



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

MINUTES OF COMMISSION MEETING
November 15, 1990
5401 Westbard Avenue
Bethesda, Maryland

The November 15, 1990, meeting of the U.S. Consumer Product Safety Commission was convened in open session by Chairman Jacqueline Jones-Smith. Commissioners Carol G. Dawson and Anne Graham were present.

Ballot Vote Decisions. The following decisions made by ballot vote of the Commissioners were placed into the record.

1. Federal Register Notice for Privacy Act Systems of Records: Personnel Security File (Due 10/29/90)

The Commission voted unanimously (3-0) to approve the Federal Register notice reporting on a Privacy Act system of records consisting of personnel security files and to approve letters submitting the report to the Office of Management and Budget and Congress. Voting to approve were Chairman Jones-Smith, Commissioner Dawson, and Commissioner Graham.

2. Request from American Textile Manufacturers Institute (ATMI) for Use of the Commission's Name (Due 11/8/90)

The Commission voted unanimously (3-0) to authorize ATMI to use the phrase "A public service message of the Consumer Product Safety Commission" in the revised public service announcement; allow ATMI to reproduce the letter to the television networks on the Commission's letterhead; approve the draft letter to ATMI with a specified change; and approve the draft letter to the television networks. Voting to approve were Chairman Jones-Smith, Commissioner Dawson, and Commissioner Graham.



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Opinion of
Commissioner Carol G. Dawson
Regarding
Petition CP-89-4
Safety Standard for Waterbeds

November 15, 1990

I voted today to deny petition CP-89-4, requesting a mandatory labeling standard to warn against possible infant suffocation on adult-size waterbeds. My decision is based on data presented to the Commission by staff, both in the briefing packages and in Commission meetings.

The staff provided statistical data showing that any risk of injury associated with adult-size waterbeds is virtually equal to that of adult-size conventional mattresses. More importantly, in both cases the risk is extremely small.

The petitioner requested that the government begin rulemaking to mandate that labels be attached to all waterbeds to warn about the potential of suffocation to infants. While this may seem simple enough, there are several practical problems which would accompany such action.

First, if the Commission requires labels for waterbeds, then logic would dictate that labels also be required for all mattresses, since the risk of injury is virtually the same in both cases.

Second, to justify such a mandatory label, the Commission would have to have some indication of its effectiveness. But the effectiveness of safety labeling to address suffocation hazards on waterbeds or conventional mattresses is uncertain, at best. Staff reported that labeling "may have some merit," but that a label is not likely to be noticed during everyday use and, furthermore, its message may contradict consumers' past experience and, therefore, be ignored.

Third, there is the question of whether mandating labels for waterbeds is an activity meriting use of the Commission's resources. Given the low level of the risk and the uncertain effectiveness of a warning label, can the Commission afford to expend resources on this project? I believe not.

I do support, however, a Commission effort to examine the overall issue of infant suffocation. There are approximately 200 suffocations to children under one year of age annually associated with some type of product. A thorough analysis of infant suffocations might reveal common threads among suffocation incidents. It could aid the Commission in providing clear guidance to consumers or identify other products that do pose a serious hazard, such as was the case with infant bean bag cushions.

The data currently before us on this one product present no evidence to conclude that there is an unreasonable risk of suffocation associated with waterbeds. Under our statutes, consequently, there is no basis for federal intervention.

Infants should never be left on adult beds of any kind. The Commission has issued safety alerts in the past, urging parents not to leave infants on adult beds and, I would presume, will continue to do so in the future. These alerts advise consumers that infants should sleep only in cribs that meet federal safety standards and industry voluntary standards for cribs.



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Statement of
Chairman Jacqueline Jones-Smith
on Petition for Mandatory Labeling
Standard for Waterbeds
November 15, 1990

Today the Commission considered a petition requesting the development of a mandatory labeling standard for adult-size waterbeds that would require a permanent warning of a suffocation hazard on waterbed mattresses, on accompanying printed instructions, on sales receipts, and on posters at the place of purchase. After considering the information contained in staff briefing packages in light of the criteria set forth in the Commission's regulations at 16 CFR §1051, I voted to deny the petition.

Although there is a risk to infants of suffocation associated with adult-size waterbeds, I believe that, based on the available information, it may be difficult to establish that the product presents an unreasonable risk. I found the following facts compelling: (1) the product is intended for adults, (2) there is a relatively low number of incidents compared to the millions of waterbeds in use, (3) there is a comparable risk ratio and hazard pattern associated with conventional beds, and (4) by contrast, with infant cushions, a product that involves a similar hazard pattern, there is a relatively high number of incidents compared to the millions of products in use.

