



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

MINUTES OF COMMISSION MEETING

October 5, 1983

Third Floor Hearing Room
1111 - 18th Street, N.W.
Washington, D.C.

The October 5, 1983, meeting of the U.S. Consumer Product Safety Commission was convened in open session by Chairman Nancy Harvey Steorts. Commissioners Terrence Scanlon, Stuart M. Statler 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. Withdrawal of Toy Chest Proposed Rule

The Commission voted 3-2, with Commissioners Sloan and Zagoria dissenting, to approve a draft Federal Register document withdrawing a proposed mandatory rule that addressed the risk of strangulation from hinged toy chest lids, relying instead upon a voluntary standard.

2. Consent Order Agreement - OS #4758

The Commission voted unanimously (5-0) to provisionally accept a Consent Order Agreement in the matter of Richard E. Nichols and Cheri Nichols, d/b/a Cotton Dreams.

Agenda Matters.

1. Oral Contraceptives - PPPA Exemption

The staff briefed the Commission on issues related to a proposed regulation to exempt from child-resistant packaging requirements certain cyclically administered oral contraceptives. The exemption was proposed on February 11, 1974, in response to petitions from six pharmaceutical firms. In proposing the exemption, the Commission cited the low acute toxicity of oral contraceptives, and medical literature and human experience data which showed that the estrogen and progestogen substances used in oral contraceptives do not present an acute ingestion hazard to young children. Following publication of the proposed exemption, concerns were raised regarding possible chronic health effects that may be associated with accidental ingestion of oral contraceptives by young children.

Staff reported that it has completed an evaluation of additional human experience data and up-to-date information on the substances and levels of substances used in oral contraceptives, and concludes that oral contraceptives do not pose a risk of either acute or long-term adverse health effects in children who may accidentally ingest them. To permit public comment on all data currently available, staff is recommending that the Commission repropose the exemption rather than finalize it based on the previous proposal. The Commission will decide this matter at the Commission meeting of October 20, 1983.

2. Enforcement Matter (OS #4540)

Meeting then in closed session, the Commission considered issues relating to an enforcement matter. The Commission will further consider this matter at a future Commission meeting.

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

For the Commission:

October 19, 1983
Date

Sadye E. Dunn
Sadye E. Dunn
Secretary

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1513

Requirements To Address Strangulation Risk Presented by Toy Chests; Withdrawal of Proposed Rule

AGENCY: Consumer Product Safety
Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission is withdrawing a proposed mandatory rule that addressed the risk of strangulation from a hinged toy chest lid falling on a child's head while the child is leaning into the chest. The withdrawal is based on the adequacy of a voluntary standard which the Commission believes is adequate to reduce or eliminate this risk of injury.

DATE: The withdrawal is effective on October 6, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Tyrrell, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Commission has authority, under the Federal Hazardous Substances Act (FHSA), to regulate unreasonable risks of injury presented by toys and other articles intended for use by children. 15 U.S.C. 1261. The FHSA requires the Commission to follow a three-stage proceeding to issue such a regulation. 15 U.S.C. 1262(e-i).

In April 1982 the Commission issued an advance notice of proposed rulemaking (ANPR)—the first stage—to address the risk of strangulation from a toy chest lid falling on a child's head while the child is leaning into the chest. 47 FR 16041 (April 14, 1982). A few of the public comments on the ANPR stated (as the Commission was already aware) that a voluntary standard for toy chests was being developed to address this risk. The Toy Manufacturers of America (TMA) was developing the standard under the auspices of the American Society for Testing and Materials (ASTM).

In March 1983 the Commission issued a proposed rule—the second stage—to

address the toy chest strangulation risk. 48 FR 11289 (March 17, 1983). The preliminary regulatory analysis accompanying the proposed rule included the finding that the Commission had "not as yet received sufficient documentation to indicate that substantial compliance [with the ASTM voluntary toy chest standard under development] can be expected." 48 FR 11295.

ASTM requested the return of final ballots on its voluntary standard by August 22, 1983, although ballots returned after that date may be considered. As long as no negative votes are filed that will require resolution and thus delay the approval process (ASTM has received none so far), the publication date of the voluntary standard is expected to be no later than the end of calendar year 1983.

