



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

MINUTES OF COMMISSION MEETING

November 2, 1983

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

The November 2, 1983, meeting of the U.S. Consumer Product Safety Commission was convened in open session by Chairman Nancy Harvey Steorts. Commissioners Terrence Scanlon, Edith Barksdale Sloan and Sam Zagoria were present.

Ballot Vote Decisions. Chairman Steorts read into the record the following decisions made by ballot vote of the Commissioners.

1. Issuance of Requirement that Manufacturers of Coal and Wood Stoves Submit Copies of Labels and Instructions to the Commission

The Commission voted unanimously (5-0) to approve a Federal Register notice issuing a requirement that manufacturers and importers of coal and wood burning appliances subject to 16 CFR Part 1406 submit to the Commission copies of the performance and technical data (labels and instructions) that are required to be furnished with these appliances.

2. Recommendation to Amend the Government in the Sunshine Act

The Commission voted 3-2 to approve a letter supporting the recommendation of the Administrative Conference of the United States to amend the Government in Sunshine Act as proposed in its Federal Register notice of September 27, 1983. Commissioners Scanlon and Sloan voted not to approve.

3. FOIA Appeal - Request of Chemical Manufacturers Association

The Commission voted unanimously (5-0) to affirm the decision of the Freedom of Information Officer to withhold a first draft of a contractor's report and narrative monthly "progress reports," pursuant to FOIA Exemption 5.

4. Appeal of Denial of Consumer Complaint Reports, S-306246

The Commission voted 4-0-1 to affirm the decision of the Freedom of Information Officer to withhold specified material. Commissioner Sloan abstained. Commissioners Sloan and Statler filed brief statements with the Office of the Secretary explaining their votes.

5. Appeal of Denial of Consumer Complaint Reports, S-103094

The Commission voted 4-0-1 to affirm the decision of the Freedom of Information Officer to withhold specified material. Commissioner Sloan abstained. Commissioners Sloan and Statler filed brief statements with the Office of the Secretary explaining their votes.


Agenda Matter: Consumer Complaint Processing

The staff briefed the Commission on the results of a study concerning the receipt, processing and disposition of consumer complaints at CPSC during fiscal year 1983. The briefing described several modifications in complaint handling made during the year that have enhanced CPSC's role as a major conduit for information sharing between government, business and the consumer, including: implementation of a process to obtain consumer confirmation of complaints; reduced withholding of complaints from manufacturers; increased frequency of mailing of complaints to manufacturers; and the distribution of in-depth investigations to manufacturers. In its discussion, the Commission asked the staff to take additional steps to further enhance the complaint process in two areas: (1) to obtain confirmation by the consumer of complaints filed by third party professionals, such as attorneys, and (2) to obtain responses from more of the manufacturers to whom complaints are sent, working with trade associations and member firms' consumer affairs executives.

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

For the Commission:

Dated \_\_\_\_\_

  
\_\_\_\_\_  
Sadye E. Dunn  
Secretary

*Journal of 11/1/83*

Commission is requiring the submission of this information, along with the required labeling and directions, in order to assist the Commission in determining that the proper information is being furnished with the appliances. This requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act. [Control No. 3041-0040.]

**DATE:** This rule is effective December 8, 1983. Copies of the required data shall be furnished to the Commission by that date or within 30 days after any change in the data or introduction of a new model.

**ADDRESSES:** All materials the Commission has that are relevant to this proceeding may be seen in, or copies obtained from, the Office of the Secretary, Room 328, 5401 Westbard Avenue, Bethesda, Maryland 20207, phone (301) 492-6800.

**FOR FURTHER INFORMATION CONTACT:** Wade Anderson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, phone (301) 492-6400.

**SUPPLEMENTARY INFORMATION:**  
Background

On May 16, 1983, the Commission issued a rule under section 27(e) of the Consumer Product Safety Act, 15 U.S.C. 2076(e), requiring that certain performance and technical data be provided with coal and wood burning stoves, freestanding fireplaces, and similar appliances. 18 CFR Part 1406; 48 FR 21898. Part of the data required to be furnished is in the form of labeling on the device, including the depiction of installation clearance distances, and complete installation, operation, and maintenance directions are also required to be furnished with the appliance.

A complete explanation of the provisions and rationale for this rule is set forth in the Federal Register notice that issued the rule.

