



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

MINUTES OF COMMISSION MEETING
June 16, 1999
4330 East West Highway
Bethesda, Maryland

The June 16, 1999, meeting of the U. S. Consumer Product Safety Commission was convened in open session by Chairman Ann Brown. Commissioner Mary Sheila Gall and Commissioner Thomas H. Moore were present.

Agenda Item: Proposed Revocation of 1996 and Later Amendments to the Children's Sleepwear Flammability Standards, Sizes 0 through 6X and sizes 7 through 14

The Commission considered options related to its proposed revocation of the 1996 and later amendments to the children's sleepwear flammability standards that exempted infant garments sized 9 months and under and tight-fitting garments in larger sizes. The proposed revocation, published in the Federal Register on January 19, 1999, was directed by the fiscal year 1999 appropriations legislation for the Commission and other agencies, which further directed that, by July 1, 1999, the Commission issue a final rule revoking, maintaining or modifying the amendments.

On June 9, 1999, the staff briefed the Commission on the staff's analysis of written and oral comments received in response to the proposed revocation, reports by the General Accounting Office on burn-incident data and information and education efforts, and other available information, and on the staff's recommendations that the Commission (1) withdraw its proposed revocation of the amendments to the children's sleepwear flammability standards, (2) issue a labeling requirement for tight-fitting sleepwear, and (3) correct several references in the sleepwear standards. (Ref: staff briefing package dated June 3, 1999)

At today's meeting, the Commission voted on three motions offered by Commissioner Moore as follows:

(1) The Commission voted 2-1 to approve the Federal Register notice to withdraw the proposed revocation of the 1996, and subsequent amendments, to the children's sleepwear flammability standards, such approval to be subject to corrections to the notice to be approved by a majority of the Commission by close of business on June 17, 1999. Commissioner Moore and Commissioner Gall voted in favor. Chairman Brown voted in opposition.

(2) The Commission voted 2-0-1 to approve the Federal Register notice modifying the amendments to the children's sleepwear flammability standards to require that tight-fitting sleepwear bear a neck label and hangtag, such approval to be subject to corrections to the notice to be approved by a majority of the Commission by close of business on June 17, 1999. Commissioner Moore and Commissioner Gall voted in favor. Chairman Brown abstained.

(3) The Commission voted 2-0-1 to approve the Federal Register notice, as drafted, which corrects several references in the children's sleepwear flammability standards, sizes 0 through 6X. Commissioner Moore and Commissioner Gall voted in favor. Chairman Brown abstained.

Commissioner Moore, Commissioner Gall, and Chairman Brown filed separate statements concerning the sleepwear amendment revocation matter, copies attached.

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

For the Commission:



Sadye E. Dunn
Secretary

Attachments

**STATEMENT OF COMMISSIONER MARY SHEILA GALL
ON THE DECISION TO WITHDRAW THE PROPOSED REVOCATION OF
AMENDMENTS TO THE CHILDREN'S SLEEPWEAR FLAMMABILITY
STANDARDS**

June 16, 1999

I voted today to withdraw the proposed revocation of the amendments to the Children's Sleepwear Flammability Standard, to issue a labeling requirement for tight-fitting sleepwear, and to correct several references in the sleepwear standards.

My decision was based on a thorough review of the injury data, technical evaluations and the findings of both of the GAO reports. The Commission received 3,400 written comments and I read each letter carefully and fully considered the statements of the 21 witnesses who appeared at our hearing. This second scrutiny of evidence reinforced my belief that these amendments provide a safe cotton alternative for children's sleepwear.

Unfortunately, there has been much misinformation and confusion surrounding this debate. While I do recognize the commendable motives of those who have urged the Commission to revoke the amendments, they have mischaracterized the intent of our regulations. The purpose of the amendment was to provide a safe alternative to the increased use of long underwear style cotton garments being marketed as sleepwear. Traditional pajamas, robes and nightgowns still must be flame resistant. The sleepwear standard is restricted to protect against ignition caused by brief exposure to small open flames.