Moreover, it is uncertain at this time that the requested labeling standard would be effective. According to the staff, a label would have to overcome consumers' prior benign experience with mattresses. The fact that the label would be covered most of the time by bedding would decrease the likelihood that the label would be noticed or its safety message followed.

While any injuries or deaths to infants are tragic, the Commission cannot address all risks raised in petitions through mandatory standards but only those risks which withstand scrutiny under the relevant statutes and regulations.

Throughout the briefing on this matter much attention was focused on the industry's activities in establishing a voluntary waterbed labeling program. This effort, though encouraging, does not form the basis for my decision. It is my belief that the industry's actions have no bearing on the initial consideration of whether the risk should be addressed through a mandatory standard.

Staff made three other recommendations regarding additional actions to be taken. I rejected the staff's recommendations to (1) request that the industry submit their voluntary labeling program to a national standards organization and (2) monitor the development of and eventual conformance with the voluntary standard. I have consistently stated that this agency is small and cannot address all safety problems. Given the fiscal realities in which the agency must operate, the Commission must target its resources and support those programs which provide the greatest margin of safety for the American consumer. Given the low relative risk of suffocation with waterbeds compared to other products and the uncertainty as to the effectiveness of a labeling program in this case, I believe the Commission could best target its resources in areas where the outcome is more significant and more certain.

The staff also recommended providing information on this hazard through normal consumer education activities. Providing information to consumers has always been an important aspect of the Commission's program to help prevent injuries and deaths associated with consumer products. The Commission has placed special emphasis on providing information on hidden or non-obvious hazards to infants including bed suffocation hazards.

I support the continuation of these information activities. I am relatively confident that my colleagues also are supportive of these efforts. However, inasmuch as a formal Commission vote was not needed to provide this information in the past, I do not believe that such a vote is needed at this time. These activities will continue.



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Petition CP-89-4 Safety Standard for Waterbeds Statement

Under section 110 of the reauthorization legislation recently passed by the Congress, and currently awaiting Presidential signature, the Consumer Product Safety Commission is prohibited from denying any petition "on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition," and the Commission has determined that the standard will adequately reduce the risk of injury and will be substantially complied with by the affected industry. The staff briefing materials on the waterbed petition state clearly that the voluntary labeling program now under consideration by the waterbed industry "is not a voluntary standard developed by a nationally recognized voluntary standards organization, nor has the staff verified the industry's claims that most manufacturers will follow it." Thus, in keeping with the spirit, if not the letter, of this new legislation, the Commission cannot deny this petition on the basis of an existing voluntary standard.

Subsequent to the Commission briefing on this matter on October 24, 1990, the Waterbed Manufacturers Association (WMA) met and apparently adopted a labeling program for waterbeds which, WMA now argues, is a voluntary standard. The Office of the General Counsel has expressed uncertainty as to whether this WMA labeling program would be a voluntary standard in the sense Congress intended under section 110 of the reauthorization legislation. Clearly, however, the WMA program has not been developed in accordance with reasonable procedures such as those used by national consensus standards groups, such as ANSI.

Even if it could be argued that the WMA labeling program is a voluntary standard that is "in existence", in my view, the record before the Commission does not currently support a finding that the industry's labeling proposal is adequate to reduce the risk of injury or will be substantially complied with by the industry. The staff has raised questions as to the content, format, and adequacy of the label originally proposed by the industry and has suggested a number of improvements. Although the industry has agreed to adopt all of the staff's changes, save for the orange border around the signal word, the Commission needs to be assured that these alterations are in fact made and

that the program is properly developed, implemented, and adhered to. On this latter point it is important that the Commission have hard facts before it, such as number of complying manufacturers and number of complying products, demonstrating that there will be substantial compliance by the industry.

Of course, under the Commission's regulations on petitions, 16 C.F.R. §1051.9, the Commission must also consider whether waterbeds present an unreasonable risk of injury to infants and whether a rule is reasonably necessary to address this risk. While the staff states that "it may be difficult" to establish unreasonable risk, I do not believe that the facts in this matter support this assertion. Determination of unreasonable risk requires the Commission to consider the costs versus the benefits of the proposed mandatory action. Data recently submitted by the staff show that waterbed related infant deaths average about 8 per year and that the risk of injury is about .22 deaths per million in use. The Commission staff has now advised the Commission that the maximum cost of a label for waterbeds is around 10 cents per label. With label effectiveness of even 25%, representing about 2 lives saved, the Directorate for Economics' data indicate that costs of up to 87 cents per label could be justified. Thus, with an estimated labeling cost to the industry of only 10 cents per label the benefits of a label clearly outweigh the costs. Additionally, although a waterbed is an adult product, in my view the likelihood of an adult placing an infant on a waterbed is a foreseeable use. Thus, I believe the Commission has more than adequate grounds to find, at least preliminarily, that waterbeds present an unreasonable risk of suffocation to infants.

