. In all cases on record involving fire accidents with pre-ambulatory children, the accidents would have occurred no matter what type of clothing the child was wearing. There was a house fire, or a crib fire, or some other general conflagration in which the sleepwear garment was not the first to ignite, but instead became involved in a larger, external fire situation. The infant plays a passive role in the ignition sequence, according to NBS reports. Details on the 22 cases involving children under three are given in NBS Technical Note 815 by Elaine Tyrrell published in Feb. 1974. None of the garments in the database used to justify the standards were tight-fitting garments. Mannequin studies and actual experience in the UK, Canada, Australia, New Zealand and the US (since 1993) continue to show that tight-fitting garments and infant sized garments are not the types of garments that are involved in burn injuries and fatalities. The philosophy of the Agency at that time was to cover everything -- even those products that were not shown to be a risk. Therefore, in the original 0-6x standard, all sleepwear products, including 100% polyester and nylon, had to be treated with fire retardant chemicals to meet the standard, because the standard applied to all products, even those that were not part of the problem the standards were designed to address.

The standard has now been amended several times. In February 1978, CPSC amended the standard because "tris" (tris 2,3-dibromo propyl phosphate), a fire-retardant agent used on polyester and other synthetics to make those garments flame resistant, was shown to be a carcinogen. It was never used on cotton. This amendment removed the "residual flame time" requirements from the test method of the standard. As a result, since 1978 essentially no sleepwear in the marketplace has been treated with FR-agents to make them flame resistant. Consumers still appear to be more concerned about potential

toxicity (real or imagined) of FR-treatments to their children, than the risk of burn injuries in sleepwear. This was illustrated by comments by Mr. Al Gore at House Oversight Hearings in 1977 (May 11, 13, 16, 1977; see p. 81) and continues today. The cotton FR-treatments have been shown to be safe by the National Cancer Institute. Nevertheless, essentially every time FR-cotton sleepwear has been put on the market the consumer has not purchased it and so it was removed from the market. The 1978 amendments allow untreated polyesters and other synthetic fibers that melt and drip away from the flame to pass the test. Cotton, which is a char former, will not pass the test without an FR-treatment. Cotton and polyester ignite at about the same temperature and both burn. The 1978 amendments appear not to have diminished the safety provided by the standard.

In 1996, CPSC amended the standards again. This time, snug-fitting and infant garments sized 9 months of age or younger were removed. These products were never part of the problem. These amendments do not diminish the protection provided by these standards. CPSC has additional data from 1994 which show that tight-fitting garments are not a risk, and along with data from Canada and other countries strongly support and reinforce the CPSC finding that the amendments do not diminish the safety provided by the Children's Sleepwear Flammability Standards.

CPSC, therefore, after almost 5 years of intense, thorough study was correct in excluding these garments from 16 CFR 1615 and 1616.

II. TIGHT-FITTING GARMENTS SHOULD BE EXEMPT FROM THE CHILDREN'S SLEEPWEAR FLAMMABILITY STANDARDS (16 CFR 1615 AND 1616).

CPSC has very strong data indicating that the exemption of tight fitting garments does not diminish the protection provided by the standards. All currently available data strongly demonstrate that loose and flowing nightwear garments are the kind of nightwear involved in burn injuries and fatalities (59 FR 53620; Oct. 25, 1994, ref. 8, 10, 11 and 61 FR 47634; Sep. 9, 1996); that tight-fitting garments are less likely to contact an ignition source and less likely to be ignited and if ignited burn less rapidly than loose fitting garments; and that tight-fitting sleepwear does not present an unreasonable risk of fire leading to burn injury or death to children.

Contrary to the misleading information conveyed by some, these amendments did not affect loose pajamas, nightgowns, and robes. Those items still must meet the requirements of the Children's Sleepwear Flammability Standards and be flame resistant. In addition, tight-fitting garments must comply with the Standard for the Flammability of Clothing Textiles, 16 CFR 1610.

A. Snug fitting garments are one of the safest types of garments because: (1) They are not easily ignited because the body acts to absorb heat from the ignition source and thus helps to slow the heating of the fabric to the point at which ignition can start; (2) They make the wearer immediately aware of an ignition source, since the heat of a match or

lighter flame is transferred through the fabric directly to the skin; (3) If they are ignited, they tend to burn slowly, because only one side of the fabric receives sufficient oxygen to support combustion. Using mannequins and video-tape recordings, the safety of tight-fitting garments has been demonstrated and illustrates why those garments do not represent an unreasonable flammability hazard.

B. Canada originally adopted the US Children's Sleepwear Flammability Standards but modified them in 1987. The major reasons for amending their standard were results from mannequin testing of garments that were described in a Final Report to the Consumer and Corporate Affairs Canada by E.M. Crown, U. of Alberta, July 1985 and a Canadian Medical Association paper (J.R.S. Stanwick, CMAJ 132, 1143, 1985).

