



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting by Ballot

1111 - 18th Street, N. W.
Washington, D.C.

Voting: Chairman King
Commissioner Pittle
Commissioner Sloan
Commissioner Zagoria

ITEM

Comments on Draft Legislation: Proposed Uniform Hazardous
Substances Export Notification Act of 1979

(Briefing material transmitted by the Office of the Secretary on
April 16, 1979)

DECISION

The Commission approved the attached response on the above-referenced
draft legislation for transmittal to Mr. Ronald Peterson, Office of
Management and Budget.

VOTE

Concurring: Chairman King (4/17/79)
Commissioner Pittle (4/17/79)
Commissioner Sloan (4/18/79)
Commissioner Zagoria (4/18/79)

For the Commission:

A handwritten signature in cursive script that reads "Sadye E. Dunn". The signature is written in dark ink and is positioned above a horizontal line.

Sadye E. Dunn, Secretary



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

April 24, 1979

Honorable Walter Mondale
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

In accordance with the requirements of section 27(k) of the Consumer Product Safety Act, we are enclosing our response to the Office of Management and Budget's request for comments on draft legislation concerning uniform hazardous substances export notification.

Sincerely,

Susan B. King
Susan B. King
Chairman

Enclosure



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

April 24, 1979

Honorable Thomas P. O'Neill
Speaker of the House
Washington, D.C. 20515

Dear Mr. Speaker:

In accordance with the requirements of section 27(k) of the Consumer Product Safety Act, we are enclosing our response to the Office of Management and Budget's request for comments on draft legislation concerning uniform hazardous substances export notification.

Sincerely,


Susan B. King
Chairman

Enclosure

UNITED STATES GOVERNMENT

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Memorandum

RECEIVED OFFICE OF THE SECRETARY

APR 24 12 09 PM '79

DATE: April 24, 1979

TO: Ronald Peterson
Office of Management and Budget
FROM: Susan B. King, Chairman *SBK*

SUBJECT: Draft Legislation: Proposed Uniform Hazardous Substances Export Notification Act of 1979.

Thank you for the opportunity for the Consumer Product Safety Commission to comment on this proposed legislation.

We strongly support a uniform policy approach in the area of exportation of hazardous products and substances. However, the Commission has serious policy and administrative reservations with respect to this proposal, and thus could not support it as drafted.

The draft legislation requires certain agencies, including CPSC, to notify foreign governments about regulated products which the agencies have designated as involving a "severe hazard." "Severe hazard" is defined as "a high probability of severe injury to health, safety, or the environment which, in the judgment of a regulatory agency, is posed by any reasonably likely use of, or exposure to, whether or not intentional, a product or substance under its jurisdiction." This definition imposes no clear, workable criterion for determining what constitutes a "severe" hazard. In addition, it is unclear whether a "severe hazard" differs from the hazards addressable under current statutes, and how it would differ. Further, the proposed statute appears to require a separate and new administrative determination by the agency as to the definition of "severity", and thus could introduce an element of undue procedural delay, administrative burden, and opportunity for litigation into the regulatory process.

The definition of "regulatory action" is also unclear. If it refers to the issuance of a ban or regulation, there is no way to predict how hazardous a future non-complying product might be. A particular violative product could turn out to be seriously defective or it could be non-complying only because of a minor labeling problem. Notification that a regulation or ban has been issued would be premature and useless to the foreign country, in our view, since that government would not know what to look for in imported products without an elaborate inspection or certification program of its own.

If "regulatory action" refers to the time an agency takes enforcement action against particular products, notification would be more specific and perhaps more useful. However, the Commission's enforcement activities, as one example, are limited because of our relatively small number of inspectors. If any non-complying products remained undiscovered, the foreign countries would not be notified about them. We therefore believe that a statutory requirement that exporters notify the Commission (and/or the foreign countries) of the intent to export non-complying goods should be included in any notification legislation. If notification were specifically tied to actual or proposed shipments, as Commission statutes now require, effective communication with foreign governments about hazardous exported products would be more likely. * /

* / Within a week or two, the Commission will be proposing new regulations interpreting the statutory requirement that exporters notify the Commission of intent to export from the United States products which do not comply with applicable standards or regulations. The Commission must then notify the foreign government. These regulations will be proposed under provisions of the Consumer Product Safety Authorization Act of 1978 (Pub. L. 95-631). As proposed, they would not require shipment-by-shipment notification, such as those specifically criticized in the "Statement of Purpose and Need," when the same exporter is shipping the same types of products to the same country during a given year.

Further, the requirement that notice shall be given only to foreign governments expressing an interest in receiving them ("interested foreign governments") presents both policy and administrative difficulties. Countries could conceivably be interested in receipt of notices in some instances but not in others (such as where no trade has occurred). It might well be administratively unworkable to attempt to distinguish between countries which are "interested" and those which are not. More importantly, the "interested foreign government" requirement also appears objectionable from a policy standpoint, since it seems to suggest that the receiving nation has primary responsibility for notice regarding hazardous exports from the United States, rather than the United States itself. Such a view is inconsistent with Commission's view of the United States' responsibility in this area.

Lastly, although the work of Esther Peterson's Inter-agency Task Force, on which the Commission served as an advisory member, is referenced as a general source for this proposal, it is not clear whether or how this proposal relates to the Task Force effort. It is our understanding that a general policy for notification is being developed by that Task Force, and it is unclear how, if at all, this legislative proposal relates to that ongoing effort.

cc: President of the Senate
Speaker of the House