



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

MINUTES OF COMMISSION MEETING
December 3, 1999
4330 East West Highway
Bethesda, Maryland

The December 3, 1999, meeting of the U. S. Consumer Product Safety Commission was convened in open session at 10:00 a.m. by Chairman Ann Brown. Commissioner Mary Sheila Gall was present. Commissioner Thomas H. Moore was not present; however, Commissioner Moore left a written vote and explanatory statement on the matter under consideration.

Agenda Item: Hydrocarbons

The Commission considered options concerning whether the Commission should issue a proposed rule to require child-resistant packaging for products that contain low-viscosity hydrocarbons. The Commission was briefed by the staff at the Commission meeting of November 9, 1999, on the options, including the staff's recommendation that the Commission issue a notice of proposed rulemaking to require child-resistant packaging of consumer products that contain hydrocarbons of low viscosity. (Ref: staff briefing package dated August 10, 1999.) The Commission also received supplemental information from the staff: (1) staff memorandum dated October 7, 1999, responding to questions raised by Commissioner Gall, and (2) staff memorandum dated November 23, 1999, responding to correspondence from the Cosmetic, Toiletry, and Fragrance Association.

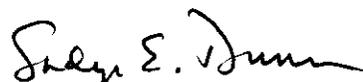
Preliminary to consideration of options at today's meeting, Commissioner Gall expressed her desire that staff undertake a data collection effort to address mineral-based products that would be covered by the proposed rule. Chairman Brown noted that in Commissioner Moore's written statement, Commissioner Moore also recommended that staff actively seek out during the proposal period all available information relevant to the inclusion and the exclusion of products within the scope of this rule. The Assistant Executive Director for Hazard Identification and Reduction provided an estimate of approximately four weeks for staff to develop in conjunction with Poison Control Centers an action plan that could be presented to the Commission. Chairman Brown concurred in the suggested procedure to obtain additional information if possible.

Voting then on motion of Chairman Brown, the Commission by unanimous vote (3-0) approved the draft Federal Register notice in the briefing package dated August 10, 1999, without change, proposing a rule to require child-resistant packaging of consumer products containing low-viscosity hydrocarbons. Commissioner Moore's vote was submitted in writing in accordance with Section IV(A)(4)(b) of the Commission Decisionmaking Procedures.

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

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

For the Commission:



Sadye E. Dunn
Secretary

Attachments



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Decision Statement on Hydrocarbons
Chairman Ann Brown
December 3, 1999

I voted to issue the Notice of Proposed Rulemaking to require child-resistant packaging of consumer products containing hydrocarbons. In my opinion, the staff has demonstrated that certain products containing hydrocarbons create a serious aspiration hazard to children, and that the proposed rule would address those risks.

The rulemaking should proceed. We will thus have an opportunity to obtain public comment on the important issues raised in this proceeding.

I believe the staff has assembled important evidence:

- (1) that the product is hazardous and available to children;
- (2) that child-resistant packaging is required to protect children from serious personal injury or illness; and
- (3) that the special packaging required by the proposed rule would be technically feasible, practicable and appropriate.

I have always believed that if there is a way for the Commission to eliminate even a single death, and if it can do so through voluntary action or otherwise within the statutory framework that Congress set, the Commission should do so. The Commission has already required child-resistant packaging for hydrocarbon-containing products such as furniture polish, paint solvents, and lighter fluid. Our action today is the logical next step in a process that has brought ever-greater safety to American children.

The cosmetics industry has raised concern that certain mineral oil-based cosmetics such as baby oil should be exempted from the proposed rule. The industry has argued that the hydrocarbons contained in these substances are different, less toxic, and less likely to be aspirated than other hydrocarbons. Some other commenters have suggested that because the number of deaths from these products has not been high, compared to some other products regulated under the PPPA, the Commission should not act.

Based on the staff's analysis of these arguments, I do not believe the Commission has received convincing information to justify excluding mineral oil products from the proposed rule at this time.

I believe, based on the information currently available, that mineral oils, as defined in the proposed rule, pose a sufficient aspiration risk to children and should be required to be placed in child-resistant enclosures. Certainly it would be premature today to drop mineral oil products from consideration at this stage in the rulemaking. Nevertheless, I will continue to carefully weigh the arguments on both sides of this question and make the decision at the final rule stage.

According to the staff, the products here present the same health hazards as other products we have regulated under the PPPA. Even though hydrocarbon poisoning is not the crisis faced almost 30 years ago with aspirin and furniture polish, the health risks posed by these substances to children are evident.

As I have said before, the Commission must not allow the crisis to become the enemy of the important. The problem our staff has identified is important. The Commission's action today is important, and I wish to thank our staff, my fellow Commissioners, the public and industry for their work on this project.



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**STATEMENT OF COMMISSION THOMAS H. MOORE
ON THE PROPOSED RULE TO REQUIRE CHILD-RESISTANT PACKAGING
FOR LOW-VISCOSITY HYDROCARBONS
December 3, 1999**

Today, I have voted to issue the proposed rule to require child-resistant packaging for low-viscosity liquid hydrocarbons. I have done so because I believe that the information that has been provided by our staff sufficiently supports their recommendation to issue the proposed rule. I think that the Commission staff has done an excellent job of determining what properties of a product lead to an aspiration hazard and thereafter defining parameters under which products would be regarded as hazardous because of their potential for aspiration. However, I also believe that there may be some unresolved issues concerning the inclusiveness of the scope of the regulation as defined by staff.

