



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

CPSC EXECUTIVE SESSION  
June 6, 1975

1750 K Street, N. W.  
Washington, D. C.  
9:30 am

Presiding: Chairman Simpson

Present : Commissioner Newman  
Commissioner Franklin  
Commissioner Kushner

ITEM

Employee Membership and Participation in Voluntary Standards  
Organizations --- Promulgation of Policy.

DECISION

The Commission approves the attached Federal Register Notice,  
which promulgates this policy in final form.

VOTE

Concurring: Chairman Simpson

Commissioner Newman

Commissioner Franklin

Commissioner Kushner

Commissioner Pittle

*R. Simpson*

*Newman*

*B. Franklin*

*J. Kushner*

*R. David Pittle*

Submitted by: Commissioner Franklin

ich as the Commission's re-  
ure limited, it will have to rely  
on voluntary standards efforts to ad-  
dress many problems. The Commission  
believes that voluntary standards organi-  
zations can play an important role in  
reducing the unreasonable risk of in-  
jury associated with consumer products.  
To the extent that accidents and injuries  
can be reduced or eliminated by voluntary  
standards activities, the Commission will  
support such activities and the partici-  
pation of appropriate staff members in  
such activities.

2. A comment suggests that rather  
than discouraging or prohibiting CPSC  
staff or officials from participating in  
voluntary standard organizations, the  
Commission should encourage full and  
active participation by all Commission  
employees in all phases of voluntary  
consensus standards operations.

One of the primary tools available to  
the Commission in eliminating or reduc-  
ing unreasonable risks of injury is the  
promulgation of mandatory standards.  
Under section 7 of the Consumer Prod-  
uct Safety Act (15 U.S.C. 2056), this is  
done by inviting persons to submit offers  
to develop a standard or to submit a pre-  
viously issued or adopted standard as a  
proposed consumer product safety stand-  
ard. Because the Commission must ob-  
jectively evaluate an existing standard  
in order to determine if it should be pro-  
posed as a mandatory standard, in lieu  
of accepting an offer to develop a stand-  
ard, the Commission does not believe that  
CPSC policymaking, decisionmaking, or  
decision-recommending officials respon-  
sible for evaluating the standard and rec-  
ommending to the Commission the adop-  
tion or rejection of an existing standard  
should participate in the development of  
voluntary standards. The policy only pre-  
cludes the Commissioners and a limited  
number of Commission employees from  
participating in the development of vol-  
untary standards, and the Commission  
believes that this limitation will not be  
detrimental to the development of vol-  
untary standards.

The policy, however, has been modified  
in proposed section IV-B (§ 1031.4(a)  
below) to allow CPSC employees other  
than those enumerated in proposed sec-  
tion V-A and B (§ 1031.5 (a) and (b)  
below) to become members of commit-  
tees, subcommittees, councils, or boards  
that do not develop or approve standards.  
The Commission finds that most CPSC  
employees should be allowed to partici-  
pate fully in the activities of standards  
bodies, including those activities not con-  
sidered to be standards development or  
standards approval activities.

3. A comment suggests that the pro-  
posal be changed to recognize "past con-  
tributions to improved product safety of  
voluntary standards-writing organiza-  
tions" and the important role they have  
in the future.

The Commission recognizes that vol-  
untary standards organizations have

# Title 16—Commercial Practices

## CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

### SUBCHAPTER A—GENERAL

#### PART 1031—EMPLOYEE MEMBERSHIP AND PARTICIPATION IN VOLUNTARY STANDARDS ORGANIZATION

##### Promulgation of Policy

The purpose of this document is to  
promulgate regulations prescribing the  
Commission's policy on CPSC employee  
membership and participation in volun-  
tary standards organizations. Originally  
proposed as non-CFR text in a simple  
notice, the material is suitable for codi-  
fication and accordingly is adopted below  
as 16 CFR Part 1031.