When this rule was initially proposed, it included a requirement that manufacturers, including importers, of the appliances provide the Commission with copies of the directions and labeling that they are using to satisfy the requirements of 18 CFR Part 1406. Under the proposal, manufacturers would also provide to the Commission a statement of how the clearance distances that are required by the rule to be stated on the appliance were determined. Submission

<sup>1</sup> The rule was approved by a 4-0 vote of the Commission. Newly appointed Commissioner Terrance Scanlon abstained.

of these data is required so the staff can determine (1) that the specific statements required by the rule are present, (2) that other types of information required by the rule, but not required to be in specific language, are present, and (3) whether the clearance distances stated appear appropriate or whether further investigation is necessary.

When 18 CFR Part 1406 was issued, the Commission stated that these proposed information submission requirements would be issued after they had been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This approval has now been obtained (OMB Control No. 3041-0040), and the requirements are issued below.

**Comment on the Proposal**

One comment on the proposed rule related to the requirement to submit data to the Commission. This commenter stated that the proposed rule did not provide any protection against disclosure of test data submitted to the Commission to a party who requested it under the Freedom of Information Act. The commenter stated that the rule should provide such protection.

In general, the Commission does not have the authority to withhold information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, unless the information fits into one of the exemptions provided in 5 U.S.C. 552(b). The exemption that could fit the situation described by this commenter is in paragraph (4) of that section, which concerns "trade secrets and commercial or financial information obtained from a person and privileged or confidential." If the information submitted fits into this category, under 15 U.S.C. 2055(a)(2) the Commission would be prohibited from disclosing it. Therefore, exemption (3) of the FOIA (which exempts items that are specifically exempted from disclosure by statute, under certain conditions) would also be applicable. Disclosure of trade secrets and certain other types of confidential information is also prohibited by 18 U.S.C. 1905. Furthermore, under 15 U.S.C. 2055 (with certain exceptions), the Commission may not release information that would enable the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product unless (1) the Commission notifies the manufacturer or private labeler of the intended disclosure, (2) provides them an opportunity to comment, and (3) takes the reasonable steps provided in 15 U.S.C. 2055(b). This section provides

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1406**

**Performance and Technical Data for Coal and Wood Burning Appliances; Reporting Requirements**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission issues a requirement that manufacturers and importers of coal and wood burning stoves, freestanding fireplaces, and similar appliances provide to the Commission copies of performance and technical data that are required to be supplied with these appliances by a previously-issued Commission regulation. Part of the required data is in the form of labeling on the device, including the depiction of installation clearance distances; also, complete installation, operation, and maintenance directions are required to be furnished with the appliance. The rule being issued also requires the submission of a statement of how the clearance distances (required by the previous rule to be stated on the appliance and in the instructions) were determined. The

(a) *Written notice.* Manufacturers shall provide to the Commission copies of the written notice required by § 1406.4(a). If the written notice is provided to purchasers in a way, such as by casting or stamping the notice into the stove, that makes it impractical to furnish a sample of the actual notice to the Commission, the manufacturer will provide an actual-size copy of the notice and a description of the forming process.

(b) *Directions.* Manufacturers shall provide to the Commission a copy of the directions required by § 1406.4(b).

(c) *Rationale.* Manufacturers shall provide to the Commission a statement of how the distances to combustibles required to be stated by § 1406.4(a)(1) were determined. In addition, the manufacturer will state the type of appliance, its fuel, size, and weight, and the material of which it is constructed, unless this information is included in the directions submitted under paragraph (b) of this section.

(d) *General.* (1) The information required to be submitted under paragraph (a) through (c) of this section shall be submitted for each distinct design or model of appliance manufactured. An appliance will be considered to be a distinct design or model if it differs from other appliances of the same manufacturer by functional differences such as performance, weight, size, or capacity. Differences in cosmetic or other nonfunctional features do not require the submission of additional information.

(2) The written notice, directions, and rationale shall be provided to the Associate Executive Director for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Bethesda, Maryland 20207, by December 6, 1983. If there is a subsequent change in the component materials or design features of a model for which this information was previously submitted that could cause the model to require different clearances from combustibles or a different type of chimney, or if a new product is introduced into United States commerce, the required information shall be submitted within 30 days after the change or introduction.

(Approved by Office of Management and Budget under control number 3041-0040)

Dated: October 31, 1983.

Sadye E. Dunn,  
Secretary, Consumer Product Safety  
Commission.

(FR Doc. 83-2987 Filed 11-2-83; 8:45 am)

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