



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Ann Brown
Commissioner Mary Sheila Gall
Commissioner Thomas H. Moore

ITEM:

Policy Statement on Section 15(b) Reporting

DECISION:

The Commission voted 2-1 to approve with change a draft Federal Register notice seeking public comment on a policy statement that information concerning products sold outside of the United States that may be relevant to evaluating defects and hazards associated with products distributed within the United States is reportable under section 15(b) of the Consumer Product Safety Act. Chairman Brown and Commissioner Moore voted to approve. Commissioner Gall voted not to approve and filed a statement concerning her vote, copy attached.

For the Commission:

A handwritten signature in black ink that reads "Sadye E. Dunn".

Sadye E. Dunn
Secretary

* Ballot vote due December 13, 2000



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WASHINGTON, DC 20207

**STATEMENT OF THE HONORABLE MARY SHEILA GALL
IN OPPOSITION TO PUBLICATION OF POLICY
STATEMENT CONCERNING PRODUCTS
SOLD OUTSIDE OF THE UNITED STATES**

December 13, 2000

Today I voted against the publication of a policy statement that states that information concerning products sold outside of the United States must, under certain circumstances, be reported to the Commission under Section 15(b) of the Consumer Product Safety Act (CPSA). I support the concept of publishing this policy statement for comment, but I do object to the revised notice in its present form.

My principal objections to the revised notice are that it states that it is "a straight-forward reading of the CPSA," and that "[The Commission] will give the public an opportunity to comment prior to our issuance of this policy statement." I fear that this language implies that the Commission has already decided to publish the policy statement in its present form, which will discourage comments. I proposed changes to the revised notice that I believed would have done more to solicit comments, but my fellow commissioners did not agree to those changes.

I agree with the concept of publishing for comment for two reasons, and I am pleased that my fellow commissioners now agree that the policy statement should be published for comment. First, the Commission should have the views of the interested and affected communities before it publishes a policy statement such as this one. Recent hearings before and a report by the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Committee on Government Reform have shown that agencies often use "guidance" or "policy" documents as a way of regulating. While I do not believe that this policy statement constitutes regulation in the absence of rulemaking procedures, it is of sufficient importance that the views of the interested and affected communities should be sought before it is published.

Second, the policy statement contains elements not contained in the statute. Section 15(b) of the CPSA speaks of "the product" as failing to comply with a rule or a voluntary standard, or containing a defect, or creating an unreasonable risk. The policy statement, on the other hand, mentions that incidents or experience with "a substantially similar product, or with a component thereof, sold in a foreign country," may trigger a reporting obligation. This distinction may be an important one and I hope that the Commission will receive comments on it.

The world of consumer products is increasingly global and the Commission is justified in recognizing it as such. The Commission should gain as much information as possible about the realities of the global market when it seeks to make policy about it.