B. Statutory Framework

After the ANPR stage of a three-stage FHSA rulemaking proceeding, the Commission must evaluate any voluntary standards submitted by the public. If compliance with any such standard is likely to result in the elimination or adequate reduction of the identified risk and if it is likely that there will be substantial compliance with the standard, the Commission must terminate the proceeding to issue a mandatory standard and notify the public that it will rely on the voluntary standard to address the risk. 15 U.S.C. 1262(g)(2).

When the Commission considered comments on the toy chest ANPR, the ASTM voluntary standard was being developed. The Commission decided that the voluntary standard did not satisfy the two-pronged finding necessary for termination of the proceeding. More specifically, as noted in *Background* above, the Commission could not find that substantial compliance "can be expected." 48 FR 11295. That finding was of course based on then-available information.

After the proposal stage of an FHSA rulemaking proceeding, the Commission must make certain findings before it can proceed to the third stage and issue a final rule. The Commission must again evaluate existing voluntary standards because one of the findings is, " * * * in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—(i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or (ii) it is unlikely that there will be substantial compliance

with such voluntary standard * * * " 15 U.S.C. 1262(i)(2)(A).

Therefore, the Commission can go no further than the proposal stage if it believes that there is likely to be substantial compliance with an adequate voluntary standard.

C. Decision

The Commission has determined that the risk of injury presented by the chests is effectively reduced by reliance on a voluntary standard to address the risk of injury, instead of issuing a mandatory standard. As a result, the toy chest rule proposed in March 1983 is hereby withdrawn,¹ and the rulemaking proceeding begun with the ANPR in April 1982 is hereby ended.²

While the ASTM voluntary standard on toy chests has not yet been formally published, and thus may not technically be "adopted" the Commission considers it to be in final form. The requirements of the ASTM standard are identical to those of the Commission's proposed mandatory standard. This means that compliance with this voluntary standard is likely to result in the elimination or adequate reduction of the risk that a hinged toy chest lid will fall on a child's head while the child is leaning into the chest.

The Commission has considered the information on compliance with the ASTM standard that is in the record of the rulemaking proceeding. The most recent information in the record is from a telephone survey by the Commission staff of 59 firms that are now, or have been in recent years, manufacturers of toy chests.

Information supplied by the twenty firms that currently manufacture toy chests with hinged lids indicates that 98 percent of such toy chests manufactured thus far in 1983 have—and all of the ones made during the remainder of 1983 will have—lid support devices on them to address the toy chest strangulation risk. The Commission believes that the

¹ If the Commission made this decision after the ANPR stage and before the proposed rule stage, it would be a "termination" of the proceeding under section 3(g)(2) of the FHSA. The decision to abandon the proceeding after the proposal stage, based on the inability to make the two-pronged finding about the inadequacy of an existing voluntary standard, is essentially a "termination" of the proceeding. However, since the FHSA does not apply this term, a "withdrawal" of the proposed rule serves the same purpose.

² The Commission's vote was 3-2. Commissioner Zagoria voted to defer a decision until a voluntary industry standard was actually adopted and the Commission compliance staff could confirm the data from the telephone survey (see below); Commissioner Sloan voted to issue a final rule. All five Commissioners have issued separate statements or opinions that are available from the Office of the Secretary.

types of devices being used, spring-loaded and non-adjustable friction lid supports, are capable of meeting the voluntary standard as long as they are properly constructed and installed, thereby adequately reducing or eliminating the risk of injury. Available information about the testing of the toy chests currently produced by the twenty firms is that sixteen firms say their chests pass tests of the lid support devices, and the remaining four firms say there is no need to test because their toy chests have spring-loaded lid support devices on them.

Based on the information from the telephone survey and all other available information, the Commission cannot find that there is unlikely to be substantial compliance with the ASTM voluntary standard. However, the withdrawal of the proposed mandatory rule on toy chests does not leave the Commission powerless to protect consumers from toy chests that may present a strangulation hazard to children. If some hazardous toy chests do appear on the market in spite of the voluntary standard, the Commission fully intends to seek remedial action against them. In fact, the Commission staff will be monitoring the toy chest market.

