



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

Record of Commission Action
Commission Meeting of November 9, 1978

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

Presiding: Chairman King

Present: Commissioner Franklin
Commissioner Pittle
Commissioner Sloan

ITEM

Draft PPPA Statement of Policy and Interpretation Concerning Hazardous
Substances Packaged in Large Containers

(Briefing material submitted by the Office of the
Secretary on October 30, 1978.)

DECISION

The Commission approved the attached Federal Register Notice with the
Office of General Counsel recommended changes.

VOTE

Concurring: Chairman King *Susan B. King*
Commissioner Franklin *Barbara H. Franklin*
Commissioner Pittle *R. David Pittle*
Commissioner Sloan *Edith Ballsdale Sloan*

Submitted by the Office of the Secretary



[6355-01-M]

SUBCHAPTER E—POISON PREVENTION
PACKAGING ACT OF 1970 REGULATIONS

PART 1701—STATEMENTS OF POLICY
AND INTERPRETATION

**Statement of Policy and Interpretation
Regarding Applicability of
Child-Resistant Packaging Stand-
ards to Hazardous Substances
Packaged in Large Containers**

AGENCY: Consumer Product Safety
Commission.

ACTION: Interpretation of regulation.

SUMMARY: The Commission issues this statement of policy and interpretation to explain that Commission requirements for child-resistant packaging do not, unless specified otherwise for a particular substance, apply to hazardous substances packaged in containers with a capacity of 5 gallons or greater. The Commission takes this position because special packaging requirements apply only to "household substances." The Commission does not generally consider substances packaged in containers of 5 gallons or more to be "household substances," as defined in the Poison Prevention Packaging Act of 1970, since they are not customarily used around the household. This statement of policy and interpretation is being issued to elimi-

nate confusion as to the application of the requirements for child-resistant packaging. It does not affect requirements under the Federal Hazardous Substances Act for hazardous substances intended, or packaged in a form suitable for use in the household.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Sandra Eberle, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6400.

SUPPLEMENTARY INFORMATION: Section 3(a) of the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471-1478) provides that the Commission may issue standards for the special packaging of any "household substance" to help protect young children from serious personal injury or illness from handling, using, or ingesting such substance. As provided by section 2(2) of the PPPA (restated at 16 CFR 1700.1(b)(2)), the term "household substance," means any substance that is customarily produced or distributed for sale for consumption or use, or customarily stored by individuals in or about the household, and which is also a "hazardous substance" as defined in section 2(f) of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261(f)); a "food, drug, or cosmetic" as those terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or a "substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house."

The Commission has in effect special packaging requirements for various substances, as listed in its regulations at 16 CFR 1700.14(a). Among these are the following hazardous substances: Furniture polishes (16 CFR 1700.14(a)(2)), sodium or potassium hydroxide preparations (16 CFR 1700.14(a)(5)), turpentine preparations (16 CFR 1700.14(a)(6)), kindling and/or illuminating preparations (16 CFR 1700.14(a)(7)), methyl alcohol preparations (16 CFR 1700.14(a)(8)), sulfuric acid preparations (16 CFR 1700.14(a)(9)), ethylene glycol (16 CFR 1700.14(a)(11)), and prepackaged liquid solvents for paint or other similar surface coating materials (16 CFR 1700.14(a)(15)).

In the past, the Commission staff has interpreted the requirements for special packaging at 16 CFR 1700.14(a) to apply to hazardous substances without regard to the size of the container, unless a manufacturer could show that the hazardous substance was not a "household" substance when produced in a certain size container. The

regulations at 16 CFR 1700.14(a) do not specify the size of the containers of the hazardous substances covered by the regulation, and when interpreted literally could apply to a hazardous substance in any size container. The Commission has received inquiries from manufacturers concerning the applicability of special packaging requirements to hazardous substances in large size containers.

Based on its experience with the manner in which these hazardous substances are marketed to consumers, the Commission has learned that most of the substances customarily marketed for household use are traditionally sold in packages of 1 gallon or less. The Commission is not aware of any instance in which these substances have been customarily produced or distributed for household use in containers of 5 gallons or greater. As a result, the Commission does not believe that these substances in containers of 5 gallons or more are customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household, and thus are not "household substances" within the meaning of the PPPA. Since these substances are not household substances when packaged in containers of 5 gallons or more, these substances are not required to be in special packaging when packaged in large size containers of 5 gallons or more. Unless otherwise specified, this statement of enforcement policy applies to all hazardous substances subject to special packaging requirements under the PPPA, including hazardous substances for which special packaging requirements are established in the future. Thus, unless a particular substance is designated by regulation as being a household substance when packaged in a container of 5 gallons or more, the substance will not be considered subject to special packaging requirements. The Commission is issuing this statement of enforcement policy in order to clarify this interpretation of the applicability of special packaging requirements to hazardous substances in large size containers of 5 gallons or greater. The requirement of special packaging continues to apply to these substances when packaged in containers smaller than 5 gallons. This statement does not affect the applicability of any requirements, including labeling requirements, under the FHSA for "hazardous substances intended or packaged in a form suitable, for use in the household" as defined in section 2(f) of the FHSA and the accompanying regulations at 16 CFR 1500.3(c)(10)(i).

Because the material published below is a general statement of Commission policy involving enforcement

of a regulation, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and opportunity for public participation and delay in effective date are inapplicable. Therefore, the statement published below shall be effective upon date of publication.

Accordingly, pursuant to the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, Sections 2, 5, 7, 9, 94 Stat. 1670-1674, 15 U.S.C. 1471, 1474, 1476, 1478) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, Section 30(a), 86 Stat. 1231, 15 U.S.C. 3079(a)), 16 CFR Part 1701 is amended by adding a new § 1701.3 as follows:

§ 1701.3 Applicability of special packaging requirements to hazardous substances in large size containers.

The special packaging requirements of the PPPA apply to "household substances" for which the Commission has determined there is a need for special packaging, as provided in section 3 of the act (15 U.S.C. 1472). At section 2(2) of the act (15 U.S.C. 1471) (restated at 16 CFR 1700.1(b)(2)), the term "household substance" is defined as "any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household * * *." The Commission has issued requirements for special packaging for certain hazardous substances at 16 CFR 1700.14(a). Unless otherwise indicated in the requirements for specific hazardous substances, the Commission interprets the term "household substance" as only applying to these hazardous substances when packaged in containers with a capacity of less than 5 gallons. As a result, unless otherwise specified, the hazardous substances at 16 CFR 1700.14(a) are not required to be in special packaging when packaged in containers of 5 gallons or more.

(Secs. 2, 5, 7, 9, Pub. L. 91-601; 94 Stat. 1670-1674 (15 U.S.C. 1471, 1474, 1476, 1478); sec. 30(a), Pub. L. 92-573, 86 Stat. 1231 (15 U.S.C. 3079(a).))

Effective date. These amendments become effective November 17, 1978.

Dated: November 14, 1978.

SADYE DUNN,
Secretary, Consumer
Product Safety Commission.

(FR Doc. 78-32322 Filed 11-16-78; 8:45 am)