



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

MINUTES OF COMMISSION MEETINGS

August 17, 1983

Third Floor Hearing Room
1111 - 18th Street, N.W.
Washington, D.C.

The August 17, 1983, meeting of the U.S. Consumer Product Safety Commission was convened in open session by Chairman Nancy Harvey Steorts. Commissioners Terrence Scanlon, Stuart Statler and Sam Zagoria were present.

Ballot Vote Decisions. Chairman Steorts read into the record the following decisions made by ballot vote of the Commissioners.

1. FOIA Appeal of Robert B. Jervis and John C. Randall, Attorneys (#S301063)

The Commission voted unanimously (5-0) to affirm the decision of the Freedom of Information Officer to withhold specified material.

2. FOIA Appeal of J. M. Berger, Professional Consultants, Occupational Health, Inc. (#S301152)

The Commission voted (4-1) to affirm the decision of the Freedom of Information Officer not to release the requested document in its entirety. Commissioner Scanlon voted not to affirm.

3. FOIA Appeal of John Evangelisti, Attorney (#S207081)

The Commission voted unanimously (5-0) to affirm the decision of the Freedom of Information Officer to withhold specified material. Commissioner Statler has filed a brief statement with the Office of the Secretary explaining his vote.

4. Fiscal Year 1984 Operating Plan

The Commission voted unanimously (5-0) to approve the Fiscal Year 1984 Operating Plan incorporating decisions made at the July 6, 1983, Commission meeting. In a separate vote, the Commission voted unanimously (5-0) that it is the wish and the sense of the Commission that the CPSC Upward Mobility Plan be continued at least at its present level through FY 1984.

Agenda Matters.

1. Toy Chests

The Commission considered whether to issue a final mandatory rule addressing the strangulation risk presented to young children by toy chests with hinged free falling lids. The rule was proposed on March 17, 1983.

At a briefing by staff on August 10, 1983, the Commission had requested further information on probable industry compliance with a proposed voluntary standard that is essentially identical to CPSC's proposed rule. The staff reported that, based on a telephone survey of toy chest manufacturers conducted during the past week, almost all toy chests with hinged lids produced in 1983 will be equipped with lid support devices of types that address the strangulation hazard.

Following substantial discussion, the Commission voted 3-2 to withdraw the proposed rule and rely on the voluntary standard. The Commission further directed the staff to implement a program to check for compliance with the voluntary standard. Commissioner Zagoria dissented from the vote to withdraw the proposed rule at this time, voting rather to defer a decision on rulemaking pending staff verification of the industry voluntary action. Commissioner Sloan, whose vote was read into the record, voted to issue a final mandatory rule. All Commissioners filed statements of vote or opinions and these are attached.

2. Petition to Ban Room Odorizers Containing Volatile Nitrites - (HP 82-1)

On September 3, 1982, Dr. Ronald W. Wood requested that the Commission declare room odorizers containing volatile nitrites to be banned hazardous substances under the Federal Hazardous Substance Act. The hazard to consumers alleged by the petition is the induction of a behavior disorder by intentional inhalation of these products.

Prior to consideration of the merits of the petition, the Commission questioned CPSC's jurisdiction to deal with the issue raised by the petitioner, suggesting that the Food and Drug Administration (FDA) was the more appropriate agency for response. After discussion the Commission decided to defer action on the petition and requested that the Chairman meet with the Commissioner of FDA to discuss the matter.

3. Unvented Gas-Fired Space Heaters - Proposed Revocation

The Commission considered a draft Federal Register notice to propose revocation of the Safety Standard requiring Oxygen Depletion Safety Shutoff Systems (ODS) for Unvented Gas-Fired Space Heaters (16 CFR Part 1212). The Commission had decided at its meeting on May 26, 1983, by a vote of 3-2, to initiate the revocation proceeding. This action was taken in response to applications from state and local governments requesting exemption from preemption by the standard of state and local requirements.

