



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting by Ballot

1111 - 18th Street, N.W.
Washington, D.C.

Voting: Chairman King
Commissioner Pittle
Commissioner Sloan
Commissioner Zagoria

ITEM

Request by Administrative Conference for CPSC Method of Implementing Recommendation 78-4, Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulation

(Briefing material transmitted by the Office of the Secretary on April 4, 1979.)

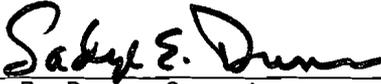
DECISION

The Commission approved the attached comments on the above-referenced matter for transmittal to the Honorable Robert Anthony, Chairman, Administrative Conference of the U.S., Washington, D.C.

VOTE

Concurring: Chairman King (4/17/79)
Commissioner Pittle (4/17/79)
Commissioner Sloan (4/18/79)
Commissioner Zagoria (4/17/79)

For the Commission:



Sadye E. Dunn, Secretary



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WASHINGTON, D.C. 20207

APR 30 1979

Honorable Robert Anthony
Chairman
Administrative Conference
of the United States
Washington, D. C.

Dear Chairman Anthony:

This is in response to your letter of January 23, 1979, in which you advised the Commission that the Administrative Conference of the United States has adopted Recommendation 78-4, Federal Agency Interaction with Private Standards-setting Organizations in Health and Safety Regulation. You asked that the Commission advise you of its practices in this area and of the steps we are planning to take or have taken to comply with the procedures included in the Recommendation.

As you are aware, the Commission published in the FEDERAL REGISTER of May 4, 1978, a policy statement entitled "Commission Involvement In Voluntary Standards Activities", 16 CFR 1032 (43 Fed. Reg. 19216). That policy statement sets forth the manner in which the Commission intends to be involved in voluntary standards activities and the role of voluntary standards activities in the development of mandatory standards by the Commission. In addition, the Commission in 1978 revised its regulation on Employee Membership and Participation In Voluntary Standards Organizations, 16 CFR 1031 (43 Fed. Reg. 30795, July 18, 1978).

The Commission's policy statements to a large extent are consistent with the provisions of Recommendation 78-4. The Commission's policy statements recognize the role of voluntary standards in product safety and, consistent with

section 1 of the Recommendation, provide for staff involvement with voluntary standards technical committees along lines substantially in accord with the criteria in section 6(c) of the Recommendation. To the extent Commission resources allow, Commission employees are involved in the activities of technical committees of significant interest to the Commission as recommended in paragraph 1(a). In addition, the Commission through its Office of Program Management and its routine interaction with voluntary standards bodies, keeps abreast of voluntary standards activities of interest to it and recommends changes in standards where appropriate.

Commission representatives who attend voluntary standards meetings are in all cases nonvoting representatives of the Commission. Moreover, Commission employees may not formally indicate approval of a voluntary standard. This policy provision is stronger than the Recommendation which would only prohibit employees from voting on a voluntary standard or binding the agency regarding such a standard. Also consistent with the Recommendation is the CPSC's policy of not allowing its staff to accept primary leadership roles on development committees so as not to dominate the committees, 16 CFR 1031.5(g) (Recommendation 1(c)). Moreover, where relevant, the Commission describes in rulemaking notices any involvement it has with voluntary standards organizations involved in the proceeding (Recommendation 1(d)).

The Administrative Conference's Recommendation suggests that agency employees who participate in the development of a voluntary standard should not participate in the agency's decision on whether to adopt or to revise that standard unless no other personnel with the requisite knowledge and experience are available (Recommendation 1(a)). Under the Commission's Policy on Membership and Participation in Voluntary Standards Organizations, 16 CFR 1031, agency employees who make final decisions or develop final recommendations are prohibited from participating in the development of voluntary standards, except as otherwise specifically provided by the Commissioners. Those employees who are allowed to participate in voluntary standards activities are permitted to be involved in an official capacity in evaluating the voluntary standard, as long as they describe clearly, as part of their evaluation, the

extent of their participation in its development. The Commission believes that this procedure is necessary in view of its limited staff.