In its report on children's burn injury data, GAO states that the overall risk of injury appears to be small. This is consistent with the evidence gathered and evaluated by the staff. However, because of the small number of injuries, the GAO concluded that data is statistically insufficient to assess the effects of the amendments. Still, and most importantly, the GAO concluded there is no evidence to support the conclusion that the amendments have increased risk.

GAO's report on the consumer information and education (I&E) efforts stated that 73% of tight fitting cotton garments they found had hang tags and labels. The safety message was inconsistent, however, and the hang tags were often inconspicuous. GAO acknowledged that unexpected delays in finalizing technical changes to the amendment, as well as industry production problems, resulted in a less coordinated I & E campaign than envisioned. The Commission worked closely with industry to develop technical changes to the amendment to alleviate these problems. Many sleepwear manufacturers waited to begin production until the technical changes to the amendments were finalized

in February 1998. As a consequence, consumers and retailers were confused by inconsistent messages.

In the past, I have questioned certain instances where the staff has recommended mandatory labeling for familiar products. However, in light of the particulars of this sleepwear issue, I consider mandatory labeling appropriate. It is not readily apparent to the consumer that these cotton garments must be tight fitting. Permanent labels on the garment will have a consistent message informing consumers that the garment is not flame resistant and should be tight fitting.

The continued success of this objective, however, depends on two things:

- 1.) Continued cooperation with industry , and
- 2.) The willingness of consumers to adhere to this safety message and use fire-resistant sleepwear or snug fitting cotton sleepwear.

I look forward to continue working with industry to educate the public about children's sleepwear safety.

**STATEMENT OF COMMISSIONER THOMAS HILL MOORE
ON THE PROPOSED REVOCATION OF THE CHILDREN'S SLEEPWEAR
AMENDMENTS**

June 16, 1999

I voted today: to approve the withdrawal of the proposed revocation of the amendments to the children's sleepwear flammability standards; to issue a labeling requirement for tight-fitting sleepwear; and to correct several references in the sleepwear standards.

Throughout this process there have been many misconceptions about the provisions of the original Sleepwear Standards and about the changes the Commission has made to them. The staff has done an excellent job of analyzing and responding to the public comments and in presenting their recommendations. I would particularly like to thank Margaret Neily, the current project manager. And Terry Karels who was the project manager during the original amendment process upon which much of today's decision still rests.

There are a few issues staff addressed in their most recent briefing package to the Commission that I think are worth reiterating.

Some people think that there are no longer any sleepwear standards. Nothing could be further from the truth. For most children--the ones found to be at greatest risk from small open flame ignition--only one specific style of garment, tight-fitting is exempt from the sleepwear flammability requirements. All of the styles of sleepwear that were the cause of burns to children in the past--robes, nightgowns and loose-fitting pajamas--must still meet the sleepwear flammability requirements. Those styles of sleepwear will not disappear.

Many people think that prior to the Commission's changes in 1996, most sleepwear garments were treated with chemicals to make them flame retardant. Again, this is not true. Less than one percent of either polyester or cotton sleepwear garments are treated with flame retardant chemicals. The vast majority of children's sleepwear garments are made from untreated polyester or untreated cotton. Both of which, under the right circumstances, can be ignited and both of which, depending upon the weight, finish and weave of the fabric and the fit of the garment can afford a degree of protection from a small open flame.

Nearly all commenters who spoke in favor of revocation, based their remarks on the belief that there are solid statistics that

show the sleepwear standards had a dramatic effect in reducing the deaths and injuries to children from sleepwear ignition. In fact, we have no baseline data from which to measure the performance of the standards. No national injury database existed prior to the promulgation of the standards and the death data on clothing ignition can not distinguish between deaths related to sleepwear and deaths related to other types of clothing. Clothing-related deaths, for all age groups, have declined dramatically over the last twenty-five years. The dramatic declines in age groups over age 15 could not have had anything to do with the children's sleepwear standard. A number of other factors had to come into play to cause this across-the-board reduction in deaths in all age groups. While I am sure the standards played some role in reducing deaths and injuries to children, we cannot measure it, nor can we separate out its effect from the many other societal factors that have reduced fire deaths and injuries in this country.