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As drafted, the Federal Register notice included as appendices the statements of two members of the majority in the decision as well as the statements of Chairman Steorts and Commissioner Sloan who dissented from the revocation decision. Commissioner Statler noted that existing Commission policy was to state, by footnote, the fact of dissenting votes and not to include the text of dissents; therefore, Commissioner Statler objected to the Federal Register notice as drafted unless and until Commission policy is changed. Commissioner Zagoria moved to make an exception to the policy in this case and to approve the Federal Register document as drafted. Chairman Steorts joined Commissioner Zagoria in voting for the motion for an exception to the policy. Commissioners Scanlon and Statler voted against the motion. There being no majority decision, the motion did not carry.

The Commission agreed that it would address the policy issue concerning publication of dissenting opinions when all Commissioners were present, and would subsequently consider the matter of the document to propose revocation of the unvented gas-fired space heater standard.

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

For the Commission:

September 8, 1983
Date

Sadye E. Dunn
Sadye E. Dunn
Secretary

STATEMENT OF
NANCY HARVEY STEORTS, CHAIRMAN
CONSUMER PRODUCT SAFETY COMMISSION

TOY CHESTS

WEDNESDAY, AUGUST 17, 1983

WE NOW HAVE BEFORE US A DECISION ON WHETHER TO PROMULGATE A MANDATORY RULE. IN APRIL 1982 WE PUBLISHED AN ADVANCE NOTICE OF PROPOSED RULEMAKING FOR TOY CHESTS AND IN MARCH OF THIS YEAR WE PUBLISHED A PROPOSED RULE. FINALLY, WE ARE CONSIDERING A FEDERAL REGISTER NOTICE THAT WOULD ISSUE A FINAL MANDATORY RULE.

I BELIEVE ACTION TO PROTECT CHILDREN FROM THE STRANGULATION HAZARDS OF TOY CHESTS IS IMPERATIVE AND LONG OVERDUE. AS I MENTIONED IN MY OPENING STATEMENT WE KNOW OF 21 CASES WHERE CHILDREN HAVE DIED FROM STRANGULATION, TWO CASES OF BRAIN DAMAGE, AND THREE OTHER CASES OF NEAR-MISSES ASSOCIATED WITH TOY CHESTS.

TODAY WE HAVE LEARNED FROM OUR STAFF THAT THE VOLUNTARY STANDARD ACTIVITY FOR TOY CHESTS WILL BE COMPLETED THIS MONTH AND THAT VOLUNTARY STANDARD IS THE SAME AS THE PROPOSED MANDATORY STANDARD THE COMMISSION PUBLISHED.

MANUFACTURERS HAVE TOLD OUR STAFF THAT THEY EXPECT TO BE IN FULL COMPLIANCE WITH THIS VOLUNTARY STANDARD FOR ALL FUTURE PRODUCTION. IN FACT, THEY CLAIM THAT 98% OF PRODUCTION THIS YEAR HAS BEEN IN COMPLIANCE.

IN ADDITION I HAVE PERSONALLY HELD DISCUSSIONS WITH SEVERAL COMPANY PRESIDENTS ABOUT THEIR INTENTIONS TO CORRECT THIS POTENTIAL HAZARD. IN THESE CONVERSATIONS, EACH PRESIDENT EXPRESSED A CONCERN ABOUT THE PROBLEM AND TOLD ME THAT THEY WERE ALREADY PUTTING A SAFETY DEVICE ON THEIR TOY CHESTS AND THAT THEY WOULD DO SO IN THE FUTURE REGARDLESS OF THIS COMMISSION'S ACTION.

SEVERAL ALSO INDICATED THAT THEY WOULD SEND A SAFETY DEVICE AND A DIAGRAM FOR CORRECT INSTALLATION TO CONSUMERS FOR A NOMINAL COST.

BASED ON THE STAFF'S INFORMATION, THE DISCUSSION THAT WE HAVE HAD TODAY, AND MY CONVERSATIONS WITH THE MANUFACTURERS, I AM VOTING TO WITHDRAW THE PROPOSED MANDATORY RULE.