Authority: Secs. 2(f)(1)(D), (q)(1)(A), (s); 3(a-1), 75 Stat. 372, 374, 375, 80 Stat. 1304-05, 83 Stat. 187-89, 95 Stat. 703; 15 U.S.C. 1261, 1262.

Dated: October 3, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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BILLING CODE 6355-01-M

**CONSUMER PRODUCT SAFETY
COMMISSION**

[CPSC Docket 84-C0001]

**Richard E. Nichols and Cheri Nichols,
Individuals Doing Business as Cotton
Dreams; Provisional Acceptance of a
Consent Order Agreement****AGENCY:** Consumer Product Safety
Commission.**ACTION:** Provisional acceptance of a
Consent Order Agreement under the
Flammable Fabrics Act.**SUMMARY:** Under requirements of 16
CFR 1605.13, the Commission must
publish in the *Federal Register* consent
agreements which it provisionally
accepts under the Flammable Fabrics
Act. Published below is a provisionally-
accepted Consent Order Agreement
with Richard E. Nichols and Cheri
Nichols, individuals doing business as
Cotton Dreams.**DATES:** Any interested person may ask
the Commission not to accept this
agreement by filing a written request
with the Office of the Secretary by
November 2, 1983.**ADDRESS:** Persons wishing to comment
on this Consent Order Agreement
should send written comments to the
Office of the Secretary, Consumer
Product Safety Commission,
Washington, D.C. 20207.**FOR FURTHER INFORMATION CONTACT:**
Stephen E. Joyce, Directorate for
Compliance and Administrative
Litigation, Consumer Product Safety
Commission, Washington, D.C. 20207;
telephone (301) 492-6626.

Dated: October 13, 1983.

Sadye E. Dunn,
*Secretary.***SUPPLEMENTARY INFORMATION:** In the
Matter of Richard E. Nichols and Cheri
Nichols, d.b.a. Cotton Dreams; Consent
Order Agreement.

Richard E. Nichols and Cheri Nichols,
doing business as Cotton Dreams, under
the laws of the State of Florida
(hereinafter, Respondents) enter into
this Consent Order Agreement
(hereinafter, Agreement) with the staff
(hereinafter, the Staff) of the Consumer
Product Safety Commission (hereinafter,
the Commission) pursuant to the
procedure for consent order agreements
contained in Section 1605.13 of the
Commission's Procedures for
Investigations, Inspections, and
Inquiries under the Flammable Fabrics
Act (FFA), 16 CFR Part 1605.

This Agreement and Order are for the
sole purpose of settling the allegations
of the staff that Respondent has sold

certain noncomplying children's sleepwear, in violation of the Flammable Fabrics Act and the standards, rules, and regulations thereunder as more fully set forth in the complaint accompanying this agreement.

Respondents and the Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following Acts: The Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*); and the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*).

2. Cotton Dreams is a name used by Richard E. Nichols and Cheri Nichols; Cotton Dreams is organized and does business under the laws of the State of Florida; is engaged in the sale of articles of children's playwear considered by the Commission to be sleepwear; and has its principal place of business and address located at 9090 U.S. 1, Wabasso, Florida 32970.

3. Richard E. Nichols does business as Cotton Dreams and controls its acts, practices and policies.

4. Cheri Nichols does business as Cotton Dreams and controls its acts, practices and policies.

5. Respondents are now and have been engaged in one or more of the following:

a. The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, and the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), the Standard for Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71), and the implementing rules and regulations (16 CFR Part 1615); and

b. The importation into the United States, or the manufacture for sale, the sale, or the offering for sale of a product made of fabric or related material, which has been shipped or received in commerce and which is subject to the requirements of the Flammable Fabrics Act, the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71), and the implementing rules and regulations; and

c. The manufacturing for sale, or the offering for sale, in commerce, or the importation into the United States, and the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or

related material which is subject to the requirements of the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (FF 5-74), and the implementing rules and regulations (16 CFR Part 1616); and

D. The importation into the United States, or the manufacture for sale, the sale, or the offering for sale, of a product made of fabric or related material, which has been shipped or received in commerce, and which is subject to the Flammable Fabrics Act, the Standard for Flammability of Children's Sleepwear: Sizes 7 through 14 (FF 5-74), and to the implementing rules and regulations.

6. This Agreement is for settlement purposes only, does not constitute an admission by Respondents they have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the incorporated Order (hereinafter, Order) upon Respondents.

