United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

CPSC/OFFICE OF THE SECRETARY

1998 DEC 10 P 2:53

BALLOT VOTE SHEET

DATE: December 10, 1998

TO : The Commission
Sadye E. Dunn, Secretary

FROM : Jeffrey S. Bromme, General Counsel
Stephen Lemberg, Asst. General Counsel
Harleigh Ewell, Attorney, GCRA (Ext. 2217) HE

SUBJECT: Codification of policy for hazardous liquids in consumer products

BALLOT VOTE DUE DEC 18 1998

On May 28, 1998, the Commission published in the Federal Register the text of a document that provides guidance for manufacturers, importers, distributors, and retailers of consumer products that may contain hazardous liquids. 63 FR 29182. To protect children and other persons from the toxic effects of exposure to these chemicals, the Commission recommended that manufacturers of such products refrain from filling them with hazardous liquids. Further, the Commission recommended that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that liquid-filled children's products do not contain hazardous liquid chemicals.

The staff believes that this policy would be more accessible to interested parties if it were part of the Code of Federal regulations. Accordingly, a Federal Register notice that would issue this policy as 16 C.F.R. § 1500.502 is attached for the Commission's consideration. Since this is not a substantive rule, and is a statement of policy and interpretative rule, notice and comment rulemaking and a delayed effective date are not required. 5 U.S.C. § 553.

Please indicate your vote on the following options.

I. CODIFY THE POLICY ON HAZARDOUS LIQUIDS IN CONSUMER PRODUCTS. Please check the relevant option(s) below.

____ 1. APPROVE THE ATTACHED DRAFT FEDERAL REGISTER NOTICE WITHOUT CHANGE.

(Option I continued on p. 2.)

NOTE: This document has not been reviewed or accepted by the Commission.
Initial rh **Date** 12/10/98

CPSA 6 (b)(1) Cleared
X No Mfrs/PrvtLblrs or Products Identified
X Excepted by
Notified

(Option I continued.)

____ 2. PUBLISH THE DRAFT FEDERAL REGISTER NOTICE WITH CHANGES (please specify).

_____ _____
(Signature) (Date)

II. DO NOT CODIFY THE POLICY ON HAZARDOUS LIQUIDS IN CONSUMER PRODUCTS.

_____ _____
(Signature) (Date)

Comments/Instructions:

Billing Code 6355-01P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Codification of Guidance Policy on Hazardous Liquids in Consumer Products

AGENCY: Consumer Product Safety Commission.

ACTION: Final policy statement.

SUMMARY: The Commission codifies a statement, issued previously and published in the **Federal Register**, that provides guidance for manufacturers, importers, distributors, and retailers of consumer products that are filled with a liquid, usually to help provide some type of visual effect. Examples of such products are paperweights containing snow scenes or boats, and some keychains and pens. To protect children and other persons from toxic effects of exposure to these liquids, the Commission recommends that manufacturers of such products not fill the products with hazardous liquids. Further, the Commission recommends that, before purchasing liquid-filled products for resale, importers, distributors, and retailers obtain

assurances from the manufacturers that the products do not contain hazardous liquids.

DATE: This policy has been effective since May 13, 1998.

FOR FURTHER INFORMATION CONTACT: Frank Krivda, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0400, ext. 1372.

SUPPLEMENTARY INFORMATION:

On May 28, 1998, the Commission published in the **Federal Register** the text of a document that provides guidance for manufacturers, importers, distributors, and retailers of consumer products that may contain hazardous liquids. 63 FR 29182. To protect children and other persons from the toxic effects of exposure to these chemicals, the Commission recommends that manufacturers of such products refrain from filling the products with hazardous liquids. Further, the Commission recommends that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that liquid-filled children's products do not contain hazardous liquid chemicals.

In order to make this policy more accessible to interested parties, the Commission is codifying the policy as 16 CFR 1500.502.

Since this is a statement of policy and an interpretative rule, neither a general notice of proposed

rulemaking nor a delayed effective date is required. 5 U.S.C. 553(d)(2). A delayed effective date is not required for the additional reason that this policy is not a substantive rule. 5 U.S.C. 553(d)(3). Accordingly, this codification will become effective immediately upon its publication in the **Federal Register**.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and Recordkeeping requirements, and Toys.