Certain proponents of revocation continue to insist that the Commission take into account burn incidents that are beyond the scope of the Children's Sleepwear Standards because those are the burn incidents that they have found. The original sleepwear standards were never intended to protect children from anything other than brief contact with a small flame, such as a match, cigarette lighter or candle. The three-second test with a one and one-half inch flame was meant to duplicate the most common fire scenarios that were identified in the incidents. We make no claim and we have no data to support the notion that any garment that passes the children's sleepwear standards' flammability test will protect a child from any larger flame or one of any longer duration. So to include burn incidents which involve bigger flames with longer exposure times would be, in effect, to require the cotton garments to pass a test that the flame resistant garments were never required to meet in the first place.

What factors led to the Amendments? The impetus for the change in the sleepwear standards was that some manufacturers, capitalizing on consumers' preference for cotton, were making long underwear that looked suspiciously like sleepwear and perhaps engaging in other activity to encourage parents to move to underwear as a cotton alternative to the traditional polyester sleepwear. Our enforcement staff tried to take action against these manufacturers, but as long as the garments were labeled "underwear," enforcement action was extremely difficult.

Once the staff began looking at the incidents of children being burned while wearing clothing they were put to sleep in, it became clear that oversized T-shirts were a dangerous choice for children's nightwear. However, staff never based its recommendation to the Commission, and I certainly did not base my vote, on any assumption that parents who permitted loose-fitting

cotton T-shirts to be used for their children's sleepwear would switch to tight-fitting cotton sleepwear. What we did believe would happen was that the same parents who went out of their way to buy form-fitting cotton underwear would buy slightly more form-fitting cotton sleepwear and that manufacturers, now having a legal cotton alternative, would stop skirting the sleepwear standards and make complying cotton sleepwear garments. Since the adoption of the amendments, sales of polyester sleepwear garments have grown, as have sales of the new cotton sleepwear garments, whereas cotton underwear sales, after years of marked growth are showing signs of flattening out. This may be an early indication that our strategy is working.

Some commenters say there has not been enough time to tell what effect the amendments to the standards have had. People focus on the effective date of the amendments (January 1, 1997), but ignore that the Commission, as early as 1979, had notice of consumers crossing over and buying long underwear to be used as pajamas. As that trend increased throughout the 1980's and 1990's, when the Commission was actively trying to enforce against these garments, the injury rate to children in clothing used for sleeping did not change. In other words, even though more children were being put to sleep in form-fitting cotton underwear garments, these garments were not involved in burn injuries or deaths from small open flames. Thus we have a much longer history without incidents--at least twenty years--not just back to the effective date of the amendments.

Now I would like to address the new labeling requirements. A number of people who testified or submitted comments attacked the lack of a uniform, nationwide information and education campaign on the part of industry to help consumers make an informed choice on children's sleepwear. I agree that there should be more uniformity in the message and that the level of conformance with the voluntary program is not nearly as high as it should be (although I am grateful to those manufacturers and retailers who did take their commitment seriously).

There are a number of reasons why industry never launched the full campaign, not the least of which was the uncertainty about the content and the future of the cotton exemptions. The Commission is also at fault for not taking a more aggressive posture in getting out the message about the changes in the sleepwear standard and reminding consumers about why the standards were promulgated in the first place. The Commission will take a more active role in the future. The mandatory hangtag and permanent neck label we have adopted today should make it easier for consumers to select the type of sleepwear they want for their children and for secondhand users to know the garment is not flame resistant and must fit their child snugly.

Our new message is 'look for the yellow tag' if you want to determine which garments are the snug-fitting cotton sleepwear. I imagine that makers of flame-resistant sleepwear will find a similar way to make their garments more readily identifiable to the consumer.

While we have no mandatory requirements for hangtags and labels to be printed in Spanish (and we were supplied with no data to support the need for this) I would certainly hope that manufacturers who sell in regions of the country with a high Spanish-speaking population would consider the need for this.

