



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

MINUTES OF COMMISSION MEETING

December 22, 1992

5401 Westbard Avenue

Bethesda, Maryland

The December 22, 1992, meeting of the U.S. Consumer Product Safety Commission was convened in open session by Chairman Jacqueline Jones-Smith. Commissioners Carol G. Dawson and Mary Sheila Gall were present.

Agenda Matters.

1. Election of Vice Chairman

Upon nomination by Commissioner Dawson, with Chairman Jones-Smith seconding the nomination, Commissioner Mary Sheila Gall was elected by unanimous vote (3-0) to serve as Vice Chairman of the U.S. Consumer Product Safety Commission for the term beginning January 1, 1993, and ending December 31, 1993. Chairman Jones-Smith filed a statement concerning the election of the Vice Chairman, copy attached.

2. Charcoal Container Labeling, Petition HP 91-1

The Commission considered Petition HP 91-1 from Barbara Mauk requesting that the Commission issue changes in the labeling requirements for packages of charcoal to address hazards from carbon monoxide. The Commission was briefed by the staff on the petition at the Commission meeting of December 3, 1992. (Ref. staff briefing package dated November 18, 1992.)

Following introductory comments by Chairman Jones-Smith concerning the issues raised in the petition and the requirements for rulemaking under Section 3(b) of the Federal Hazardous Substances Act (copy attached), Chairman Jones-Smith moved to grant the petition submitted by petitioner Mauk as to the statements that charcoal produces carbon monoxide and that carbon monoxide has no odor and to deny all other portions of the petition; further, to direct the staff to prepare a notice of proposed rulemaking to be published in the Federal Register to amend the required labeling for charcoal in a manner consistent with this motion, but which also proposes that such labeling be revised with respect to the indoor use of charcoal. The motion was adopted by a vote of 2-1, Chairman Jones-Smith and Commissioner Dawson voting in favor and Commissioner Gall voting against.

Charcoal Container Labeling Petition, continued

A statement filed by Chairman Jones-Smith concerning the charcoal container labeling matter is attached.

3. Advance Notice of Proposed Rulemaking on Children's Sleepwear

The Commission considered a staff recommendation that the Commission issue an advance notice of proposed rulemaking (ANPR) to amend the standards for the flammability of children's sleepwear, sizes 0 through 6X and 7 through 14, to exempt tight-fitting garments and garments intended for infants. The Commission was briefed by the staff on this matter at the Commission meeting of November 18, 1992. (Ref. staff briefing package dated November 3, 1992.)

Following introductory comments by Chairman Jones-Smith (copy attached), the Commission voted unanimously (3-0) on motion of Chairman Jones-Smith to adopt the staff's recommendation to issue an ANPR to amend the standards for the flammability of children's sleepwear by exempting close-fitting garments and garments intended for infants. The Commission further directed the staff to prepare a Federal Register notice to be approved by the Commission by ballot vote.

Separate statements on this matter have been filed by Chairman Jones-Smith and Commissioner Dawson, copies attached.

4. Enforcement of Children's Sleepwear Standard

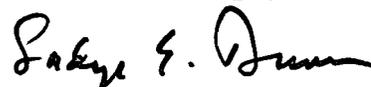
Meeting in closed session, the Commission and staff discussed issues related to the enforcement of the children's sleepwear standard.

5. Voluntary Standards/International Affairs

Reconvening in open session, the Commission was briefed by the staff on voluntary standards and international affairs activities carried out by staff during the fourth quarter (July - September) of fiscal year 1992.

There being no further business on the agenda, Chairman Jones-Smith adjourned the meeting.

For the Commission:



Sadye E. Dunn, Secretary

Attachments



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**Statement of Chairman Jacqueline Jones-Smith
On the
Election of a 1993 Commission Vice-Chairman
December 22, 1992**

The term of the current Vice Chairman ends this month, December, and I am pleased to support Commissioner Dawson's nomination of Commissioner Mary Gall to serve as CPSC Vice Chairman for 1993.

I recognize that the Commission has an internal policy which provides for the rotation of the Vice Chairmanship and that the natural rotation of the office would be back to Commissioner Dawson. However, in light of the fact that Commissioner Dawson is currently serving a continued term, which ends in October 1993, it just makes sense to elect as Vice Chairman the Commissioner whose official term goes beyond that point.