In the FEDERAL REGISTER of July 19,  
1974 (39 FR 26475), the Commission pro-  
posed a statement of policy on the above  
subject. Although the policy statement  
is exempt from the notice and public  
procedure provisions of 5 U.S.C. 553, the  
Commission proposed it because of the  
policy's importance and because several  
outside parties requested that it be pub-  
lished for comment and a public meeting  
was previously held on this issue.

*Rulings on comments.* In response to  
the proposal, comments were received  
from consumers, consumer organizations,  
a consumer columnist, a voluntary stand-  
ards organization, a trade association, an  
independent testing laboratory, two  
manufacturers and a consultant organi-  
zation. Copies of the comments may be  
seen in the Office of the Secretary.

The principal issues raised by the com-  
ments and the Commission's conclusions  
thereon are as follows:

1. A comment opposes Commission  
participation in the development of volun-  
tary standards primarily because "it will  
provide a patina of legitimacy for volun-  
tary standard-setting efforts which do  
not deserve it and it will result in the  
needless diversion of the scarce resources  
of the Commission to activities with little  
prospect of reducing the unreasonable  
risk of products to the consumer."

played an important role in the past to improve product safety and hopes that they will continue to do so in the future. The Commission, however, does not believe the suggested change in the proposal is necessary because proposed section II (§ 1031.2 below) adequately recognizes the importance of the contributions made by voluntary standards organizations.

4. A comment suggests that a statement be added to the proposal emphasizing the need for the Commission to encourage and work with voluntary standards organizations.

The Commission believes that this point is adequately addressed in proposed sections II and V-H (§§ 1031.2 and 1031.5(h) below) in that those provisions do not discourage participation by most CPSC employees in voluntary standards activities.

5. Two comments point out that the proposal made no reference to participation of Commission employees in international standardization activities and that such participation should be provided for and encouraged.

The Commission recognizes the importance of participation in international standards development activities and has therefore changed proposed section II (§ 1031.2 below) to refer to participation in both domestic and international standards activities.

6. A comment suggests that the Commission encourage CPSC employees to become members of voluntary standards development bodies by paying their expenses.

The Commission interprets this as suggesting it pay the dues or membership fees of CPSC employees who wish to join voluntary standards organizations. A Federal statute (5 U.S.C. 5946) prohibits payment of membership fees or dues of an employee in a society or association unless legislatively authorized. The Commission does not have the specific authority to expend funds for this purpose; however, the Commission is authorized to, and does, provide reimbursement of travel expenses justified by representation at official functions (5 U.S.C. 4110).

7. A comment suggests that proposed section V-C (§ 1031.5(c) below) be changed to specify that CPSC employees may participate in the development of voluntary safety standards only in accordance with the provisions of proposed V-H (§ 1031.5(h) below), which limits participation to those activities that appear to further the objectives and programs of the Commission and that are consistent with the Commission's regulatory programs.

This suggested change is consistent with the purpose of the proposal and has been adopted.

8. A comment suggests deleting the requirement for advance approval by the Office of the General Counsel and the Office of the Executive Director for attendance of CPSC employees at voluntary standards meetings because it would inhibit and discourage employee participation.

The Commission agrees that specific approval by the Office of the General Counsel is unnecessary since that office will provide legal advice and assistance when requested concerning employee participation in voluntary standards organizations. The Commission does not agree that review by the Office of the Executive Director will inhibit or discourage employee participation in voluntary standards activities. The review will provide a mechanism for coordinating participation by CPSC staff in such activities.

9. A comment questions whether the Commission should attempt to impose its unlimited public-participation policy upon voluntary standards-development organizations by requiring in proposed section V-E that voluntary standards development meetings in which CPSC employees participate be open for observation and participation, where appropriate, by any and all interested or concerned persons.

The Commission is not attempting to impose its public-participation policy upon voluntary standards organizations. The Commission, however, was established primarily to protect the public from unreasonable risks of injury. The Commission does not believe that any activity in which it participates should be closed to members of the public except in extraordinary circumstances. The Commission has modified the provision (§ 1031.5(e) below) to specify that generally CPSC employees will participate in voluntary standards activities only where there is opportunity for comment on those standards by all interested parties.

