U.S. CONSUMER PRODUCT SAFETY COMMISSION
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STATEMENT OF COMMISSIONER NANCY NORD ON THE VOTE TO APPROVE REVISIONS TO TERMS OF ACCEPTANCE OF CHILDREN'S PRODUCT CERTIFICATIONS BASED ON THIRD PARTY CONFORMITY ASSESSMENT BODY TESTING OF CLOTHING TEXTILES

April 15, 2011

Last August I voted against issuing laboratory accreditation requirements relating to the Flammable Fabrics Act's (FFA) general wearing apparel standard because, in my view, this regulation is not a children's product safety rule. As such, the third party testing requirements of CPSIA do not apply. Unlike the children's sleepwear standard, aimed specifically at children and designed to protect them from a defined and documented risk, this standard provides the same level of protection to everyone and does not differentiate children's wearing apparel from that of adults. The majority's decision to require third party testing for fabrics that may (or may not) find their way into children's garments over-reads the CPSIA, and it is not required either by the statute or to further safety. While I am pleased to see some limited relief being recommended, it would be inappropriate for me to vote for staff-recommended revisions to the terms of requirements for third party testing certifications that I do not agree apply.

The majority's misinterpretation of the statute has resulted in the potential for wasteful and redundant testing. To alleviate some of the unproductive and burdensome results, the apparel industry has asked that we grandfather testing that was done up to a year prior to the imposition of this testing requirement. The staff agrees with this request. I believe that this is a useful correction.

The apparel industry also raised capacity issues stating that too few of the accredited testing facilities were located in the countries where clothing is designed and sourced and where fabric is procured. The statute allows us to extend the date for testing by 60 days when we find an availability issue. In this case that would have extended the required testing date into early 2011. The staff dismisses this portion of the industry request merely by stating that because there are at least 67 laboratories worldwide accredited to do this testing, there is not an availability issue and, besides, the issue is moot since the testing extension has passed. I am troubled that no real analysis was done of the lab availability issue. In addition, by not addressing the request until after the time deadline passed, we mooted the issue. Agency inaction is not a proper way to respond to a request for relief.

A related concern to me is the impact of the testing and certification requirements under Section 14 of CPSA on the guarantee programs established under the FFA. As the staff analysis indicates, these guarantee programs are based on reasonable and representative tests and have been working well for many years. Imposing additional requirements will not provide additional protection. I do not believe Congress meant to supplant programs that are providing guarantees of safety. When the Section 14 final rule comes before the Commission later this year, I will urge my colleagues to carefully consider its effect on FFA's guarantees.