I know that Commissioner Gall will do a fine job.



U.S. CONSUMER PRODUCT SAFETY COMMISSION

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**CHAIRMAN JACQUELINE JONES SMITH'S OPENING STATEMENT
ON A PETITION FOR AMENDMENT OF LABELING REQUIREMENTS
FOR CHARCOAL INTENDED FOR HOUSEHOLD USE**

December 22, 1992

This morning the Commission will vote on whether it should grant Petition # HP 91-1, which would have the Commission amend the existing labeling requirements for packages of charcoal intended for household use. This Petition was submitted to the Commission on October 12, 1990 and docketed by the Office of General Counsel on March 27, 1991.

Petitioner is the mother of a child who died as a result of carbon monoxide poisoning. This tragedy occurred when the child was overcome by carbon monoxide emitted from a charcoal grill located inside a camper in which he was sleeping.

Petitioner requests that current labeling requirements be amended to include warnings that burning charcoal produces carbon monoxide and other toxic fumes until it is completely extinguished, and that carbon monoxide has no odor.

Staff recommends that this petition be granted in part and denied in part. In addition, Staff recommends that it be authorized to determine whether additional labeling changes ought to be mandated that might further clarify the dangers associated with burning charcoal -- particularly if used indoors.

The Commission was briefed by the Staff on these matters on December 3, 1992.

It should be noted that should the Commission approve all or part of the Staff's recommendations, a rulemaking proceeding would be conducted in accordance with Section 3(b) of the Federal Hazardous Substances Act (FHSA). The requirements under Section 3(b) differ from other forms of Commission rulemaking in several ways.

First, they involve a two-part rulemaking process initiated by a Notice of Proposed Rulemaking. Secondly, they provide that existing labeling requirements can be amended if they are "inadequate" in their current form and as such pose a "special hazard" to the public's health and safety. Notably, there is no

necessity to make "unreasonable risk" findings nor must the Commission engage in an extensive cost-benefit analysis in order to promulgate such labeling modifications.



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**CHAIRMAN JACQUELINE JONES SMITH'S STATEMENT ON A
PETITION FOR AMENDMENT OF LABELING REQUIREMENTS
FOR CHARCOAL INTENDED FOR HOUSEHOLD USE**

December 22, 1992

Today, I voted to grant, in part, Petition # HP 91-1, to amend the existing labeling requirements for packages of charcoal intended for household use. In addition, I voted to authorize the Staff to determine whether certain additional labeling modifications may be appropriate to clarify the nature of the potential hazard posed by burning charcoal briquets.

Petitioner is the mother of a child who died as a result of carbon monoxide poisoning. This tragedy occurred when the child was overcome by fumes emitted from a charcoal grill located inside a camper in which he was sleeping.

Petitioner requested that current labeling requirements be amended to include warnings that burning charcoal produces carbon monoxide and other toxic fumes until it is completely extinguished, and that carbon monoxide has no odor. Staff recommended that only those portions of the petition pertaining to an explicit warning of the presence of odorless, Carbon Monoxide fumes be granted. I agreed with this portion of the Staff's recommendation.

In addition, Staff recommended that it be authorized to research whether additional labeling changes ought to be mandated that might further clarify the dangers associated with burning charcoal -- particularly if used indoors. I agreed, but voted to limit these additional inquiries as to whether or not the cautionary language pertaining to the indoor use of charcoal, on the current labels, is dangerously misleading.

The rulemaking procedures initiated today by the Commission were conducted in accordance with Section 3(b) of the Federal Hazardous Substances Act (FHSA). The requirements under Section 3(b) differ from other forms of Commission rulemaking in several ways.

First, they involve a two-part rulemaking process initiated by a Notice of Proposed Rulemaking. Secondly, they provide that existing labeling requirements can be amended if they are "inadequate" in their current form and as such pose a "special hazard" to the public's health and safety. Notably, there is no necessity to make "unreasonable risk" findings nor must the

Commission engage in an extensive cost-benefit analysis in order to promulgate such labeling modifications.

I believe that the Staff's preliminary findings suggest that the current labeling requirements may not only be inadequate, but may in fact be dangerously misleading. Should these preliminary indications be affirmed by evidence produce through these proceedings, they would satisfy the statutory requirements for a final determination that a "special hazard" exists and that this hazard must be rectified by modifications to the labeling requirements.