On the question of the effectiveness of a label to address this hazard, the Human Factors memo in the briefing package acknowledges that "the petition to require labels on waterbed mattresses warning of suffocation risks to children may have some merit." Given the data, it is my belief that alerting the public to the potential hazard of infant suffocation associated with waterbeds, particularly since this hazard may not be perceived by the consumer as obvious, is certainly better than the current situation where no warnings exist at all. Further, I note that the conventional mattress industry currently has a hang tag program warning about infant suffocation. This is particularly interesting, since data submitted in the supplemental staff briefing package indicate not only that the risk of injury for waterbeds is about equal to that of conventional mattresses, but also, that the percentage of fatalities related to conventional mattresses attributed to "suffocation with no wedging or layover" is 3%, as compared to 23% for waterbed related fatalities.

This year the Commission voted to proceed with an ANPR to develop labeling to address choking hazards presented by balloons, small balls, and marbles. The data presented to the Commission prior to that vote illustrated that during a nine year period, 32 fatalities were attributed to small balls. In addition, the staff estimated that 300-350 million small balls are sold annually. The petition now before the Commission also requests a labeling remedy and concerns yet another potential hazard to children. This time, however, economics estimates 4 million waterbeds are sold per year while 48 children have died over a six year period. Thus there is precedent in the Commission's recent history to issue an ANPR regarding hazards to children even when the fatalities appear to be few in the face of an extremely high number of products on the market.

Therefore, in my view, given the provisions of the reauthorization legislation and the requirements of the Commission's current rulemaking and petitioning provisions, we have no choice but to grant this petition and issue an ANPR.



Anne Graham, Commissioner
November 15, 1990



U.S. CONSUMER PRODUCT SAFETY COMMISSION

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MINUTES OF COMMISSION MEETING

November 7, 1990

5401 Westbard Avenue

Bethesda, Maryland

The November 7, 1990, meeting of the U.S. Consumer Product Safety Commission was convened in open session by Chairman Jacqueline Jones-Smith. Commissioners Carol G. Dawson and Anne Graham were present.

Agenda Matters.

1. Final Rules: Child-Resistant Packaging for Glue Removers Containing Acetonitrile and Permanent Wave Neutralizers Containing Potassium Bromate or Sodium Bromate

The Commission considered whether to issue final rules to require child-resistant packaging for two products: 1) household glue removers, in liquid form, containing more than 500 mg of acetonitrile in a single container and 2) home permanent wave neutralizers, in liquid form, containing in a single container more than 600 mg of sodium bromate or more than 50 mg of potassium bromate. Special packaging requirements for these products had been proposed in the Federal Register of January 16, 1990. On October 24, 1990, the Commission was briefed by the staff on issuance of the final rules, the staff's response to the one comment received on the proposal, and the draft Federal Register notice that would issue the child-resistant packaging rules. (Ref. Staff briefing package dated October 10, 1990.)

On motion of Chairman Jones-Smith, the Commission voted unanimously (3-0) to issue final rules to require child-resistant packaging for glue removers containing acetonitrile and for permanent wave neutralizers containing potassium bromate or sodium bromate, and to approve the Federal Register notice in the briefing package as drafted. Chairman Jones-Smith has filed a statement concerning this matter, a copy of which is attached.

Commission Minutes
November 7, 1990

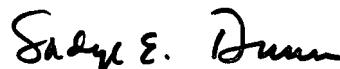
2. Waterbeds Petition, CP 89-4

The Commission was briefed by the staff on Petition CP 89-4 from the Consumer Federation of America, the New York State Attorney General, and the American Academy of Pediatrics requesting a mandatory labeling standard for adult-size waterbeds to warn of a suffocation hazard to children. The staff had also briefed the Commission on this matter on October 24, 1990 (staff briefing package dated October 9, 1990), and subsequently had provided additional information in response to questions raised at the briefing. (Ref: staff briefing package dated November 2, 1990.) The Commission also had received material from the Office of the General Counsel concerning the effect on the Commission's petition procedures of the Consumer Product Safety Improvement Act of 1990, if signed into law by the President (November 6, 1990, Official Use Only); a statement of the Waterbed Industry in opposition to the petition, filed on November 5, 1990; and a letter dated November 5, 1990, in support of the petition from the petitioners.

The Commission asked questions of the staff and requested that additional information be provided. No decisions were made on the petition at today's briefing.

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

For the Commission:



Sadye E. Dunn
Secretary

Attachment