Since promulgation of the amended Canadian sleepwear standards in 1987, no burn deaths associated with children's sleepwear have been reported in Canada (61 FR 47634; Sep. 9, 1996). A December 18, 1995, letter from Therese Gagnon, Acting Chief, Mechanical and Electrical Hazards Division, Health Canada, Health Protection Branch, Product Safety Bureau, to Patty Adair of NCC concerning the Children's Sleepwear Flammability Standards and the Canadian experience states:

> **"Since the Regulations have come into effect, injuries due to the ignition of children's sleepwear are no longer an issue in Canada."**

C. Australia and New Zealand also have standards that include fit characteristics that exempt tight-fitting garments. The burn injury and fatality data in these countries show that these standards are working (59 FR 52620; Oct. 25, 1994 and 61 FR 47634; Sep. 9, 1996).

D. Other than the United Kingdom, no other European country has legislation or standards specifically to control the fire safety of children's sleepwear. The UK Nightwear (Safety) Regulations 1985 (finalized December 20, 1985) came into effect March 1, 1987. Since 1987 the UK has allowed children's nightwear that does not meet strict vertical flame test requirements in the marketplace (if it is labeled). Burn injuries involving sleepwear in the US are a rare occurrence. When burn injuries do occur, they are when children are wearing loose flowing garments (a class that has to comply with a vertical flame test). (See earlier comments by NCC.)

III. GARMENTS SIZED FOR INFANTS 9 MONTHS OF AGE OR YOUNGER SHOULD BE EXEMPT FROM THE CHILDREN'S SLEEPWEAR FLAMMABILITY STANDARD SIZES 0 THROUGH 6X (16 CFR 1615)

Infant sleepwear should never have been covered in the original standard. The determined unreasonable risk that the Children's Sleepwear Flammability Standards are designed to protect the child against is when the child is up and ambulatory and can obtain matches, cigarette lighters, candles, or be exposed to other sources of flame, including stoves, fireplaces, and space heaters, not when the child is in bed. These exposures are not encountered by pre-ambulatory children.

The Canadian and other countries' experiences for burn injuries and fatalities for infant sleepwear sizes are similar to the US as reviewed by CPSC – there are no cases under 15 months. These infant items are not included in the Canadian, Australian, and New Zealand Children's Sleepwear Flammability Standards, all of which are effectively protective standards (59 FR 52620 and 61 FR 47634).

The rare or exceptional accidents for infants lying in their cribs still occur. However, complying flame resistant garments also provide no protection from injury under these unusual circumstances. If the bed or crib or the house burns, or if something burning is tossed on the bed and over the child, none of the products on the market, flame resistant or not under 16 CFR 1615 and 1616, will provide protection from injury. If anything the cotton sleepwear may be slightly more protective.

IV. OTHER

Some also argue that a more severe Children's Sleepwear Flammability Standard is required in the US because we have more residential fires than almost any other country. This argument is without merit since in the US the number of residential fires where "all wearing apparel worn" was the form of material first ignited was less than 0.2% (CPSC Report, 1993 Residential Fire Loss Estimates, Nov. 1995). So sleepwear is an insignificant source of residential fires.

V. CONCLUSIONS

There is no basis in documented fact to overturn the CPSC decision to amend the Children's Sleepwear Flammability Standards. All available burn injury and fatality incidence data from the US and all other countries, as well as technical studies with mannequins, support the CPSC conclusions that the amendments to the Standards for Flammability of Children's Sleepwear (sizes 0 through 6x and 7 through 14, 16 CFR 1615 and 1616) which exclude tight-fitting sleepwear garments and garments sized for infants 9 months of age or younger do not diminish the protection to the public from unreasonable risk of fire provided by these standards. The CPSC's conclusions to amend the standards were arrived at after almost five years of intense and thorough study and notice and comment rulemaking, including an ANPR, an NPR and a final rule, each proceeded by extensive briefing packages outlining the rationale for the staff recommendations. Changes in lifestyle in the US, as in other countries, e.g., in smoking habits, elimination or reduction in use of space heaters and other socio-economic changes, also provide additional reasons that these amendments to the Children's Sleepwear Flammability Standards were the justifiably correct thing to do.

The 1971 (16 CFR 1615) and 1974 (16 CFR 1616) standards were overly severe in that they excluded things that were not a risk. None of the garments in the data base used to justify the original standards were tight-fitting garments and infant garments. The philosophy of the Agency at that time was to cover everything, even products that were not shown to be a risk. All available data indicate that covering these garments under the

standard was overly severe. CPSC, therefore, was correct in amending the standard to exclude tight-fitting sleepwear and infant garments sized 9 months of age or younger.

NCC agrees that CPSC is correct in its determination that these amendments afford the consumer a wider selection of sleepwear garments without reducing the protection provided by the standards.

NCC appreciates the opportunity to testify on this rulemaking and urges CPSC to maintain these amendments to the Children's Sleepwear Flammability Standards that exclude infant garments sized 9 months of age or younger and snug-fitting garments.

Comments of Joan Balfour
Before the Consumer Product Safety Commission
Washington, DC
April 22, 1999

My name is Joan Balfour. The comments I will share this morning are on behalf of myself and the National Cotton Women's Committee. This national committee of cotton women seeks to increase demand for U.S. cotton by urging consumers to purchase cotton products made in the United States and by asking retailers to stock more domestically-manufactured cotton products.