Currently, our regulations require the following label:

WARNING: Do Not Use For Indoor Heating or Cooking Unless Ventilation is Provided for Exhausting Fumes to Outside. Toxic Fumes May Accumulate and Cause Death.

Preliminary evidence indicates that the phrase "toxic fumes" does not trigger as effective a warning as does the specific term "Carbon Monoxide". Identifying the fact that Carbon Monoxide is odorless may also enhance the adequacy of this label.

Finally, I am especially concerned that the current wording may be tragically misleading. It gives no guidance to the consumer as to what constitutes adequate indoor ventilation. In addition, I believe that it is questionable as to whether the indoor burning of charcoal for "heating or cooking" ought to be recommended under any circumstances. This agency issues consumer alerts specifically warning against burning charcoal indoors. The Commission has an obligation to correct this mixed message.

For these reasons, I believe that it is appropriate for Staff to proceed with a Section 3(b) rulemaking; but just for the limited purposes indicated above. I did not find the additional recommendations of either the Petitioner or Staff to be compelling under our statutory guidelines and, thus, voted to limit the scope of the staff's project.



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**CHAIRMAN JACQUELINE JONES-SMITH'S
OPENING STATEMENT ON APPROVING THE
STAFF'S RECOMMENDATION TO PUBLISH AN
ADVANCE NOTICE OF PROPOSED RULEMAKING
TO CONSIDER AMENDING THE CHILDREN'S
SLEEPWEAR FLAMMABILITY STANDARD**

December 22, 1992

Today the Commission will consider a staff recommendation to amend existing safety standards for the flammability of children's sleepwear. At issue, at this time, is whether circumstances have changed sufficiently since the promulgation of the current regulations to warrant a reexamination of these sleepwear standards.

In 1972 and 1975, flammability standards were adopted that prescribed certain tests for fabrics used for manufacturing children's sleepwear. Untreated cotton fabric can not pass these flammability tests. As a consequence, today, virtually all garments explicitly marketed as children's sleepwear are made of polyester material.

According to staff, however, current market trends strongly suggest an increasing consumer preference for 100% cotton garments. As a consequence, consumers appear to be substituting "non-sleepwear" items, such as "long underwear", playwear, daywear, sweatsuits, tee-shirts, etc., all made of cotton fabric, for traditional, children's sleepwear.

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 appear to have multiple uses.

More alarming, however, 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. Why? Staff has produced some preliminary evidence that "loose fitting" garments -- such as tee-shirts and nightgowns -- may pose a far greater flammability hazard than "tight fitting" garments. Indeed, several Countries have explicitly adopted flammability standards based upon this "loose fitting"/"tight fitting" distinction.

For these, and other reasons, the Commission directed the staff, in November 1991, to establish a project to examine the scope of the sleepwear standard. Based upon their findings, staff has proposed the publication of an Advance Notice of Proposed Rulemaking to amend the current regulations by exempting tight fitting garments and garments intended for infants from the existing sleepwear standard.

I should stress that, ultimately, if the Commission adopts this or a modified, staff recommendation, the most critical question that the staff would be required to address is whether these exemptions would tend to lower the level of protection of the public -- and of children in particular -- from the unreasonable risk of fire. This, of course, would be wholly unacceptable.



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**CHAIRMAN JACQUELINE JONES-SMITH'S
STATEMENT ON APPROVING THE
STAFF'S RECOMMENDATION TO PUBLISH AN
ADVANCE NOTICE OF PROPOSED RULEMAKING
TO CONSIDER AMENDING THE CHILDREN'S
SLEEPWEAR FLAMMABILITY STANDARD**

December 22, 1992

Today I voted to approve the staff's recommendation to publish an Advance Notice of Proposed Rulemaking (ANPR) to consider amending existing safety standards for the flammability of children's sleepwear. The Commission voted unanimously to adopt this recommendation.

The major issue to be examined by the staff is whether circumstances have changed substantially enough since the promulgation of these regulations, in the early 70', to warrant a modification of these children's sleepwear flammability standards.

While some of the raw data suggests that these 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.

A most troubling concern for me, is the possibility that certain contemporary marketing trends and consumer preferences may, in fact, have increased the risk of injury and death associated with the use of children's sleepwear. A brief review of the background will clarify how this has developed.

