



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

MINUTES OF COMMISSION MEETING

August 3, 1994

4330 East West Highway  
Bethesda, Maryland

The August 3, 1994, meeting of the U.S. Consumer Product Safety Commission was convened at 10:00 a.m. in open session by Chairman Ann Brown. Commissioner Mary Sheila Gall and Commissioner Jacqueline Jones-Smith were present.

Agenda Items

1. Children's Sleepwear

The Commission considered a possible notice of proposed rulemaking to amend the standards for flammability of children's sleepwear to exempt tight fitting sleepwear garments and sleepwear garments intended for infants. The Commission began the proceeding which could lead to such amendment by publication of an advance notice of proposed rulemaking in the Federal Register of January 13, 1993. At the Commission meeting on July 28, 1994, the Commission was briefed by the staff on the issues raised in the proceeding and the staff's recommendation for continuation of the proceeding by issuance of a notice of proposed rulemaking. (Ref: staff briefing package dated July 18, 1994.) The Commission and staff also met in closed session on August 2, 1994, to discuss issues related to enforcement of the children's sleepwear standard.

At today's meeting, following questions and discussion by the Chairman and Commissioners, Chairman Brown offered a two-part motion, to terminate the rulemaking proceeding to amend the children's sleepwear flammability standards and to terminate the stay of enforcement (published in the Federal Register January 13, 1993) after providing firms an adequate lead time to bring their sleepwear garments into full compliance with the flammability standards. This motion was defeated by a vote of 1-2, with Chairman Brown voting in favor and Commissioners Gall and Jones-Smith voting against.

Children's Sleepwear, continued

The Commission then voted 2-1 to approve each of two motions offered by Commissioner Gall, as follows:

(1) Continue the rulemaking proceeding on the children's sleepwear flammability standard, and direct the staff to prepare a draft notice of proposed rulemaking consistent with today's proceedings, for approval by the Commission by ballot vote.

(2) Continue the stay of enforcement of the children's sleepwear flammability standard published in the Federal Register on January 13, 1994.

Commissioner Gall and Commissioner Jones-Smith voted in favor of the motions. Chairman Brown voted in opposition. Separate statements on the children's sleepwear matter were filed by Commissioner Gall, Commissioner Jones-Smith, and Chairman Brown, copies attached.

This concluded the morning session of today's Commission meeting. The Commission reconvened at 2:00 p.m. for the second agenda item for today.

2. Fiscal Year 1996 Budget

The Commission considered the agency's preliminary budget request for fiscal year (FY) 1996. On July 27, 1994, the Commission was briefed by the staff on a staff-recommended budget of \$46 million and 487 full-time equivalent positions (FTEs) as set forth in the 1996 Preliminary Budget Request document transmitted by the Executive Director on July 13, 1994. On August 1, 1994, the staff provided supplemental information in response to questions raised at the briefing.

At today's meeting, following a statement by Commissioner Jones-Smith (copy attached) in support of a motion calling on the Commission to designate a specific priority project in the FY 1996 budget, Commissioner Jones-Smith offered the motion as follows: that the Commission designate the Hazard Assessment and Reduction (HAR) Poison Prevention Project as CPSC's FY 96 Priority Project; that this project shall receive full funding and resource allocation at levels consistent with the project's explanation in the FY 96 Preliminary Budget Recommendation (p. 18); further, that the Poison Prevention Project shall be held harmless from agency funding cuts caused by future Executive or Legislative actions affecting CPSC's final FY 96 appropriations or funding levels. The motion was defeated by a vote of 1-2, with Commissioner Jones-Smith voting in favor and Chairman Brown and Commissioner Gall voting in opposition.

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FY Budget Request, continued

The Commission then voted unanimously (3-0) on motion of Chairman Brown to approve the FY 1996 Preliminary Budget Request as presented by the staff in its briefing package of July 13, 1994.

There being no further business on the agenda, Chairman Brown adjourned the meeting.

For the Commission:



Sadye E. Dunn  
Secretary

Attachments

**COMMISSIONER JONES-SMITH'S STATEMENT ON  
STAFF'S RECOMMENDATION TO PUBLISH A  
NOTICE OF PROPOSED RULEMAKING  
TO CONSIDER AMENDING THE CHILDREN'S  
SLEEPWEAR FLAMMABILITY STANDARD**

**August 3, 1994**

Today, I voted to publish a Notice of Proposed Rulemaking (NPR) to amend existing safety standards for the flammability of children's sleepwear. The major issue to be addressed is whether the inclusion of tight fitting cotton garments in the sleepwear standard is still needed to adequately protect the public from unreasonable risks of deaths, injuries and property damage from fires associates with sleepwear. Preliminary data suggests that the answer is no. Indeed, this data suggests that exempting tight fitting garments from the sleepwear standard could enhance safety.