My husband and I operate a family farm in Lumber Bridge, North Carolina, with cotton being our principal cash crop. We are members of the National Cotton Council, an organization that serves all seven segments of the U.S. cotton industry, from producer to textile manufacturer.

Obviously, I have a vested interest in maintaining viable markets for cotton products. But I also bring to this communication forum the perspective of a mother, a grandmother and a consumer.

Madam Chairman, I appreciate the opportunity to comment on the question of whether the Consumer Product Safety Commission should reverse its decision to exempt from its children's sleepwear flammability standards infants' garments and snug-fitting children's sleepwear. These amendments allow such products made from cotton to be sold across our nation's retail counters.

Two weeks ago on Good Morning America, the cotton industry's motivation in defending the safety and use of these sleepwear products was characterized by an ABC News reporter as being "all about profits." Lest that accusing finger be pointed at me this morning, I would like to say that my comments are also offered from the perspective of a mother and grandmother. I believe mothers and grandmothers everywhere will understand that I have no higher motivation than the health and safety of my children and grandchildren. I take strong offense to the suggestions by Diane Sawyer and Dr. Herndon on Good Morning America that the National Cotton Council would, on behalf of its membership, sacrifice the safety of children at the alter of profitability.

In good conscious I could not support CPSC's action to amend regulations for infants' and tight-fitting sleepwear if there were any evidence suggesting such garments are unsafe. Knowing the controversy that has surrounded children's sleepwear flammability, I have made it my business to inquire about the data that **should** drive legislative and regulatory decisions by the Congress and regulatory agencies. I certainly want to do nothing that would contribute in any way to placing children at risk – mine or anyone else's. Fortunately, the data are not difficult even for the lay person to understand. Other than instances where entire houses burned or beds were ignited, there simply are no recorded injuries or deaths involving infants' or tight-fitting sleepwear.

Removing these sleepwear products from the market will do nothing to reduce injuries from conflagrations, and, therefore, such action would not contribute even marginally to an improvement in safety. Accordingly, there is no rational basis for denying consumers access to such products by legislation or regulation. The Consumer Product Safety Commission made the right decision when it amended regulations for this type of sleepwear. The 1996 amendment which excludes snug-fitting sleepwear and sleepwear for infants 9 months or younger was based on the following considerations:

- Snug-fitting sleepwear is less likely to come in contact with a flame;
- Even when ignited, snug-fitting sleepwear doesn't burn rapidly because there is little trapped air to feed the fire;
- Infants under 9 months are not mobile enough to come in contact with flame sources;
- All other countries in the world that have a children's sleepwear flammability standard have similar standards and exemptions, and their safety experience is excellent, despite definitions of "snug-fitting" that is not as restrictive as the U.S. definition.
- Loose fitting nightgowns and woven pajamas and robes of the type that are more likely to contribute to injuries and fatalities continue to be covered by a strict standard.

In closing, I would urge legislators and others who involve themselves in this decision process to consider the facts objectively, as the Consumer Product Safety

Commission has done thus far. Any product that truly represents a material consumer safety hazard should, without question, be removed from the market. I believe the Consumer Product Safety Commission has an obligation to do so. Moreover, I think there is ample evidence that the Commission has done just that. But neither the Consumer Product Safety Commission nor the Congress of the United States should impose unjustified market restrictions on safe products for which consumers have shown a preference. Such action does not advance the objective of safety; it does deny consumers the opportunity to purchase safe, inexpensive, comfortable, non-allergenic sleepwear for their children.

Given the absence of burn data linking infants' sleepwear and tight-fitting sleepwear to injuries or deaths, I simply cannot understand the calls for elimination of such garments from the market. It can serve no useful purpose. I urge members of the Commission not to be influenced by emotional, perhaps well-meaning -- but nevertheless unfounded -- calls to reverse a perfectly rational decision that was made by a responsible agency after more than 5 years of thorough study.

Thank you for the opportunity to share these observations with you.

Prepared Statement

Steve Lamar
Director, Government Relations

Submitted To The
Consumer Product Safety Commission

In Response To Its

Proposed Revocation Of The
Snug-Fitting And 0-9 Month
Exemptions For Children's Sleepwear

April 1999

For information:

Stephen Lamar or Mary Howell
703-524-1864

Thank you for providing me an opportunity to appear before the Commission to present the views of the American Apparel Manufacturers Association (AAMA).

AAMA is the central trade association for US companies that produce clothing. Our members are responsible for about 85 percent of the $100 billion worth of garments sold at wholesale in this country every year.

At the outset, let me reiterate that AAMA shares the same goals of the Consumer Product Safety Commission (CPSC) to ensure that hazardous products, especially those that endanger children, be removed from the marketplace. Our industry is extremely consumer driven and we consistently strive to make products that are not only functional and meet fashion needs, but which are also safe.

With this in mind, we strongly urge the CPSC to maintain the exemptions – for both snug-fitting children's sleepwear and for sleepwear made for the 0-9 month sizes – that it endorsed in 1996.

We have commented on this issue repeatedly in the past, and submitted a longer statement last month in response to the January 19 Federal Register notice. Today, I would like to stress several key points.