HOWEVER, I WOULD LIKE TO CHALLENGE ALL MANUFACTURERS TO ADD A RETROFIT PROGRAM TO THEIR ACTIVITIES. I FEEL THAT IT IS ESSENTIAL THAT THE TOY CHESTS NOW IN THE MARKETING PIPELINE, AS WELL AS IN THE HANDS OF THE CONSUMERS OF AMERICA ALSO BE MADE AS SAFE AS POSSIBLE.

IN CONCLUSION I WOULD LIKE TO APPLAUD THE TOY MANUFACTURERS OF AMERICA, WHICH UNDER THE DIRECTION OF DOUG THOMPSON, HAS DONE AN OUTSTANDING JOB OF BRINGING BOTH MEMBERS AND NON-MEMBERS TOGETHER IN AN EFFORT TO CORRECT THIS HAZARD.

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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

STATEMENT OF
TERRENCE M. SCANLON, VICE CHAIRMAN
CONSUMER PRODUCT SAFETY COMMISSION

ON

TOY CHEST STANDARD
August 17, 1983

This vote today is my first on the question of imposing a mandatory standard as a Commissioner. It is also coincidentally, the first final vote on a mandatory rule to come before the Commission since the 1981 amendments, those amendments which mandated that this Commission defer mandatory standards in favor of the voluntary process under certain circumstances. Make no mistake about it, the tragic injuries or deaths to young children from toy chest lids are both profound and troubling to all concerned, and most obviously to the affected families. We, as a public health and safety agency, must and should do all we can to protect the consumers of this Nation from the unreasonable risks of deaths and injuries such as those involved in the matter before us today. This is especially true of those least able to either speak or work to protect themselves -- the young. But, Congress in these 1981 amendments to our acts, mandated and codified as a duty for this Commission the realization of the significance of the voluntary standard process, and the important and pivotal role it too can play in reducing the unreasonable risk of injury from defective consumer products. I believe it is much less costly and faster to get a voluntary standard in place which will produce results faster than would be the case with a mandatory rule.

Now let's look at this proposed final rule that is before us here today since the passage of the CPSC's 1981 amendments -- toy chests. We have a voluntary standard already developed under the American Society for Testing and Materials (ASTM) process in conjunction with the Toy Manufacturers of America (TMA). The CPSC staff indicates the voluntary standard is identical to the proposed rule, or even a little more stringent. We also now have a cooperative industry, regardless of the past, that by its very nature, is noncohesive. Having worked for years with small businesses, I can tell you that noncohesive is the essence of most of the small business community. These firms often do not have the time or resources to join and work with trade associations. However, in meeting with TMA representatives, I am told that more than 90 percent of the manufacturers have agreed to apply the corrective hinge to these chests and are doing so voluntarily today. The CPSC Economics staff supports these figures as well. These lid supports effectively reduce the risk of injury involved.

It appears to me that we are not faced here with a recalcitrant industry, but rather with a small business-intense industry that, within the parameters of that industry and the inherent limitations of its very makeup, is trying and succeeding in doing what is best for the consumer, the public, and themselves as well. There is a commendable and sincere effort underway to protect the public and rather than discourage such efforts, in this industry and others, by imposing a mandatory rule now, we ought to defer here to their voluntary efforts, to monitor their activities, and encourage additional and better efforts in this area of toy chests and other children's products.

Cost is not a factor in this case. There is little involved here that prohibits the manufacturers from complying voluntarily and only a slight additional cost to the consumers.

In light of the ASTM voluntary standard scheduled for final ballot completion next week, I doubt whether Commission action could be effective and in place before that voluntary effort is consummated. This is another case where the voluntary standard process moves faster, thereby affording more protection for children without the threat of litigation.

Accordingly, I opposed the imposition of this rule and moved to terminate this rulemaking proceeding. The mandate of the act under which we operate requires nothing less, as does common and practical sense.