Under the Consumer Product Safety Act, the Commission has the authority to propose a voluntary standard as a mandatory standard in lieu of developing a new standard. The Commission will propose voluntary standards in lieu of developing a new standard in those situations where such action is appropriate. The Commission actions in the area of adopting voluntary standards generally will be consistent with paragraphs 6 and 7 of the Recommendation. The Commission, in conjunction with any use of voluntary standards, is continuing to study the "regulatory guide" approach discussed in paragraph 7(e) of the Recommendation.

Section 4 of the Recommendation suggests that federal agencies regularly review standards or revisions to standards in the agency's area of expertise proposed by technical committees. It also recommends that agencies advise such committees on a regular basis whether the proposed standards and revisions appear to be consonant with the agency's regulatory responsibilities.

It is the Commission's view that this section of the Recommendation, while a worthy goal, may prove to be unduly burdensome to federal agencies, particularly small agencies such as the Commission. The Commission simply does not have the resources to advise technical committees on a regular basis whether standards they issue or revise are appropriate. The Commission, however, will to the extent consistent with its resources and priorities comment on proposed standards or revisions to standards proposed by technical committees concerning consumer products with which the Commission is particularly concerned.

The Commission's policy statement on involvement with voluntary standards organizations diverges somewhat from the provisions of the Recommendation in the area of the role of voluntary standard technical committees (section 1(b)). The Recommendation states that when an agency is considering whether to modify an existing mandatory health or safety standard or to develop a new one, it "should normally ask an appropriate technical committee... to consider the matter and the data bearing on the possible need for a modification or a new standard." This action is to be done before

the agency independently proposes modified or new standards as an advance notice of proposed rulemaking which describes the interactions between the agency and the technical committee. The notice is also to explain how the public's views may be communicated to the voluntary standards committee.

The Commission's policy statement provides in relevant part that the Commission may defer initiating a mandatory development proceeding if there is clear evidence to show that development of a voluntary standard that adequately addresses the risk of injury presented by a consumer product, began prior to a Commission determination that the product presents an unreasonable risk of injury; and development of a voluntary standard will be completed expeditiously. In addition, the Commission may defer action on a mandatory standard if it finds that a voluntary standard is adequate in all but one or two areas.

The Commission in its policy in effect puts the responsibility on voluntary standards organizations to initiate standards activities before the Commission decides to take such action. The Recommendation, on the other hand, in effect places the responsibility on the federal agency to ask an appropriate technical committee to consider whether a new or revised standard is needed; and to provide the technical committee the first opportunity to develop a standard.

It is the Commission's view, as indicated in its comments on the proposed Recommendation, that it is inappropriate for it always to defer action on the question of mandatory standard activity in order to give voluntary standards technical committees an opportunity to consider the matter and the data bearing on the possible need for modification of an existing standard or the need for a new standard. This provision inappropriately places voluntary standards technical committees in a privileged position compared to other interests. The Commission, however, will proceed on a case-by-case basis in determining the appropriate action to take regarding standard development. In this regard, the Commission's policy statement on Commission involvement in voluntary standards activities is one that evolved over a period of time and after much consideration. At this time that policy statement appears to be the most appropriate way for the Commission to carry out its statutory mandate.

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In proceeding under its policy, the Commission does comply with the spirit of the Recommendation in that before taking action to develop a mandatory standard it considers available alternatives including the development of voluntary standards. Moreover, under the policy the Commission may, in certain cases, defer to a voluntary standards organization for development of standards. For example, the Commission's policy provides that where the Commission finds a voluntary standard to be adequate in all but one or two areas, it may defer mandatory standard activity and request standards development organizations to revise the standard to address the identified inadequacies. Moreover, the Commission has in the case of a standard for chain saws, deferred to a voluntary standard development effort. In the case of chain saws, however, the Commission negotiated a development time table and assured itself that the development procedures were adequate to insure participation by all interests.

Please do not hesitate to contact me if you have any questions regarding the Commission's views on Recommendation 78-4.

Sincerely,



Susan B. King
Chairman

bcc: OGC CHRON
OGC FILE
OGC ATTORNEY/SCHOEM
OGC READING

AHSchoem:AD:4/25/79
OGC Control No. 1683
OS Control No. 121-79