Effective date. This codification is effective _____ [insert date of publication].

For the reasons given above, the Commission amends 16 CFR Part 1500 as follows:

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261-1278; Agency policies, 63 FR 3310, 63 FR 29182.

2. A new § 1500.502 is added, reading as follows:

§ 1500.502 Guidance for hazardous liquid chemicals in children's products.

(a) *Summary*. The U.S. Consumer Product Safety Commission issues this guidance to manufacturers, importers, distributors, and retailers to protect children from

exposure to hazardous chemicals found in liquid-filled children's products, such as rolling balls, bubble watches, necklaces, pens, paperweights, keychains, liquid timers, and mazes.[1] The Commission identifies the major factors that it considers when evaluating liquid-filled children's products that contain hazardous chemicals, and informs the public of its experience with exposure to these hazardous chemicals to children. To reduce the risk of exposure to hazardous chemicals, such as mercury, ethylene glycol, diethylene glycol, methanol, methylene chloride, petroleum distillates, toluene, xylene, and related chemicals, the Commission requests manufacturers to eliminate the use of such chemicals in children's products. The Commission also recommends that, before purchasing products for resale, importers, distributors, and retailers obtain assurances from manufacturers that liquid-filled children's products do not contain hazardous liquid chemicals.

(b) *Hazard*. During reasonably foreseeable handling or use of liquid-filled children's products, hazardous chemicals may become accessible to young children in a manner that places children at risk. Young children are exposed to the chemicals from directly mouthing them or from

[1]This guidance is not a rule. It is intended to highlight certain obligations under the Federal Hazardous Substances Act. Companies should read that Act and the accompanying regulations at 16 CFR Part 1500 for more detailed information.

handling such objects and subsequent hand-to-mouth or hand-to-eye activity. The specific type and frequency of behavior that a child exposed to a product will exhibit depends on the age of the child and the characteristics and pattern of use of the product. The adverse health effects of these chemicals to children include chemical poisoning from ingestion of the chemicals, pneumonia from aspiration of the chemicals into the lungs, and skin and eye irritation from exposure to the chemicals. The chemicals may also be combustible.

(c) *Guidance*. (1) Under the Federal Hazardous Substances Act (FHSA), products that are toxic or irritants and that may cause substantial injury or illness under reasonably foreseeable conditions of handling or use, including reasonably foreseeable ingestion by children, are "hazardous substances." 15 U.S.C. 1261(f)(1). A product that is not intended for children, but that creates a risk of substantial injury or illness because it contains hazardous chemicals, requires precautionary labeling under the Act. 15 U.S.C. 1261(p). A toy or other article intended for use by children that contains an accessible and harmful amount of a hazardous chemical is banned. 15 U.S.C. 1261(q)(1)(A). In evaluating the potential hazard associated with children's products that contain hazardous chemicals, the Commission's staff considers certain factors on a case-by-case basis, including: the total amount of the hazardous chemical in a

product, the accessibility of the hazardous chemicals to children, the risk presented by that accessibility, the age and foreseeable behavior of the children exposed to the product, and the marketing, patterns of use, and life cycle of the product.

(2) The Commission's staff has identified a number of liquid-filled children's products, such as rolling balls, bubble watches, necklaces, pens, paperweights, maze toys, liquid timers, and keychains, that contain hazardous chemicals. In several of these cases, the staff determined that these products violated the FHSA because they presented a risk of chemical poisoning and/or chemical pneumonia from aspiration. This determination resulted in recalls or in the replacement of those products with substitutes, as well as in agreements with the manufacturers to discontinue the use of hazardous chemicals in liquid-filled children's products in future production. The Commission believes that these hazardous substances pose a risk to young children and, consequently, manufacturers should not have included them in the product design or manufacturing process.

(3) Therefore, the Commission considers the use of hazardous chemicals in children's products such as those described above to be ill-advised and encourages manufacturers to avoid using them in such products. Further, the Commission recommends that, before purchasing such products for resale, importers, distributors, and retailers

obtain assurances from the manufacturers that liquid-filled children's products do not contain hazardous liquid chemicals.

Dated: _____, 1998.

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Sayde E. Dunn, Secretary
Consumer Product Safety Commission