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

In the Matter of Commission Vote)
on Toy Chests Draft Standard)

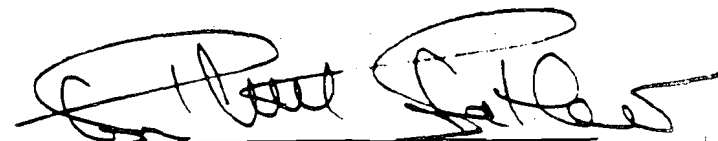
CONCURRING OPINION OF COMMISSIONER STUART M. STATLER

By its vote today, the Commission acknowledges that toy chest manufacturers have moved forcefully and convincingly to remove a serious hazard from the marketplace. As a result, generations of future children will be all the more safe, protected from toy chest lids that might otherwise crash down and snuff out unsuspecting young lives--at least 21 youngsters have been killed in recent years.

Satisfied that the industry is now producing toy chest lids with safety hinges, it's time to declare victory and move on to other pressing safety matters. American consumers are better off in their purchases, the industry is better off in terms of possible liability, and the CPSC can be comfortable in our success in helping to bring about this satisfactory result.

For this Christmas, and the shopping spree leading up to it during which more than 70% of these toy chests will be sold, American consumers can expect to see safer toy chests designed to eliminate a life-threatening risk. There is no need to mandate into law what has already been done in fact.

This is an excellent example of how industry and government can act cooperatively, in the absence of any mandatory regulation, to eliminate a hazard.


Stuart M. Statler, Commissioner
August 17, 1983



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

OPINION AND BALLOT
OF
COMMISSIONER EDITH BARKSDALE SLOAN

IN

THE MATTER OF TOY CHESTS

Today the Commission is asked to vote on the final rule to ban non-complying toy chests. The issue is not whether these chests present an unreasonable risk; that has been established by the 21 childhood deaths and two cases of brain damage known to the Commission. What the Commission must decide today is whether it should defer action on a mandatory rule in favor of a voluntary standard yet to be adopted and implemented.

To impose a mandatory regulation, the Commission must make at least one of the following findings: (1) That compliance with such a voluntary standard (in place) is not likely to result in the elimination or adequate reduction of the risk of injury or (2) that it is unlikely that there will be substantial compliance with such voluntary standard.

Is the proposed voluntary standard likely to result in the elimination or adequate reduction of the risk of injury? I think not.

Although the proposed voluntary standard and the mandatory one developed by the Commission are in most respects identical, the absence of a testing requirement by the manufacturer renders the voluntary standard impotent. I am aware that testing is not part of the mandatory rule but Commission experience demonstrates that industry has discovered the wisdom and economy of testing where a mandatory rule does exist.

Since testing is not required by the voluntary standard, the simple placement of a spring loaded hinge of the Carlson type or something similar would acquit the manufacturer of his responsibility. However, it would not necessarily enable the toy chest to pass the test requirements set forth in the standard. Thus, it cannot be determined whether the lid support is, in fact, the safety device it purports to be. Until appropriate testing programs are adopted by the manufacturers there is grave question as to the value of this voluntary standard.

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Given this shortcoming, I submit the Commission cannot assume with any degree of confidence that it is likely that the voluntary standard will result in the elimination or adequate reduction of the risk of injury.

Is it likely that there will be substantial compliance with the voluntary standards? I think not.

A voluntary standard to be of value must be the result of men of good intentions coming together of their own volition in an honest effort to establish certain minimum safety standards. Any honest appraisal of the conduct of this industry since the hazard was first brought to its attention must conclude that this standard does not meet that criterion.

Twice ASTM considered development of a voluntary standard for toy chests. And twice the effort had to be abandoned for lack of interest on the part of the industry. Only after those aborted attempts did the Commission consider a mandatory standard and only after the Commission began its deliberations did the industry respond. That response, strangely, came from the Toy Manufacturers of America which previously had demurred when asked to participate in the creation of a voluntary standard.