No Evidence to Support Revocation

First, there is no evidence to support revocation of the sleepwear amendments. CPSC reviews, national burn injury databases, press reports, feedback to our members' consumer relations departments, and the filed comments of the opponents themselves provide no cases where either of the exempted products was cited as the primary source of ignition. Although several file comments did cite burn injury statistics involving sleepwear, none of them identified how the sleepwear was ignited or what kind of sleepwear was involved.

At the same time, our members report that the exempted products are being sold. Several of our members have reported combined shipments of about 8 million units (individual garments) of exempted sleepwear since 1997. When we factor in other firms that are making snug-fitting or 0-9 month sizes, but which are not included in the above figure, we estimate the market for children's cotton sleepwear to be around 15 percent of the total children's sleepwear market.

Since the exempted garments are penetrating the market, and since there have been no corresponding burn injuries associated with these garments, there is no evidence to support revocation of the 1996 sleepwear amendments.

Need for a Safer Cotton Alternative

Second, there is a need for a safer cotton alternative to baggy or loose fitting non-complying cotton garments often worn by children as pajamas. I believe Representative Andrews in his prepared statement said we should not wait for one child to be injured before we take action. I couldn't agree more. In fact, as the CPSC has noted, we are already seeing children injured each year when they sleep in loose fitting or oversized, non-complying cotton garments.

Why is this happening? Because parents want to dress their kids in untreated cotton garments. And as we all know, cotton garments that are loose fitting are not as flame resistant as snug-fitting sleepwear. Why? Because the snug-fitting garments limit airflow that can feed a fire. Moreover, snug-fitting garments provide less opportunity for ignition and make wearers more cognizant of ignition sources.

That is why preserving the snug-fitting exemption is so important. Realistically, parents now have a choice between three kinds of garments for sleepwear. These are flame resistant polyester, cotton snug-fitting, and cotton loose fitting, but non-complying, garments. Under this scenario, parents can make the choice between cotton and polyester without sacrificing safety. If, however, we remove the snug-fitting garment, the choice between polyester and cotton now becomes a choice involving risk.

Polyester is alive and well.

Third, I cannot stress enough that polyester garments still dominate the market for children's sleepwear. Sales of synthetic pajamas are very strong and are expected to remain so for the foreseeable future. These garments remain popular for several reasons. Many consumers value them because of their inherent flame resistancy. Others prefer the roomier cut or the warmth of polyester fleece.

Although some observers had previously expressed concern that the snug-fitting standard would reduce availability of polyester sleepwear, this scenario has clearly not materialized as sleepwear made from synthetic fibers remains readily available in all markets. Moreover, our association would strongly oppose any actions that would diminish the availability of such polyester flame resistant pajamas for kids.

Confusion and Credibility

Fourth, we believe revocation of the rule at this point would be harmful in that it would confuse consumers. During the past two years, consumers have received considerable information – from the CPSC, from manufacturers and retailers, from advocacy groups, and from watchdog organizations – on the meaning of the 1996 amendments. Consumers have had considerable opportunity to absorb these changes and have now begun to adjust their buying patterns to reflect these new standards.

We believe much of this outreach has been accomplished through an aggressive point of sale campaign that was conducted by manufacturers and retailers in close cooperation and partnership with the CPSC. Key elements of that campaign have included:

- Distinctive artwork to readily identify garments as sleepwear.

- Hangtags, which are attached to sleepwear to identify if a product is flame retardant or snug fitting. Those hangtags also provide a simple explanation to the consumer of the need for this standard. That explanation reads:

  "Fabric and fit are important safety considerations for children's sleepwear. Sleepwear should be flame resistant or snug-fitting to meet U.S. Consumer Product Safety Commission sleepwear requirements."

  That statement is then followed by a second statement that reads, as appropriate,

  "This garment is flame resistant." or
  "This garment should be worn snug-fitting."

- Easy-to-read pamphlets to further describe sleepwear requirements that are posted by cash registers or near clothing racks in children's departments.

- Signs and display toppers to further identify garments as sleepwear.

- Segregation of sleepwear garments from other garments in stores and catalogs.

- Informational and training materials distributed to sales associates and telephone operators to help customers understand the importance of sleepwear flammability standards as they are making their purchases.

Where appropriate, we have supplemented that campaign through press releases, media interviews, and information on the consumer information section of our web page.

The campaign has had several important benefits. Judging by feedback we record in our members' consumer relations departments, consumers are now making better-informed decisions in their sleepwear purchases. Second, the campaign essentially encourages them to choose between two relatively safe alternatives – flame resistant polyester or snug-fitting cotton.

If the amendments were to be suddenly revoked, especially since there does not seem to be supporting evidence that the cotton products have resulted in burn injuries, the CPSC would, in effect, be telling the public to ignore the campaign from the previous two years. Our members are very consumer focused and consider it a priority to develop and maintain customer loyalty. Many of these same members invested considerable time, resources, energy, and goodwill in developing and promoting the point of sale campaign discussed above. An action by the CPSC that suddenly negates that effort, with no

supporting burn injury data, effectively undermines the credibility of our members and our association as well. We believe such action also undermines the CPSC itself. Furthermore, we are at a loss to explain how such a proposed revocation of a two year old rule – again given no apparent evidence to support such a revocation – promotes consumer safety or public confidence.

