



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

MINUTES OF COMMISSION MINUTES

December 15, 1983

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

The December 15, 1983, meeting of the Consumer Product Safety Commission was convened in open session by Chairman Nancy Harvey Steorts. Commissioners Terrence Scanlon, Stuart M. Statler and Sam Zagoria were present.

Agenda Matters.

1. Flammable Fabrics Act Export Policy

At the request of four public interest groups, the Commission held a public hearing on October 26, 1983, on the issue of whether the Commission should reconsider the export policy announced in a Memorandum Decision and Order In the Matter of Imperial Carpet Mills, Inc. (CPSC Docket No. 80-2), issued on July 6, 1983. That policy states that goods not in compliance with an applicable standard issued under the Flammable Fabrics Act (FFA) may be exported whether or not they have been in domestic commerce as long as all conditions set forth in the export provisions of the Flammable Fabrics Act are met. Previously, Commission policy prohibited export of non-complying products subject to an applicable flammability standard if they had been distributed in domestic commerce. The issue now before the Commission is whether to reconsider the policy announced in the Imperial Carpet Mills case; and, if so, the further issue of whether a proceeding concerning reconsideration of the FFA export policy should also address whether to apply the same policy to goods regulated under the Consumer Product Safety Act (CPSA) or the Federal Hazardous Substances Act (FHSA).

Following substantial discussion, including a review of the principal points made during presentations at the October public hearing and a discussion of the Commission's procedures for providing notification to foreign governments concerning firms' intent to export non-complying goods, the Commission agreed to reschedule a meeting to decide the reconsideration issue pending receipt from staff of additional information on export notification.

2. Policy for Dissemination of NEISS Data

The Commission considered a policy for the active dissemination of NEISS data to address the concern that publishing national estimates in certain circumstances may be misleading to the public.

Following discussion, the Commission voted 3-1, with Commissioner Zagoria dissenting, to approve the following policy:

In any publication by the Commission of NEISS data, all product codes will be listed and will show the actual number of cases reported; however, the national estimate will not be given unless (1) the number of cases is 20 or more, (2) the national estimate is 1200 or more, and (3) the coefficient of variation (CV) is 33 percent or less. Product codes for which the national estimate is not given will be footnoted that the code in question had fewer than 20 cases reported, the national estimate is below 1200, and/or the coefficient of variation is greater than 33 percent.

Commissioner Armstrong was not present for discussion of this matter and is not participating in the vote.

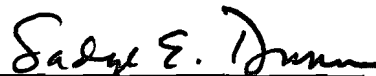
3. Crib Hardware: Proposed 30(d) Rule

The Commission considered a proposed rule under section 30(d) of the Consumer Product Safety Act (CPSA) to transfer from the Federal Hazardous Substances Act (FHSA) to the CPSA regulation of risks of death or injury that may be associated with baby cribs having items of hardware that break, become loose, detach or otherwise fail to perform their intended function, or are not provided with the cribs. The risks of injury proposed to be transferred to the CPSA do not include any risks of injury associated with items of crib hardware already addressed by regulations issued under the FHSA.

Following discussion, the Commission voted 3-1, with Commissioner Scanlon dissenting, to propose the 30(d) transfer rule for crib hardware and to approve the draft Federal Register notice of proposal. Commissioner Scanlon filed a dissenting statement, copy attached. Commissioner Armstrong was not present for discussion of this matter and is not participating in the decision.

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

For the Commission:



Sadye E. Dunn
Secretary

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Proposed Rule to Regulate Under the Consumer Product Safety Act Risks of Injury That May Be Associated With Baby Cribs Having Certain Hardware Failures or Omissions

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is investigating the possibility that various items of hardware on baby cribs may break, become loose, detach, or otherwise fail to perform their intended function, or may have been omitted, so that risks of asphyxiation, concussion, laceration or other injury are created for children occupying such cribs.

Should regulatory action become necessary to address any risk of death or injury which may be associated with baby cribs having any type of hardware failure or omission (other than a risk of injury associated with an item of crib hardware now subject to regulations issued under the Federal Hazardous Substances Act), the Commission proposes to use the provisions of the Consumer Product Safety Act rather than those of the Federal Hazardous Substances Act.¹ The Commission

¹ Commissioner Terrence M. Scanlon voted against the proposal which is the subject of this notice, and filed a separate statement concerning this matter. Commissioner Scanlon's separate statement is available in the Commission's public reading room, 8th floor, 1111 18th Street, NW, Washington, D.C., or by calling the Office of the Secretary, (301) 492-6800. Commissioner Sandra Brown Armstrong was not present at the meeting at which this matter was decided and did not participate in the decision to propose this rule.

preliminarily determines that this transfer is in the public interest because, in the event the Commission finds that a risk of death or injury is associated with cribs having items of hardware which break, become loose, detach or otherwise fail to perform their intended function, or are not provided with the crib, public notification and remedial action can be accomplished more expeditiously under the CPSA than under the FHSA.