7. A 2-piece garment such as that described in paragraph IV(D) of the attached Order with or without a collar, with sleeves, and without attached feet, made of 100% cotton rib-knit fabric is not an item of children's Sleepwear.

8. Respondents waive (a) all requirements for findings of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

9. Violation of the provisions of the Order may subject Respondents to a civil penalty of not more than \$10,000 for each such violation.

10. The Commission may disclose the terms of this Consent Order Agreement.

11. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA.

12. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission may issue the following Order:

Order

I. It is hereby ordered that Respondents, their successors and assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from selling or offering for sale, in commerce, or importing for

sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material which fails to conform to the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71) (16 CFR Part 1615); the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (FF 5-74) (16 CFR Part 1616) or the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610). These standards were issued, amended and continue in effect under the provisions of the Flammable Fabrics Act. For purposes of this Order, whether a product of wearing apparel is intended to be worn for sleeping or activities related to sleeping depends on many factors including: (a) The suitability for use by children for sleeping or activities related to sleeping, (b) the manner in which the product is distributed or promoted, and (c) the likelihood that the product will be used for sleeping or activities related to sleeping.

II

It is further ordered that Respondents consider before importing or selling any style garment, subject to this Order: (a) the sleeping or activities related to sleeping, (b) the manner in which the product is distributed or promoted, and (c) the likelihood that the product will be used by children primarily for sleeping or activities related to sleeping.

III

It is further ordered that Respondents maintain records to demonstrate that they have considered each of the three factors enumerated in paragraph II, above, before deciding to import and/or sell any style garment. These records must be maintained for one year beyond such time as they have ceased the importation, sale or distribution of the individual garment.

IV

It is further ordered that from the date this Order becomes effective, Respondents, their authorized agents, assigns, successors, authorized representatives and authorized employees, directly or through any corporation, subsidiary, division or other device, forthwith cease and desist from selling or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling

or delivering after sale or shipment in commerce, the following styles of garments irrespective of color and trim which the Commission staff has alleged do not comply with the Standard for Flammability of Children's Sleepwear: Sizes 0 through 6X (FF 3-71), 16 CFR Part 1615, or the Standard for Flammability of Children's Sleepwear: Sizes 7 through 14 (FF 5-74), 16 CFR Part 1616:

(A) Style #127, Long Flannel, Grandpa Shirt. A 100% cotton snap-front, ankle-length flannel shirt, with or without sleeves and with or without a collar. Attachment A is a picture of the style of garment that is the basis for this prohibition.

(B) Item #W128, Infants Striped Daygown. A long gown with a buttoned neck, drawstring bottom, ribbed cuffs and neck made of 100% cotton knit fabric. Attachment B is a picture of the style of garment that is the basis for this prohibition.

(C) Item #152, Flannel Daygown. A midcalf or longer gown, with or without sleeves, made of 100% cotton flannel fabric. Attachment C is a picture of the style of garment that is the basis for this prohibition.

(D) Item #2P79L, 2-piece Striped Playsuit. A two-piece garment with or without a collar, with sleeves, and attached feet, made of 100% cotton rib-knit fabric. Attachment D is a picture of the style of garment that is the basis for this prohibition. This garment without attached feet is not sleepwear.

V

It is further ordered that Respondents permit the Commission staff to conduct inspections to determine compliance with this Order and to select samples of sleepwear or related articles of clothing in inventory at Respondents' place of business.

VI

It is further ordered that, for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to the event of any proposed change in their business, such as incorporation, dissolution, assignment, or sale resulting in the emergence of another business; the creation or dissolution of subsidiaries; or any other change in the way Respondents do business which may affect compliance obligations arising out of this Order.

Any agreement, understanding, representation, or interpretation that is not contained in this Agreement and the incorporated Order may not be used to

vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 28th day of July, 1983.

RICHARD E. NICHOLS,

d/b/a Cotton Dreams.

CHERI NICHOLS,

d/b/a Cotton Dreams.

Stephen E. Joyce,

Counsel for the Commission Staff.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the Federal Register.

So ordered by the Commission, this 13th day of October, 1983.

Sadye E. Duna,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-28357 Filed 10-17-83; 8:45 am]

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