In 1972 and 1975, flammability standards were adopted that prescribed certain tests for fabrics used for manufacturing children's sleepwear. Untreated cotton fabric does not pass these flammability tests. As a consequence, today, the overwhelming percentage of garments explicitly marketed as children's sleepwear are made of synthetics, such as polyester.

According to staff, however, current market trends strongly suggest an increasing consumer preference for clothing made out of

According to staff, however, 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, tee-shirts, etc., all made of cotton fabric, for traditional, children's sleepwear.

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 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. Why? Staff has produced some preliminary evidence that "loose fitting" garments -- such as tee-shirts and nightgowns -- may pose a far greater flammability hazard than "tight fitting" garments.

Indeed, several Countries -- such as Canada, Australia and New Zealand -- have explicitly adopted flammability standards based upon this "loose fitting"/"tight fitting" distinction. As part of this rulemaking procedure, staff will evaluate the effectiveness of these standards, as compared to our own, to determine whether they present a better alternative.

As a consequence of these, and other developments, the Commission directed the staff, in November 1991, to establish a project to examine the sleepwear standard. Based upon their findings, staff recommended the publication of an ANPR to reexamine and possibly amend the current regulations by exempting tight fitting garments and garments intended for infants from the existing sleepwear standard.

My vote to go forward with this rulemaking, of course, should in no way be interpreted as suggesting any predisposition on my part to amend the existing standards. I remain completely open. I would stress, however, that the most critical question that the staff must first address, and resolve to my satisfaction, is

whether these exemptions would tend to lower the level of protection of the public -- and of children in particular -- from the unreasonable risk of fire. This, of course, would be wholly unacceptable to me. I absolutely will not compromise safety based upon market trends or consumer preferences.

Naturally, as part of this rulemaking process, the public is being invited to comment on our recommendations. I look forward to seeing the public's response.

Finally, in light of the Commission's decision to approve this ANPR, it is my understanding that the compliance staff, consistent with the concerns noted above, will be using its discretion in modifying its enforcement policy with regard to the existing sleepwear, flammability standards. A statement, elaborating on this policy, will be included in the Federal Register notice. Again, I have been assured by staff that such a relaxed enforcement policy should have no adverse safety consequences. It is my intention to monitor this enforcement strategy very closely.



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**Statement of
Commissioner Carol G. Dawson
on the
Proposed Amendment to the
Flammability Standard for Children's Sleepwear**

December 22, 1992

Today, I joined my colleagues in voting to issue an Advance Notice of Proposed Rulemaking (ANPR) to amend the Flammability Standard for Children's Sleepwear. The amendment under consideration would exempt close-fitting garments, and garments intended for infants.

The key consideration for the Commission is to determine whether, under changed circumstances of the 1990's, the current children's sleepwear standard is realistic. Judging from preliminary data, it would appear certain noncomplying garments pose very little risk. The amendments under consideration would exempt garments that present a very low fire hazard; but those same garments would continue to be covered by the general wearing apparel standards under the Flammable Fabrics Act.

Injury data from 1980 to 1991 show that an estimated 96 percent of all sleepwear-related injuries involved females. Nightgowns are the most frequent type of sleepwear cited in these incidents. The data also indicate that virtually no clothing ignition burn injuries reported involved infants. These data suggest that, while sleepwear-related burns occur relatively infrequently, loose-fitting garments pose the highest risk of fire ignition. The risk to infants is essentially nonexistent.

The Commission's decision to consider amending the children's sleepwear standard was, in part, a response to increased consumer demand for 100 percent cotton garments. Such garments do not meet the current sleepwear standard. Commission market data suggest that many children may not be sleeping in traditional sleepwear, but rather in other garments that are not form fitting, such as loose-fitting T-shirts made of 100 percent cotton, which may pose a greater risk of fire ignition than traditional sleepwear.

Moreover, some manufacturers attempt to circumvent the sleepwear standard in order to meet consumer demand for 100 percent cotton by blurring the line between sleepwear and so called "daywear," "playwear" and "long underwear." These garments often do not comply with the sleepwear standard. This obscure distinction between sleepwear, daywear and long underwear creates a difficult enforcement problem for the Commission.

Available injury data and preliminary staff analysis seem to indicate that exemptions of tight-fitting garments and garments for infants would not decrease the level of protection provided by the standard. Given the consumers' preference for cotton sleepwear, an exemption could allow greater consumer choice without increasing risk of injury.