The risks of injury which the Commission proposes to transfer do not include any risks of injury associated with any item of crib hardware which is already addressed by regulations issued under the FHSA.

DATE: Comments concerning this proposal must be received in the Office of the Secretary by January 26, 1984.

ADDRESS: Comments should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Lynn Lichtenstein, Trial Attorney, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: By this notice, the Commission proposes to regulate under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051 *et seq.*) rather than under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*) possible risks of death and injury such as asphyxia, concussion, and laceration, which may be associated with baby cribs having certain types of hardware failures or omissions, examples of which are given below.

The risks of injury which the Commission proposes to transfer to the CPSA do not include any of the following risks of injury which may be associated with crib hardware:

1. Any risk of injury associated with release of locking or latching devices to secure dropside rails from a single action at a force of less than 4.5 kilograms (10 pounds);
2. Any risk of injury associated with any horizontal bar, ledge, projection from, or other surface attached to or forming a part of any end panel or side of a crib which is accessible to a child inside the crib and is capable of being used as a toehold, and which is located less than 51 centimeters (20 inches) above the mattress support in its lowest position when the side rail is in its highest position on a "full-size crib" (as that term is defined at 16 CFR 1508.1(a)).

or less than 40.6 centimeters (16 inches) above the mattress support in its lowest adjustable position when the crib side is in its highest adjustable position on a "non-full-size crib" (as that term is defined in 16 CFR 1509.2); or

3. Any other risk of injury addressed by regulations applicable to cribs issued under the FHSA and published at 16 CFR 1500.18(a) (13) and (14), Part 1508, and Part 1509.

Section 30(d) of the CPSA (15 U.S.C. 2079(d)) governs this proposed rule. That section provides that a risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act may be regulated under the CPSA only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under the CPSA.

The Commission has examined the applicable statutes and has considered the facts regarding possible risks of death or injury which may be associated with baby cribs having certain types of hardware failures or omissions. These risks include those which are associated with the malfunction and inadequacy of hardware on the crib, as well as with the failure to include one or more items of hardware with the crib. The Commission has preliminarily

determined that it is in the public interest to regulate under the CPSA rather than the FHSA the possible risks of death or injury which may be associated with baby cribs having various kinds of hardware failures and omissions, some of which are described in this notice.

A. Background

The Commission is aware of several kinds of crib hardware failures or omissions which create risks of asphyxiation, concussion, laceration, or other injuries.

Hangers which attach the mattress support to the hooks (see Figures 1 and 2) can detach or break. Recently the Commission learned of the death of a five-month-old boy in a crib which resulted after a mattress support hanger became detached from the hook on the crib corner post.

The crib involved in this accident was approximately five years old and had been used by two other families before the fatal accident. The current owner had used the crib for five months with no indication of any safety-related problem.

On the day of the accident, the father had moved the crib to install bumper pads to protect the child from hitting against the slats. A hanger at one of the corners next to the wall became

detached. The detached hanger went unnoticed.

The child was put to bed at 10:00 p.m. At 7:30 the next morning, the child was found dead. The body was positioned with the head downward, the chin almost touching the floor. The legs were caught between the mattress and the siderail of the crib next to the wall.

The medical examiner determined that the cause of death was positional asphyxia, or asphyxia caused by the position in which the body had become entrapped. If a child remains upside down for a sufficient period of time, the child will be unable to breathe.

In this case, the child apparently had moved or rolled to the corner of the crib where the hanger was detached. The mattress and mattress support at that corner then tilted downward, and the child's head and upper body slipped through the gap between the frame of the crib and the mattress. The child was caught when the mattress and mattress support returned to a horizontal position after most of the child's weight had fallen through the gap.

The staff is also aware of a recent death which occurred when a bracket for the guide rod of the dropside (see Figure 3) became loose. The child became entrapped against the frame of the crib and died.