Conclusion

Let me leave you with a final thought. As an association, we have no vested interest in whether consumers buy cotton or polyester garments. Some of our members make synthetic sleepwear. Others make cotton sleepwear. Many of our members make both.

What we do have an interest in, and what we care very strongly about, is providing our consumers with safe choices. In 1992, our association was neutral to the proposed change because many of our members felt the 1972 rule was working satisfactorily. But when presented with the evidence that increasing numbers of consumers were substituting flame resistant pajamas with non-flame resistant garments, we acknowledged the need for a modification.

We know that a number of our consumers will insist upon dressing their kids in cotton garments for sleeping. By offering less risky cotton alternatives, and promoting the "fabric and fit" campaign to educate our consumers, we believe we are taking the only responsible course to minimize injuries and maximize consumer safety.

Thank you for your attention. I would be pleased to answer any questions you may have.

Bruce C. Navarro
Legislative & Regulatory Affairs

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STATEMENT OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS ON THE PROPOSED REVOCATION OF THE AMENDMENTS TO THE CHILDREN'S SLEEPWEAR FLAMMABILITY STANDARDS ISSUED IN 1996 AND 1999

before the U. S. Consumer Product Safety Commission

April 22, 1999

Madam Chairman, Vice Chairman Moore and Commissioner Gall:

I am Bruce Navarro of Navarro Legislative & Regulatory Affairs in Washington, D.C. I am here today on behalf of the American Association of Exporters and Importers (AAEI). AAEI encourages CPSC to retain the extant Children's Sleepwear Standards.

Introduction

AAEI is a trade association with over 1200 members, covering a diversity of products ranging from chemicals, machinery and automobiles to electronics, textiles and apparel, footwear, food, wines and specialty products. The promotion of fair and open trade among nations has been AAEI's primary mission since 1921. However, as the needs of members have expanded, AAEI has continually broadened its programs. It is just such an expansion of member needs that brings us before you today--concerns about the Congressionally-mandated proposed revocation of the amendments to the Children's Sleepwear Standards. At the outset, AAEI would like to commend the Commission for providing interested parties with this opportunity to share their views on this unusual and significant rulemaking proceeding.

Background

According to CPSC, enforcement of the Children's Sleepwear Standards has, over the years, required a continuous use of Commission resources to remove certain garments which -- upon study of the epidemiological data -- do not appear to present an unreasonable risk of injury (*see*, October 11, 1995 briefing package on children's sleepwear, at iv). Therefore, in 1991, in response to concerns that an increasing number of children were sleeping in garments which did not comply with its regulations but did not present a risk of injury, CPSC

established a project to reexamine the scope of the Children's Sleepwear Flammability Standards sizes 0-6X (16 C.F.R. 1615) and sizes 7-14 (16 C.F.R. 1616) ("Standards") and to consider amending the definitions of the term "children's sleepwear". On January 13, 1993, the Commission initiated a rulemaking on this subject with the issuance of an Advanced Notice of Proposed Rulemaking (ANPR). On that same date, CPSC adopted a Stay of Enforcement of covering garments labeled and marketed as underwear if these garments were skin-tight or nearly skin-tight (58 F.R. 4078).

As a result of information gathered and analyzed pursuant to the ANPR, the Commission issued a Notice of Proposed Rulemaking (NPR) on October 25, 1994. It was in this document that the present size specifications for untreated cotton children's sleepwear were first formally presented. After receiving extensive input from and having numerous meetings open to and involving interested parties on all sides of the issue, on April 30, 1996, the Commission voted to adopt the final rule. After further review and consideration, it was published in the **Federal Register** on September 9, 1996 (61 F.R. 47634) with an effective date of January 1, 1997.

Subsequently, CPSC continued to meet with interested parties in an effort to address continuing concerns. These meetings and the intensive study and analysis which they stimulated, ultimately resulted in the adoption of the technical changes to the Standards, on January 12, 1999 (64 F.R. 13126).

AAEI's Perspective

AAEI has characterized this proceeding as being unusual and significant. It is, in our view, unusual in that it follows the completion of a six year dialogue in which diverse stakeholders concerned with children's sleepwear safety interacted, both formally and informally, with a receptive and helpful CPSC staff to be certain that their respective positions were considered as the rulemaking progressed. These stakeholders included those here today advocating revocation, as well as those asking for modification of the current rule. These discussions had their desired effect as CPSC issued enforcement guidance and ultimately a package of technical changes to the rule. Yet, nearly three years after CPSC approved the final rule exempting untreated "snug-fitting" cotton children's sleepwear and sleepwear sized for children nine months of age or younger ("Exemptions") from the Children's Sleepwear Standards ("Standards"), Congress has mandated another review of the record.

AAEI also believes that this proceeding is significant in that CPSC, a data-driven agency, has been directed by Congress to consider revoking the Exemptions in the absence of data which would support such an action. Should this revocation occur, either by a vote

of the Commission or as a result of the attempted legislative intervention which proponents of revocation have threatened should the Commission decline to reverse itself, the viability of some firms that have brought their businesses into compliance with CPSC's requirements over the past six years may be put in jeopardy without support in the rulemaking record.