Circumstances have changed substantially since the promulgation of these regulations in the early 70's and it appears to me that our current standards are overly broad. Indeed, in recent years both Canada and New Zealand have established narrower, and effective, regulations that do permit tight fitting cotton sleepwear.

These international standards and current information suggest that excluding tight fitting garments is not needed to protect the public from an unreasonable risk of thermal injuries. While some data suggests that existing standards have been effective in reducing fire related injuries and deaths associated with children's sleepwear; other information suggests that completely extraneous factors have contributed substantially in producing this result. Some of these factors relate to changes in the styling of sleepwear, societal changes such as the decrease in smoking, as well as improvements in the manufacturing and use of other "ignition sources", such as space heaters.

According to staff, current market trends strongly suggest an increasing consumer preference for clothing made out of natural fibers -- such as wool and cotton. As a consequence, consumers appear to be substituting non-sleepwear items, such as long underwear, playwear, daywear, sweatsuits, and particularly T-shirts, all made of cotton fabric, for traditional, children's sleepwear. Staff's specific concern is that loose, flowing cotton sleepwear garments -- such as T-shirts -- present a relatively high risk of ignitability.

In addition, such trends have made it increasingly difficult for staff to enforce the existing standards. These standards define "children's sleepwear" as follows:

"...any product of wearing apparel up to and including size 6X (or sizes 7 through 14), such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping..."

Given the apparent consumer trend of purchasing non-traditional sleepwear garments -- made of cotton -- it is becoming increasingly speculative as to whether such garments are "intended to be worn primarily for sleeping". These garments certainly appear to have multiple uses.

As noted above, however, the most alarming aspect of these trends is the possibility that these substitute sleepwear products may very well pose a greater risk of injury or death than the untreated cotton sleepwear that the current standards prohibit. From October 1992 - September 1993 there were 300 clothing fire injuries involving daywear used as sleepwear. The most common garment involved was loose T-shirts. In addition, epidemiological studies show that loose fitting garments -- such as T-shirts and nightgowns -- may pose a far greater flammability hazard than tight fitting garments. CPSC incident data indicates that of the 90 hospital emergency room treated thermal burns/year to children involving sleepwear about 50% -- involve loose fitting nightgowns. The data also indicates that there are about three times as many thermal burn cases involving daywear used as sleepwear -- the most common article of clothing being loose fitting T-shirts.

I would stress, however, that the most critical question that the staff must first address, and resolve to my satisfaction, continues to be whether these exemptions would tend to lower the level of protection of children from the unreasonable risk of fires. This, of course, would be wholly unacceptable to me. I absolutely will not compromise safety based upon market trends or consumer preferences. However, our data indicates that this proposed change in the standard may actually increase the level of protection. The data and unprecedented number of comments received from the public show that consumers are choosing unsafe alternatives to sleepwear. The exclusion of tight fitting cotton sleepwear from the standard may well increase the relative safety for children whose parents prefer cotton.

Certainly, it is desirable that consumers use tight fitting sleepwear that meets the standard as opposed to loose or tight fitting cotton alternatives. This would be the ideal; but it is not happening. I believe the staff proposal could create a "safer" environment for children. Many have said "if it ain't broke don't fix it." A standard is "broke" if it is overly broad and results in consumers choosing more dangerous product alternatives that increase their relative risk. This is the real risk that needs to be addressed

I also concur with the staff that this substantive change to the sleepwear standard is best handled by means of a formal regulatory proceeding and not as an informal enforcement policy.

Finally, while the Commission reviews this issue, I believe that it is in the public interest to continue with the stay of enforcement. There have been no adverse safety effects to date as a consequence of this stay and industry has been marketing products in compliance with its provisions.



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

**STATEMENT OF COMMISSIONER MARY SHEILA GALL  
ON  
EXEMPTIONS TO THE CHILDREN'S SLEEPWEAR STANDARD**

**AUGUST 3, 1994**

Today, the Commission has decided to continue rulemaking proceedings to exempt sleepwear in infant sizes and tight fitting sleepwear garments from the children's sleepwear standard. This decision represents a balanced approach to government regulation. By using common sense, I believe the Commission has enhanced consumer safety.

Over the past eighteen months, the Commission has had in effect a stay of enforcement relating to the garments under consideration today. During that time, not a single burn incident has occurred in these product lines. This comes as no surprise since between 1980 and 1993 virtually no incidents were reported. Further, other countries which have similar exemptions in place report a lack of incidents.