10. A comment suggests that CPSC employee participation in standards-development activities be limited to consultation and comment on work as it progresses.

The Commission does not expect its employees to actually draft standards for voluntary standards organizations. Commission employees, however, may comment on standards as work progresses and may suggest changes or alternative provisions that in their opinion appear to be in the public interest. Commission employees may also express their opinion on whether a particular requirement of a voluntary standard is adequate to eliminate or reduce an unreasonable risk of injury. They are prohibited, however, from voting or otherwise indicating their approval of a standard or any provision of a standard. This prohibition on voting on a standard is necessary to reduce the likelihood that an employee's approval would be misconstrued as representing approval of the Commission.

11. One comment suggests that CPSC employees be considered as "full" members of standards development committees and not just as "non-voting advisory" members. Another comment suggests that CPSC employees be prohibited from voting on the approval of a final standard. A third comment suggests that voting on final standards should not be allowed where such approval might be construed as representing Commission approval of the standard.

The Commission concludes that the public interest would be best served if CPSC employees participate actively and fully in the development of voluntary standards without voting on their approval. To prevent any views expressed by a CPSC employee on a voluntary standard from being construed as representing an official Commission position, a new paragraph has been added to proposed section V (as § 1031.5(d) below) and an addition has been made to section V-C § 1031.5(c) below).

12. A comment suggests that CPSC employees be allowed to hold the position of secretary in voluntary standards committees. Another comment suggests that CPSC be permitted to accept positions of leadership in such committees.

The Commission believes that CPSC employees should participate actively in standards-development activities but should never direct the work of a voluntary standards committee. To preclude any assumption by CPSC employees of leadership roles in a voluntary standards committee, the Commission has adopted a rule prohibiting them from accepting a policy or primary leadership position, such as chairman or secretary, of such a committee. The acceptance of other committee positions by a CPSC employee is subject to Executive Director approval with General Counsel concurrence (see § 1031.5(g) below).

13. A comment suggests that proposed paragraph H of section V be changed so that the Commission's participation in voluntary standards activities will be subject to the provisions of section V rather than just paragraph C thereof since other portions of proposed section V modify paragraph H.

The Commission agrees and the regulation (§ 1031.5(h) below) has been changed accordingly.

14. A comment suggests that a CPSC employee who participates from later participating in an official CPSC capacity in the evaluation of the standard. The comment suggests that requiring the employee to describe in his or her evaluation of the voluntary standard the extent of his or her participation in its development will not inhibit his or her favoring a standard on which he or she worked to develop.

The combination of disclosure of participation by any CPSC staff member who helps evaluate the proposed standard and the prohibition on participation by CPSC employees listed in proposed section V-A (§ 1031.5(a) below) should assure an objective decision by the Commission on the merits of a proposed standard.

*Conclusion and promulgation.* Having considered the proposal, the comments thereon, and other relevant material, the Commission concludes that the subject policy, changed as specified above, should be adopted as set forth below.

Therefore, pursuant to provisions of the Consumer Product Safety Act (15 U.S.C. 2051-31), the Federal Hazardous Substances Act (15 U.S.C. 1261-74), the Flammable Fabrics Act (15 U.S.C. 1191-1294), the Poison Prevention Packaging

Act of 1970 (15 U.S.C. 1471-76), and the Refrigerator Safety Act (15 U.S.C. 1211-14), a new Part 1031 is added to Title 16, Chapter II, Subchapter A, as follows:

Sec.

- 1031.1 Scope and purpose of Part 1031.
- 1031.2 Voluntary standards; conflict of interest.
- 1031.3 Procedural safeguards.
- 1031.4 Membership criteria.
- 1031.5 Participation criteria.

**AUTHORITY:** Consumer Product Safety Act (15 U.S.C. 10251-81), Federal Hazardous Substances Act (15 U.S.C. 1231-74), Flammable Fabrics Act (15 U.S.C. 1191-1204), Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471-76), and Refrigerator Safety Act (15 U.S.C. 1211-14).