It is my conviction that this standard does not represent a resolve to eliminate a particularly cruel hazard, but rather a reaction to the threat of a mandatory standard. Now, when responsibility is being thrust upon them as a consequence of their own neglect, we hear no murmurs of contrition, only cries of "trust us to do it ourselves."

Considering the unfathomable recalcitrance of this industry over the past nine years to address this hazard, even as the deaths rose with grim precision, I am not persuaded that the presence on paper of a voluntary standard is likely to result in substantial compliance. Nor do I believe that substantial compliance can be measured simply by counting the number of producers who, however reluctantly, have indicated agreement with voluntary action to correct a hazard to which they were indifferent for so long.

That this industry feels more the victims than the victimizers was made clear again just this week in a letter to the chairman from the president of the Toy Manufacturers of America, a letter, I might add, not notable for its gracious language. Carefully ignoring the regrettable record of the toy chest industry, he said, among other ungenerous things, that it was his "view" that the "staff has wanted a mandatory standard and is almost disappointed that the manufacturers have accepted the voluntary standard."

I suggest to the gentleman that his view is parochial and would benefit greatly from a little hindsight. The record of these meetings clearly show that the staff long supported a voluntary standard and made what I referred to in this very forum as "heroic attempts" to get development of such a standard underway. It was the industry which on two occasions turned away.

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Finally, the results of the staff's telephone survey leaves no doubt in my mind that this industry will continue to decide for itself what is or is not compliance.

If the manufacturers of toy chests are in fact concerned that their products be safe, let them apply in a meaningful way the reasonable tests that will demonstrate it. Until they do, I vote to finalize the rule. Further, in the interests of holding safe infants of this generation and perhaps several to come, I urge the Commission to reduce the 90 day effective date to keep hazardous chests off the Christmas market.


Edith Barksdale Sloan, Commissioner

August 17, 1983
Date

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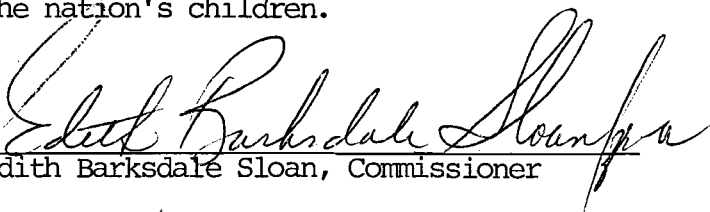
In the Matter of

Commission Vote on Toy
Chests Draft Standard

DISSENTING OPINION
OF
COMMISSIONER EDITH BARKSDALE SLOAN

The Commission has erred grievously in its rush to withdraw the proposed rule to provide toy chest safety. In my opinion, read into the record, I listed numbers of reasons, all of them valid and supportable, to justify the rule. The unreasoned choice of the Commission majority to reject a motion to defer a decision until the staff could validate the industry's claims in favor of going back to square one with an industry that has demonstrated indifference bordering on neglect is inexcusable.

The Commission, it appears, has given this industry the benefit of considerable doubt. I wish it had extended that same courtesy to the nation's children.


Edith Barksdale Sloan, Commissioner

August 17, 1983
Date



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

In the Matter of)
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Commission Vote on Toy)
Chests Draft Standard)
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DISSENTING OPINION
OF
COMMISSIONER SAM ZAGORIA

A majority of the members of the Commission voted today to terminate further work on a mandatory standard and to rely on the oral promises of toy chest manufacturers.

With this vote by the majority, the Commission is tossing away two years of effort to require a reluctant industry to add a 15 cent safety hinge to a \$25 to \$75 toy chest. It is doing so before a proposed voluntary industry standard requiring the hinges has been voted on by the individual companies and before anyone outside the industry has had the opportunity to check whether manufacturers' claims as to new safety hinges have been confirmed or tested.

With 21 infant deaths already recorded because of unsafe toy chests, I suggest the majority decision under these circumstances is premature and dangerous. We should be sure, not sorry.

Great expectations are fine for a novel, but child safety should not have to run the risk of possible fiction.



Sam Zagoria, Commissioner

August 17, 1983

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