



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

MINUTES OF COMMISSION MEETING
February 3, 1988
5401 Westbard Avenue
Bethesda, Maryland

The February 3, 1988, meeting of the U.S. Consumer Product Safety Commission was convened in open session by Chairman Terrence Scanlon. Commissioners Carol G. Dawson and Anne Graham were present.

Ballot Vote Decision. The following decision made by ballot vote of the Commissioners was placed in the record.

Civil Penalty Settlement -- BernzOmatic/Newell

The Commission voted unanimously (3-0) to provisionally accept, as drafted, the Settlement Agreement and Order in the matter of BernzOmatic, a Division of Newell Co. (CPSC No. 87-C0003); announce provisional acceptance in accordance with applicable procedures; and approve the press release. Voting to provisionally accept were Chairman Terrence Scanlon and Commissioners Carol Dawson and Anne Graham.

Agenda Matters

1. Small Parts Regulation Petition, HP87-2

The Commission considered a petition submitted jointly by the Consumer Federation of American and the New York State Attorney General's office, which requests that the Commission amend CPSC's small parts regulation at 16 C.F.R. section 1501.4 to require that the diameter of the small parts test fixture (cylinder) be increased from 1.25 inches to at least 1.68 inches to address choking incidents involving children under age three and certain toys that pass the existing small parts requirements. The staff had briefed the Commission on the petition at the Commission Meeting of December 17, 1987, and subsequently provided additional information relating to the petition as requested by the Commissioners.

Following questions and discussion at today's meeting, the Commission voted unanimously (3-0) on motion of Commissioner Graham to deny the petition and direct the General Counsel to draft an Advance Notice of Proposed Rulemaking (ANPR) to seek information on the merits of amending the small parts regulation (including diameter, length, and any other relevant factor) to change the test fixture. The ANPR should be published within the next 90 days and every effort should be made to disseminate the ANPR as widely as possible for comments, including accepting the New York Attorney General's offer to disseminate the ANPR. The Commission's work on the small parts tester should continue during this period. In making the motion, Commissioner Graham noted that denial of the petition does not flatly reject the dimensions of the test fixture submitted in the petition, but opens the matter for comment to consider all proposals, and, in the end, the petition's dimensions could be accepted.

The above motion with directions to the staff was approved by Chairman Scanlon, Commissioner Dawson, and Commissioner Graham. Chairman Scanlon and Commissioner Graham each filed a statement concerning this matter. (Copies attached.)

There being no further business on the agenda open to the public, the Commission then met in closed session for briefings by the staff on Enforcement Matter OS# 5192; Enforcement Matter OS# 3993; Enforcement Matter OS# 5527; and a Compliance Status Report.

There being no further business on the Agenda, Chairman Scanlon adjourned the meeting.

For the Commission



Sadye E. Dunn
Secretary

Attachments



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STATEMENT OF TERRENCE SCANLON, CHAIRMAN
U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC)
UPGRADING THE CPSC'S SMALL PARTS REGULATION
BETHESDA, MARYLAND
February 3, 1988

Today's Commission decision to formally initiate consideration of changes in its toy testing regulations is both prudent and timely. Not only will publication of an Advance Notice of Proposed Rulemaking (ANPR) on small parts underscore the CPSC's determination to make its current requirements even more effective, but its issuance will complement the Commission project already underway to address choking hazards affecting infants and toddlers.

Currently, there are approximately 300-450 million toys being used by children under 3 in this country. Thanks in part to the existing CPSC regulations governing toys intended for use by such children, most play items currently on the market do not present a choking hazard. Moreover, a recent (1986) upgrade of the voluntary standard provisions for squeeze toys, rattles and teethers has addressed many of the specific instances cited in a 1983 CPSC study on choking hazards posed by toys that comply with our current small parts requirements. But the very fact that not all these cases were addressed, coupled with recent reminders that others could occur in the future, argues strongly for further action. The CPSC's choking hazards project, which began this fiscal year, will provide the necessary data on the nature of the hazard, the types of toys involved and the best way to prevent such incident from occurring. Issuance of an ANPR now augments that effort by soliciting additional technical information that might be helpful to our staff and by hastening the day when recommended revisions to the existing regulation could be implemented.

In addition to saving time, pursuing an ANPR during, instead of following, the Commission's choking hazards project has another distinct advantage: it lets affected parties know what they might expect in the future and encourages them to comment. Their input, in addition to the helpful information already provided by the New York State Attorney General's office and others, will be valuable to the Commission in reaching an ultimate decision on this matter. However, initiation of an ANPR should not be interpreted as an endorsement of any particular revision to the CPSC's existing small parts regulation. To the contrary, the Commission's simultaneous decision to deny Petition HP 87-2, which referenced a 1.68" diameter requirement and suggested elimination of a length requirement, should be viewed as an indication that, while the Commission is deeply concerned about potential small parts hazards, it has no basis for favoring any particular remedy at this time. Indeed, any decision on corrective measures must, and will, be based on the evidence and analysis that is in the process of being developed by the Commission's staff. Issuance of an ANPR is no more, and no less, than a useful and necessary complement to that process.



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STATEMENT ON THE PETITION
TO AMEND THE SMALL PARTS REGULATION

Since there have been several choking incidents which involved products with diameters greater than the current standard, I am voting in favor of an Advanced Notice of Proposed Rulemaking (ANPR) to start the rulemaking procedure to determine the adequacy of the existing standard. My decision to vote for an ANPR is based on my belief that an ANPR is an appropriate way to formally solicit public comment and information before going forward with any proposed rule under the Federal Hazardous Substances Act.

My decision to deny the petitioners' request to change the small parts cylinder's diameter from 1.25 inches to at least 1.68 inches for toys intended for children under 3 years does not mean that I flatly reject those dimensions. Rather, I believe we should seek comment from all experts on the correct dimensions of the tester.

A 1983 study by the Consumer Product Safety Commission indicates that between 1973 and 1983, 195 choking incidents, including 32 deaths, were caused by toys or children's products which meet the current standard. Toys and other products are in violation of the small parts regulation if they are small enough to fit the test cylinder and/or they have loose components which are small enough to fit into the cylinder. The false illusion that a product is safe is far more dangerous than knowing that the product is not safe.

The General Counsel should draft the ANPR to seek information on the merits of amending the small parts requirement to change the diameter of the test fixture. Further, the draft ANPR should be completed and presented to the Commission within the next 90 days.

Anne Graham

Anne Graham, Commissioner
February 3, 1988