We have given manufacturers a year to switch over to the new hangtag and label, but I would encourage manufacturers who are able to do so, to make the switch sooner. We want to be able to tell consumers about this new labeling and the sooner it appears, the sooner we can get our message out.

The mandatory labels will replace part of the voluntary information and education campaign, but retailers, manufacturers and the Commission need to get the story out about tight-fitting cotton sleepwear. Retailers, in particular, need to do their part in segregating non-sleepwear from sleepwear garments and in educating their sales personnel about what can and what can not be characterized as "sleepwear."

The Commission has now gone through what amounts to four-step rulemaking on this issue. It is clear from their comments that many of the opponents of the Commission's action in 1996 have never read the three previous briefing packages of the staff on this issue. I would hope before any Members of Congress contemplate taking further action in this area that they would read those three packages, along with the most recent one, and not be guided by the misconceptions that have obscured this issue.

--



THE CHAIRMAN

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

**Statement of Chairman Ann Brown
Decision on Revocation of Amendments to Children's Sleepwear Standard**

June 16, 1999

I regret that I must differ from my fellow Commissioners today in voting against the motion to withdraw the proposal to revoke the 1996 amendments to the Children's sleepwear standard.

I believe that the original children's sleepwear standard was instrumental in reducing burn-related deaths and injuries related to flammable sleepwear. The standard was straightforward and simple. It provided a high level of protection for children by requiring fabrics used in children's sleepwear to self-extinguish when exposed to a small open flame. The regulation was working well. This longstanding standard is credited with saving many lives and preventing countless burn-related injuries.

I voted against the 1996 amendments because I could not agree that the amendments would improve enforcement of the sleepwear standard or that 6-month-old infants were necessarily immobile. I also was skeptical of a promise by the sleepwear industry that it would implement an aggressive information and education program.

As I have said time and time again, my overriding concern throughout this entire process is the mission of our agency to keep our children safe. I have seen nothing to date in the oral or written testimony that has changed my original position. A compelling case has not been made to me that infants who are capable of wearing age 9 months sleepwear are not capable of moving to a dangerous ignition source.

I am also not convinced that parents will purchase the correct size of tight-fitting sleepwear so their children will not be at risk. There also is nothing in the record to demonstrate that the availability of this tight-fitting cotton alternative has reduced the use of looser cotton clothing such as cotton T-shirts, for sleepwear. Finally, our enforcement problems continue.

In addition, the industry has not fulfilled its promise to implement an effective information and education campaign. Although about three-fourths of the stores had hangtags, the GAO report evaluating the industry effort concluded that only 16 percent of stores visited displayed either consumer education brochures or signs about sleepwear safety requirements. And now, industry blames the Commission for its own spotty efforts.

In 1996, I said that changing the old standard created an environment that *may* put our children at greater risk for burn-related injuries and death. Even though our data sources have not disclosed any specific burn cases *directly* tied to the 1996 standard, I cannot in good conscience support a sleepwear standard that I believe may provide less protection for the Nation's children.

I abstained from voting on the staff proposal to require labeling of tight-fitting garments. While I have supported certain labeling requirements in the past, and will support them on a case-by-case basis in the future, I do not believe labeling is sufficient in this case. I believe that whenever possible, safety should be built into the product -- that is, in this case, the garments themselves should inherently resist ignition, rather than relying on the purchasing decisions of parents. While I recognize that the proposed labeling provisions will improve the standard somewhat, they do not go far enough in my view.

I wish to make one other point. Over the past several years, our staff has spent a great deal of time on this issue. Each Commissioner and their personal staffs have done the same. We have heard from thousands of people on both sides of the issue. We have carefully considered all aspects of the issue. This heavy expenditure of resources has been appropriate, because this is a very important safety issue. But this is not the only safety issue confronting the Commission.

And I believe it is now time to move on, lest, in our vigorous attention to this sleepwear question, we begin to spend less time on, and pull resources away from, other critical safety problems. Therefore, while I have not agreed with my fellow Commissioners on this issue, the issue has been decided and we now need to turn our attention to other important safety issues.