To issue a final rule under the PPPA, this Commission must make certain findings. First and foremost, we must find that there are potentially serious consequences to the availability of a substance to children, that the availability must be by reason of its packaging, and that special packaging is required to protect children from the serious consequences of that substances' availability. Additionally, the Commission must find that that child-resistant packaging is technically feasible, practicable, and appropriate for products that fall within the scope of the regulation.

The substances of concern in this rulemaking are liquid products that contain more than 10% hydrocarbons by weight and have a viscosity of less than 100 SUS at 100° F. There is substantial evidence that, if ingested by children, many products within these parameters pose serious aspiration risks. Without question, staff's recommendation would impact many different classes of products that currently do not require child-resistant packaging. The sweep of staff's recommendation is much broader than anything we've previously contemplated covering under the PPPA. This therefore raises the relevant question of whether the Commission should or even could have detailed injury data information on every product that may be covered by this regulation?

I hardly think that it is necessary to have detailed injury data information on every specific product that may fall within the scope of the proposed rule. However, I do think that we should have enough specific injury data information on the classes of products that may fall within the scope of this rulemaking such that we can reasonably conclude that if a product falls within the recommended criteria for regulating, then there clearly exists the potential for serious consequences for children.

Therefore, along with my vote to issue the proposed rule, I strongly recommend that staff actively seek out, during the period of time provide by this step, all available information relevant to the inclusion and the exclusion of products within the scope of this rule. It is extremely important that this Commission have for its examination all of the available information from every reasonable source before going into the final stages of this rulemaking.

As I have indicated, I think that staff, based upon the information available to the Commission, has done an excellent job of recommending reasonable parameters for regulating and I have voted to issue those parameters as a proposed regulation. An enormous amount of time was spent gathering data and communicating with the regulated community before the scope of the proposal was settled upon. Accordingly, the participation by the regulated community in setting these proposed parameters must be acknowledged for its importance. Whether by comments, meetings with staff, or meetings with this Commissioner, the input received from industry representatives and others has been invaluable. I am hoping that such participation will continue as we move forward with this rule.

**STATEMENT OF THE HONORABLE MARY SHEILA GALL ON
PUBLICATION OF A NOTICE OF PROPOSED RULEMAKING TO REQUIRE
SPECIAL PACKAGING FOR LOW-VISCOSITY HYDROCARBONS**

December 3, 1999

Today, I voted to publish for public comment notice of a proposed rule (NPR) to require special packaging for low-viscosity hydrocarbons. My vote to go forward with this proceeding was conditional upon the Commission directing the staff to develop a detailed plan to capture incident data for mineral oil based hydrocarbon products. Such information must be collected and analyzed in order to supplement the paucity of incident data contained in the staff briefing package.

On February 18, 1997, I voted in support of an advance notice of proposed rulemaking (ANPR) to determine whether child resistant closures should be required for certain household products containing petroleum distillates. I believed that the evidence presented to the Commission, at that time, was sufficient to proceed at that preliminary rulemaking stage. To publish an NPR, however, requires more precise information and a greater level of certainty that a rule may be necessary to address an alleged hazard.

Included in the published ANPR, was a request for public commentary on the appropriate scope of this proposed rule. As a consequence, staff eliminated certain products and certain types of packaging, but decided to expand the general scope of the rule to incorporate a broad class of low-viscosity household products containing a certain threshold of hydrocarbons. After reviewing the staff briefing package, as well as the staff's responses to a series of follow-up questions and comments, I was left unsatisfied that the information at our disposal justifies the inclusion of all product classes currently encompassed in the proposed rule.

Specifically, I agreed that we possessed sufficient information – including incident data – to support going forward with respect to that class of hydrocarbons regulated under the Federal Hazardous Substances Act (FHSA). This includes a number of automotive and household products that seem to pose a clear risk of serious personal injury or illness.

On the other hand, there simply was inadequate data available to support going forward with respect to those mineral oil based hydrocarbons regulated under the Federal Food, Drug and Cosmetic Act (FDCA). This would include such common household

products as baby oil and sun tan lotion. Indeed, this appears to be considerable disagreement as to the toxicity and potential hazards posed by such products.

There is no need to provide an elaborate analysis of the statutory requirements under the Poison Prevention Packaging Act (PPPA) at this point. It should be noted, however, that the PPPA does require that the Commission consider incident data “concerning childhood accidental ingestions, illness and injury caused by household substances”. Based upon my review of the available incident data involving such mineral oil based products, I concluded that additional information is needed before this Commission can make any final determination on this rule.

At our meeting today, the Commission did direct the staff to collect and analyze incident data involving these products. My vote to proceed forward was couched in considerable reservation. None the less, I feel it is prudent, at this stage of the rulemaking process, to remain open to the possibility that there may be justification to include these products within the scope of the rule. The propriety of doing so will be determined by the information gathered during this NPR stage.