**§ 1031.1 Scope and purpose of Part 1031.**

This Part 1031 sets forth the Consumer Product Safety Commission's guidelines and requirements governing membership and participation by Commission employees in the activities of voluntary standards development bodies that concern products subject to the Commission's jurisdiction. The purpose of this Part 1031 is to further the objectives and programs of the Commission and to do so in a manner that ensures that such membership and participation:

- (a) Is consistent with the intent of the Consumer Product Safety Act and the other acts administered by the Commission;
- (b) Is not contrary to the public interest; and
- (c) Presents no real or apparent conflict of interest in the implementation of paragraphs (a) and (b) of this section.

**§ 1031.2 Voluntary standards; conflict of interest.**

(a) The Commission recognizes the role that voluntary standards may have in:

- (1) Reducing unreasonable risks of injuries associated with consumer products.
- (2) Eliminating, in some instances, the need for mandatory standards.
- (3) Providing a basis for mandatory standards.

(b) The Commission realizes there are advantages and benefits derivable from the participation of Commission personnel in the activities of domestic and international voluntary standards organizations. The Commission is also aware, however, of the need to eliminate or reduce to a minimum any real or apparent conflict-of-interest situations. Such situations might present an appearance or possibility of the Commission's giving preferential treatment to an organization or group or of the Commission's losing its independence or impartiality.

**§ 1031.3 Procedural safeguards.**

With regard to Commission decisions concerning proposing or promulgating consumer product safety rules or regulations, the Commission recognizes that:

(a) Only those staff members listed in § 1031.5 (a) and (b) have the responsibility for making the final recommendation to the Commissioners on either

adopting an existing standard as the basis for a proposed regulation, accepting an offer to develop a standard, or promulgating regulations or standards.

(b) Individuals from several Commission offices and bureaus are involved in the development of staff recommendations on accepting an existing standard; accepting an offer to develop a standard, or proposing or promulgating a regulation or standard.

(c) The recommendations and views of each person involved in developing staff recommendations will be carefully reviewed and either endorsed, questioned, or rejected by that person's Division Chief or Office or Bureau Director, the Standards Coordinator, the Chief of the Technical Analysis Division, the Director of the Office of Standards Coordination and Appraisal, the Deputy Executive Director, and/or the Executive Director.

(d) The Commissioners exercise the ultimate decisionmaking authority, and any existing standard accepted as a proposed consumer product safety rule, any proposed standard developed by an offeror, and any regulation required to be proposed is subject to public review and comment by all interested or concerned persons following its proposal in the *FEDERAL REGISTER*.

**§ 1031.4 Membership criteria.**

In view of the foregoing text of this Part 1031, the following are the Commission's guidelines governing membership and participation of Commission employees in voluntary standards organizations:

(a) Commission employees may become individual members of voluntary standards development bodies at their own expense.

(b) Commission employees, other than those holding positions listed in § 1031.5 (a) and (b), may be advisory, nonvoting members of standards development, standards approval, nonstandards development, or nonstandards approval committees, subcommittees, councils, or boards of such bodies, subject to the requirements of § 1031.5(g).

**§ 1031.5 Participation criteria.**

For the purposes of this Part 1031, "participation in the development of voluntary standards" includes any written or oral communications concerning the development of voluntary standards, but does not include attendance at meetings for the sole purpose of observation or education.

(a) Commission employees holding the following positions, because they make the final decision or because they advise those who make the final decision on adopting an existing standard, accepting an offer to develop a standard, and proposing and promulgating regulations, shall not participate in the development of voluntary standards for products subject to the Commission's jurisdiction:

- (1) The Commissioners.
- (2) The Commissioners' Special Assistants.

(3) The General Counsel.

(4) The General Counsel's legal staff.

(b) Commission employees holding the following positions, because they develop the final recommendations to the Commission on adopting an existing standard, accepting an offer to develop a standard, and proposing and promulgating regulations, shall not participate in the development of voluntary standards for products subject to the Commission's jurisdiction:

(1) The Executive Director, the Deputy Executive Director, and their Special Assistants.