The Commission Should Vote to Retain the Extant Standards

It is AAEI's position that CPSC should vote to retain the existing children's sleepwear regulations as amended in 1996 and 1999. This position is based on two simple facts:

the record supports retaining the existing regulations; and,

sound public policy dictates that the status quo be maintained.

The Record Supports Retaining the Existing Regulations

AAEI member firms which import cotton children's sleepwear tell us that the cotton children's sleepwear market in the U.S. is growing. This observation is supported by data supplied to CPSC by the National Cotton Council (NCC) which demonstrate that sales of underwear and cotton's share of the sleepwear market have been increasing since 1994 (NCC comments on Proposed Revocation, CF99-1-130, at 7, Attachment 3). Further, the American Apparel Manufacturers Association (AAMA) has represented that many of their members report strong consumer demand for cotton sleepwear manufactured under the Exemptions (AAMA comments on the Proposed Revocation, CF99-1-114, at 3).

During the period in which CPSC's Stay of Enforcement for "tight-fitting" long underwear was in effect (1993-1997), and since the 1996 amendments became effective (1997-1999), there has not been a single incident identified with exempted long underwear or complying cotton sleepwear reported (GAO/HEHS-99-64: **Consumer Product Safety Commission: Injury Data Insufficient to Assess the Effect of the Changes to the Children's Sleepwear Standard**, April 1999, at 4-5; *Briefing Package on Children's Sleepwear Project*, Memorandum from T. Karels to the Commission, October 11, 1995 at 62 **Fed. Reg.** 47634, September 9, 1996).

In short, although consumer use of exempt sleepwear has increased, the record does not support the assertion that the risk to children has also increased. As CPSC's Executive Director commented, "if there were to be an increase in the incidents, this fact would show up quickly in our data." (CPSC's March 8, 1999 Comments on GAO Report GAO/HEHS-99-64, April 1999.)

Sound Public Policy Dictates that the Status Quo be Maintained

CPSC's reconsideration of the Standards has gone on for nearly a decade. After this prolonged period of development, consumers, and those involved in the children's sleepwear industry finally have clear guidance as to what CPSC considers to be exempt sleepwear.

The existing Standards provide an objective means by which consumers, the industry and the Commission can determine whether cotton garments are exempt sleepwear. This has been achieved by precise size specifications and standardized points of measurement that are detailed in the Exemptions. If a garment falls within these parameters, it may be marketed and sold as sleepwear, regardless of the type of cotton fabric that has been used, its color, or the designs which appear on the fabric.

Further, the clarity afforded by the Standards will facilitate compliance with the regulations. With even a limited effort by CPSC to enforce the Standards, the uniformity of definition will level the playing field for firms with a commitment to children's safety. Should the Exemptions be revoked, uncertainty in the marketplace would return as CPSC would once again be placed in the position of having to utilize subjective and imprecise guidelines to distinguish between underwear, sleepwear and playwear.

In addition, revocation or modification of the Exemptions will threaten the viability of importers who have endeavored to keep their businesses in compliance with CPSC's sleepwear requirements without substantive justification. During the six year evolution of the Exemptions, some AAEI member firms worked directly with CPSC staff in an effort to comply with CPSC's requirements. In AAEI's opinion, this mutually beneficial dialogue contributed significantly to the development of the Standards that are in effect today.

As the requirements evolved, these importers changed their business practices, requiring overseas manufacturers and distributors to provide complying products. These changes, while both responsible and necessary, created significant manufacturing and production difficulties. If manufacturing and production considerations were to change again so soon after adoption of the final rule as a result of either revocation of or further changes to the Standards, the viability of some importers could be threatened should overseas manufacturers and suppliers choose to conduct business with firms operating in a less volatile environment.

Therefore, absent a showing that the garments covered by the Exemptions present an increased risk of flammability due to small open-flame ignition, sound public policy dictates that the Commission allow there to be continuity in the children's sleepwear market by retaining the Standards in their current form.

AAEI's Commitment to the Voluntary Information and Education Campaign

AAEI recognizes the benefits of assisting its member companies and consumers in becoming more knowledgeable about safety issues relating to children's cotton sleepwear. Since our member importers have the first line responsibility for bringing complying products into the U.S., AAEI will support their efforts in the following ways:

- AAEI will canvass its membership in order to identify member companies which import cotton children's sleepwear;

- AAEI will make available to these companies copies of the Children's Sleepwear Standards and information relating to the voluntary information and education program;

- AAEI, through its members who import children's sleepwear, will continue to work with CPSC on sleepwear issues;

- Through its weekly newsletter, *International Trade Alert,* AAEI will keep members apprised of developments, including CPSC's activities, in this area.

In closing, AAEI commends the Commission for its wide-ranging efforts to receive the views of those interested in this issue. The exhaustive effort that the staff has put forth on this rule, in AAEI's view, has resulted in an effective, balanced approach to the regulation of children's sleepwear.

I would be pleased to answer any questions you may have of AAEI.