Some will argue that any exemption from the standard represents movement away from safety. I disagree. The Commission staff reports, and textile experts agree, that a garment is safer when it fits closer to the body since: the fit reduces the amount of trapped air reducing the likelihood of combustion; tight fitting garments burn more slowly; if ignited, the reaction time for wearers of tight fitting garments is shorter; and, a tight fitting garment reduces the possibility of the garment coming into contact with an ignition source. In addition, a review of mobility studies involving infants led Commission staff to conclude that infants through six months do not possess the mobility to place themselves at risk through clothing ignition.

Others will argue that the real problem is that consumers are not putting their children in complying sleepwear. In my view, it is precisely because such a low percentage of consumers select sleepwear which complies with the extant standard that common sense dictates that the Commission recognize that additional demonstrably safe alternative products exist. By allowing these products to be marketed as sleepwear, consumers will have additional safe garments from which to choose. This may well result in fewer children sleeping in loose fitting garments and daywear, which have been implicated in an estimated 300 clothing burn injuries each year.

**It seems clear at this point that garments for infants and tight fitting sleepwear do not present an unreasonable risk of the occurrence of fire leading to death, injury or property damage. Further, coverage of these garments under the standard is not needed to adequately protect the public from injury or death related to fires.**

**I must caution parents and caregivers: children should not sleep in loose fitting natural fiber garments such as loose fitting tee shirts. I look forward to receiving additional public comment on the proposed rule the Commission has voted to issue today.**



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

Statement of Chairman Ann Brown  
Children's Sleepwear

The Chairman

August 3, 1994

I voted today to terminate the Commission's rulemaking proceeding to amend the Standards for the Flammability of Children's Sleepwear in sizes 0-6x and 7-14. I also voted to terminate the stay of enforcement after providing firms an adequate lead time to bring their sleepwear garments into compliance with the flammability standards.

The proposal approved by the Commission today would exempt so-called tight-fitting sleepwear garments from the flammability standards, and sleepwear garments for infants under one year of age. In considering whether to support continuing the rulemaking proceeding, I have made it clear that my primary concern is that the Commission take no action that would reduce the level of safety currently provided by the children's sleepwear standards. I am unable to support changing the sleepwear standards unless I can make the statutory findings that the changes would not present an unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage. Since I am not convinced by the evidence currently available that I can make this finding, I cannot vote to support the proposed amendments.

I am concerned that the available data fail to support the conclusion that exempting tight fitting garments from the regulation will not decrease safety. Available injury and death data demonstrates to me that the sleepwear standards are working. Although incident data was not kept on a statistical basis before issuance of the sleepwear standards in 1972 (sizes 0-6x) and 1975 (sizes 7-14), it is clear that a significant number of burn injuries and deaths associated with children's sleepwear did occur. Over the years, the actual numbers of injuries and deaths associated with sleepwear injuries and deaths appears to have declined dramatically. Although there is speculation that this decline may be based on such things as the reduced number of persons smoking and safer appliances such as space heaters and ranges, it is merely speculation. It is just as likely that the injuries and deaths have declined because the sleepwear standards are working.

I recognize that there is a consumer preference for cotton children's sleepwear garments especially in infant sizes, and that the Commission staff has encountered difficulty in enforcing the sleepwear standards because of this consumer preference. I have taken this into account in reaching my decision. I understand and am sympathetic to these concerns.

I do not disagree with the staff's conclusion that tight-fitting cotton garments present less of a hazard than loose-fitting cotton garments. I am skeptical, however, of the staff's conclusion that if the standard is amended, parents will switch from loose-fitting cotton garments (e.g. t-shirts) to exempt tight-fitting sleepwear. There is no factual evidence of consumer demand for tight-fitting sleepwear. There is no factual evidence that consumers would switch from loose-fitting noncomplying garments to exempted tight-fitting garments. It is at least as likely that the purchase of tight-fitting garments will be at the expense of garments that meet the children's sleepwear flammability standards. If so, the level of safety afforded children may well be reduced. Further, even if skin tight garments could reduce burn injuries, I am concerned that it is not practical to think that consumers will actually sleep in them. We may well find that consumers purchase tight-fitting garments in larger sizes to increase comfort, thereby obviating any safety benefit staff has indicated might be achieved with tight-fitting garments.

Regarding the proposed exemption for sleepwear for infants less than six months of age, existing evidence shows that infants at this tender age are exposed to ignition sources. The exemption would cover at least 20% of sleepwear garments in sizes 0-14. I am unable to agree to an exemption that could leave these infants more vulnerable to injury or death.