(2) The Director of the Bureau of Engineering Sciences.

(3) The Director of the Bureau of Economic Analysis.

(4) The Director of the Bureau of Biomedical Science.

(5) The Medical Director.

(6) The Director of the Office of Standards Coordination and Appraisal and the following staff members thereof:

- (i) Special Assistants to the Director.
- (ii) The Director of the Impact Analysis Division.
- (iii) The Director of the Technical Analysis Division.

(iv) The Standards Coordinators of the Technical Analysis Division.

(c) Commission employees, other than those holding the positions listed in paragraphs (a) and (b) of this section, may participate in the development of voluntary safety standards for consumer products, but only in their capacity as employees of the Commission and as part of their official duties. Except in those instances where the Commission has adopted or otherwise expressed an official position, the views expressed by Commission employees are to be represented as those of the individual employee. Travel and other expenses will be provided as specified in appropriate Federal travel regulations. Commission employees may engage in such participation, in accordance with the provisions of paragraph (b) of this section, only after having received advance approval for such participation from the Executive Director.

(d) Commission employees who attend but do not participate in meetings of voluntary standards organizations must have such attendance approved in advance by the Executive Director.

(e) Except in extraordinary circumstances and when approved in advance by the Commission in accordance with the provisions of the Commission's meetings policy (16 CFR Part 1012), Commission employees shall not participate in meetings concerning the development of voluntary standards that are not open to the public for attendance and observation. Generally, Commission employees may participate only in the development of standards that prior to use or adoption are made available for comment by all interested parties. Attendance at all meetings shall be noted in the Public Calendar in accordance with the Commission's meetings policy.

(f) Attendance and participation in voluntary standards activities shall be

contingent on Commission employees' being considered and listed by standards development committees and organizations as advisory, nonvoting members. In no case shall a Commission employee vote or otherwise formally indicate approval of a voluntary standard.

(g) Commission employees who participate in the development of voluntary standards shall not accept voluntary standards committee positions involving policy or primary leadership roles (for example, chairman or secretary). Subject to prior approval by the Executive Director, with the concurrence of the General Counsel, a Commission employee may accept other committee positions only if it appears to be clearly in the public interest for the employee to carry out the functions of that specific position.

(h) Subject to the provisions of paragraph (c) of this section and budgetary and time constraints, Commission employees may participate in voluntary standards activities that appear to further the objectives and programs of the Commission and that are consistent with ongoing and anticipated Commission regulatory programs. In the event of duplication of effort by two or more groups in developing voluntary standards for the same products or class of products, the Commission may encourage the several interests to participate in the development of a single voluntary standard.

(i) Commission employees who participate in the development of a voluntary standard, and who later participate in an official capacity in the evaluation of that standard as the basis for proposed consumer product safety rule, shall describe clearly in their evaluation of the standard the extent of their participation in its development.

(j) Participation of a Commission employee in a voluntary standards committee shall be predicated on an understanding that any list of the committee's membership that includes Commission employees shall contain a statement that participation by the Commission employee in the development of the standard does not constitute approval or endorsement of the standard.

*Effective date.* The regulations promulgated above, 16 CFR Part 1031, shall become effective July 21, 1975.

(Consumer Product Safety Act (15 U.S.C. 2051-61), Federal Hazardous Substances Act (15 U.S.C. 1261-74), Flammable Fabrics Act (15 U.S.C. 1191-1204), Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471-76), and Refrigerator Safety Act (15 U.S.C. 1211-14).)

Dated: June 16, 1975.

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

[FR Doc.75-16103 Filed 6-19-75;8:45 am]

27931

## RULES AND REGULATIONS

### CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

#### SUBCHAPTER A—GENERAL

#### PART 1031—EMPLOYEE MEMBERSHIP AND PARTICIPATION IN VOLUNTARY STANDARDS

##### Promulgation of Policy

##### *Correction*

In FR Doc. 75-16103 appearing at page 26023, in the issue for Friday, June 20, 1975, on page 26026 insert the word "a" after the word "for" in the fifth line of § 1031.5(i).

---