IMPACT IMPORTS INTERNATIONAL, INC.

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April 15, 1999

STATEMENT BY JULIE GOLDSCHEIDER
PRESIDENT, IMPACT IMPORTS INTERNATIONAL, INC.

Madame Chairman:

My name is Julie Goldscheider, and I am the President of Impact Imports International, Inc, a company located in Englewood, New Jersey. At the outset, I want to thank the Commissioners and the staff of the Consumer Product Safety Commission for providing me an opportunity to make a statement on the proposed sleepwear revocation.

Our firm manufactures 100 percent cotton clothing in infants sizes 0-24 months, and 100 percent cotton tight-fitting sleepwear in children's sizes 2-14. We have worked closely with the CPSC since our company began in 1985 to make sure that our products meet all safety requirements. We take pride in making safe garments for infants and children, and the fact that our company has never experienced a liability case of any kind. In this regard, no customer or consumer has ever contacted our company about a burn injury. That is a record we are proud of and want to maintain.

We are opposed to the proposed sleepwear revocation for several reasons. First, while we believe that the children's sleepwear standard is a good standard, it was unmanageable and covered garments that should never have been included in the standard in the first place. Under the Flammable Fabrics Act, Congress authorized the CPSC to issue flammability standards for wearing apparel to protect the public from unreasonable risks of fire. The Children's Sleepwear standard was

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first issued in 1971, and was designed to protect young children from death and serious burn injuries that had been associated with the ignition of sleepwear garments from small open flame sources. The standard was designed to protect young children who are ambulatory, that is they move from place to place.

The standard was not designed and does not protect children that are sleeping in a crib or a bed. A polyester nightgown will not protect a child that is sleeping in a bed if the bed catches on fire. A Nomex fireproof suit will protect your children from burns - but who wants to put their children to sleep in such a garment?

The recent amendments do not remove those items of sleepwear that continue to present an unreasonable risk of burn injury to young children. I read the heartbreaking comments submitted by Renee Henningsen Stilwell, a mother, who in 1972 purchased a cotton nightgown for her 3 ½ year old daughter, Maria. Maria suffered severe burn injuries when she discovered some matches. The point is that the recent amendments do not affect that cotton nightgown, a loose and flowing garment. The cotton nightgown is still covered by the children's sleepwear standard. All the data indicates that the fit of the garment is the most important factor involved in burn injuries.

Second, infants garments should never have been subject to the children's sleepwear standard. I have reviewed the comments and am dismayed by the misinformation. I am impressed by the education and background of many of the commenters, but wonder how they could be so misinformed. Many of the commenters believe that the sleepwear standard does not cover infants under 9 months of age. Infant sizing is not true to age. The rule of thumb is that you double an infant's age to obtain the infant's size. This means that an infant who is six months of age wears a 12 months size, and an infant who is 5 months of age probably wears a 9 months size. The CPSC picked size 9 months as the dividing line, because infants under six months of age are not mobile.

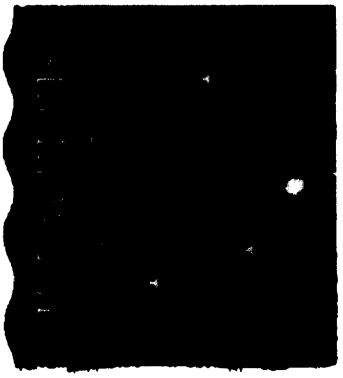
An infant who is under six months of age sleeps most of the time and is incapable of moving from one place to another where it could come into contact with a fire source. That is the reason the CPSC excluded infants garments in sizes 9 months and under from the children's sleepwear standard. Infants who wear size 9 months and under are not mobile and the children's sleepwear standard was designed to protect ambulatory young children from death and serious burn injuries that had been associated with ignition of sleepwear garments from small open flame sources.

I am bewildered by all the comments submitted by the hospitals supporting the proposed sleepwear revocation. I believe that these people have good intentions, but why do they not begin at the their own hospitals. If they are so concerned about infants that wear size 9 months or under, why don't they petition the newborn area at their own hospitals and ask that newborns not be placed in a cotton diaper, t-shirt and a hat?

The CPSC decided to exempt tight-fitting cotton sleepwear in sizes over 9 months from the children's sleepwear standard based on data that established that tight fitting garments are safe. They do not ignite quickly, because there is no oxygen under the surface of the garment to support combustion. From 1993 to June 1998, the CPSC issued a stay of enforcement of the children's sleepwear standard against snug-fitting long cotton underwear that had been used as sleepwear. The tight-fitting garments that were ultimately exempted from the children's sleepwear standard in the amendments issued in September 1996 have a tighter fit than the long cotton underwear. This demonstrates that the CPSC has established an even tighter-fitting alternative to the long cotton underwear that was the subject of the stay of enforcement. Consumers who want to place their children to sleep in comfortable cotton garments have a safe alternative to loose -fitting, oversized T-shirts.

The GAO reports suggests that CPSC's burn injury data is not complete, because the number of incidents reported as a result of the ignition of sleepwear is so low. Actually, the low number of incidents reflects the same result that was obtained in Canada. Health Canada, the Canadian government that regulates the children's sleepwear regulations in Canada . Canada originally had adopted flammability regulations for children's sleepwear that were similar to those in the U.S. Canada amended its standard in 1987 to exempt cuffed polo pajamas. There has been a lack of burn cases in Canada since the effective date of the regulations, and Health Canada noted in a December 18, 1995, letter to the National Cotton Council that a five year study to collect data concerning burns associated with children's sleepwear was discontinued because of a lack of burn cases.

Some of the comments indicated that there has not been an educational program. We emphatically deny this charge. Our company has endorsed the concept of educating parents about sleepwear products. We are a small firm and in the last year, Impact Impacts has spent $25,920 on such educational materials. We place a hangtag in the garment that advises consumers that the children's sleepwear garments should be snug-fitting. We also place a permanent label in the center of the neck that also indicates that children's sleepwear should be snug-fitting.



Fabric and fit are important safety considerations for children's sleepwear. When selecting 100% cotton natural fiber sleepwear the garment should be snug-fitting to meet U.S. Consumer Product Safety Commission sleepwear requirements.

This garment should be worn snug-fitting.

Finally, we again wish to thank the Commissioners and the staff of the CPSC for this opportunity to speak at the hearing in favor of the recent sleepwear amendments. We appreciate the time and effort the staff of the CPSC has devoted over the years to this issue.

Respectfully submitted,

Diane Weinberg for

Julie Goldscheider
Impact Imports International, Inc.

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April 20, 1999

STATEMENT BY MARLAINE GOLDSCHEIDER
EXECUTIVE VICE PRESIDENT, IMPACT IMPORTS INTERNATIONAL, INC.
HEARING ON PROPOSED SLEEPWEAR REVOCATION

Madame Chairman:

My name is Marlaine Goldscheider, and I am the Executive Vice President of Impact Imports International, Inc, a company located in Englewood, New Jersey. Before I begin, I also want to thank the Commissioners and the staff of the Consumer Product Safety Commission for permitting me to speak on the proposed sleepwear revocation.

As Julie stated, our firm manufactures 100 percent cotton clothing in infants sizes 0-24 months, and 100 percent cotton tight-fitting sleepwear in children's sizes 2-14. I have been in the infants' wear business for more than twenty-five years. During this time, I have spent many years working with the CPSC on children's sleepwear issues - 18 years to be exact.

As you know, the flammability standard for children's sleepwear was designed to protect children that are capable of moving from place to place. The standard was not designed to protect against infants and children in cribs and beds. The law works as no infant wearing size 0-9 months is ambulatory or without supervision.

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There should be no misunderstanding on this point. The sleepwear standard is designed to protect against infants and children that are ambulatory. It is not designed to protect against sleeping children. Polyester sleepwear will not protect your kids from a burn injury if the house or the bed is on fire. The sleepwear standard is only designed to protect children from a burn injury if they come into contact with an ignition source. No modifications are necessary. The law works - leave it alone.

In addressing larger size sleepwear for children wearing sizes 2-14 - out of the child's day, the child spends only about 10 hours in sleepwear.(8 hours sleeping and an additional 1 hour before and after dressing in playwear). The remainder of the day adds up to 14 hours, and that is when most accidents happen. Should we pass laws to include playwear, outerwear, denim jeans, t-shirts and all the bedding. Let us not forget that mom and dad sleep in the same 100% cotton bedding as Junior sleeps in. Is the U.S. population going to be supportive of any agency trying to wrap them up in 100% polyester?

I don't think so. I believe that in the U.S. we present the information to the consumer, and the consumer decides for him or herself how to use the information.

Let's correct another point. Even if children's sleepwear is made from polyester, it doesn't means that the sleepwear complies with the flammability standard. For example, in September 1998, the CPSC recalled children's 100 percent polyester pajamas. Again in January 1999, the CPSC recalled 100 percent polyester fleece robes. Both the pajamas and the robe failed to meet flammability standards for children's sleepwear.

Finally, I again wish to thank the Commissioners and the staff of the CPSC for this opportunity to speak at the hearing in favor of the recent sleepwear amendments. I appreciate the dedication of the staff of the CPSC to this issue. Impact Imports, Inc. will back the outcome one hundred percent.

Respectfully submitted,

Marlaine Goldscheider
Impact Imports International, Inc.

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U. S. CONSUMER PRODUCTS SAFETY COMMISSION
WASHINGTON, D.C. 20207
OFFICE OF THE SECRETARY

ATTENTION ROCKY HAMMOND

My name is Vivian Reisman and I will be speaking on April 22, 1999 I intend to address the following issues outlined as follows:

A. The "size" vs. "age" issue.

B. The issue of consumers having no natural cotton alternative if the amendments are revoked. Consumers will resort to loose fitting cotton tee shirts and other loose apparel to satisfy the need for cotton.

C. The emotional aspects of the issue versus the true facts of the issue.

D. Skin tight statistics No incidents

E. Industry and CPSC have worked together to bring a safe cotton garment to the consumer.

F. Need to make sure that the tragedy of burn victims is avoided by use of skin tight garments.

Thank you.

Very truly yours,

Vivian G. Reisman