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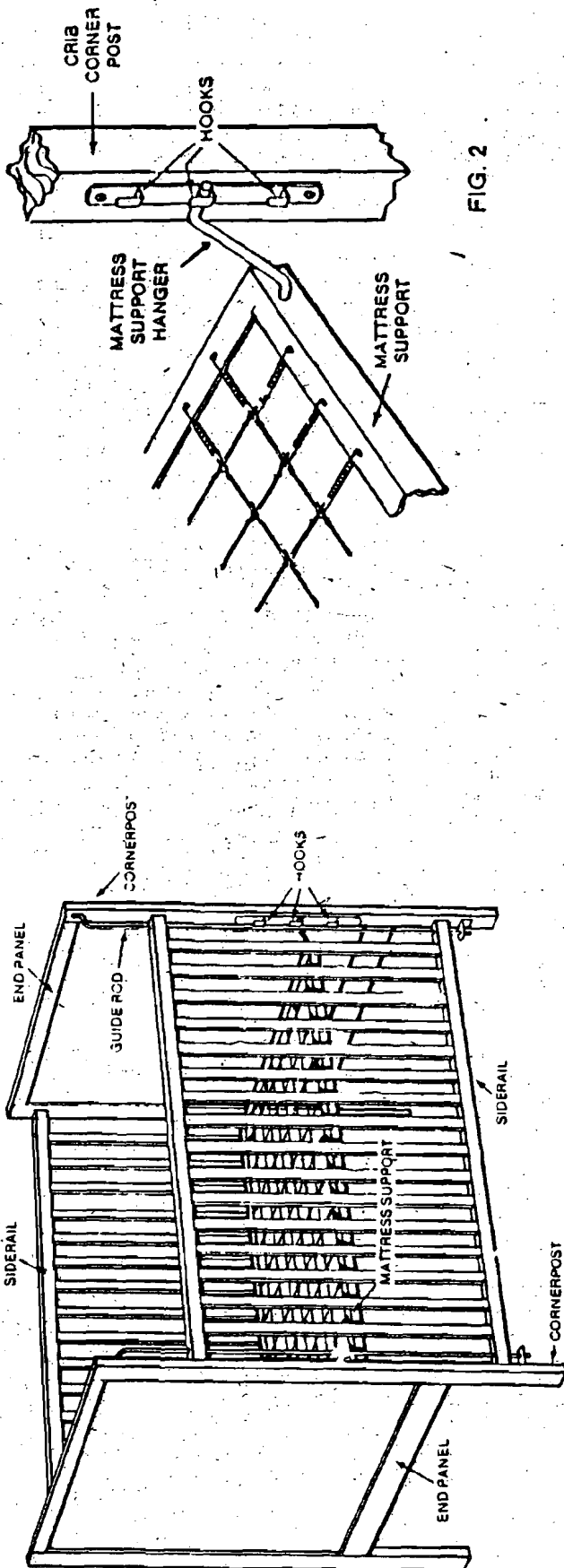


FIG. 1

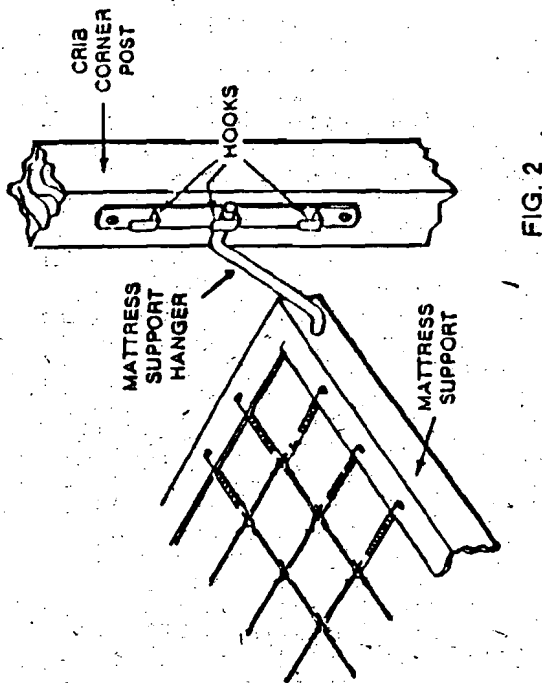


FIG. 2

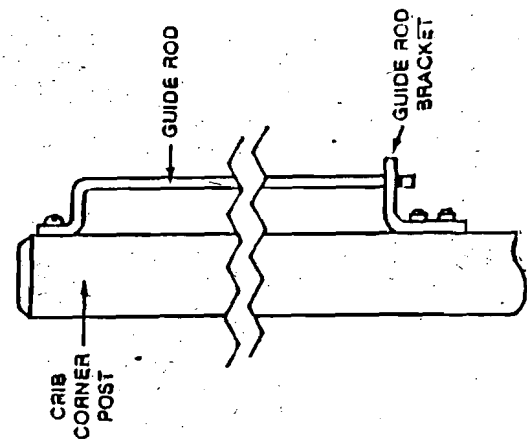


FIG. 3

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Other hardware failures involve machine screws or bolts which can pull out or loosen. In one incident, a 13-month-old girl was in a crib with one fixed siderail and one dropside. The bolt holding the top rail of the fixed siderail to an end panel at one corner of the crib became loose. The threaded retaining nut (grommet nut) which should have held the bolt in place either was never supplied or was missing. The siderail could then move out at the top away from the end panel. The child's head was caught between the loose side rail and the end panel of the crib. It is believed that she slid down into the opening formed by the siderail and the end panel. She was caught by the neck and strangled to death.

In another incident involving a machine screw, the screw or bolt securing the bottom of the fixed siderail became disconnected from the cornerpost. This allowed movement of the siderail. The two-year-old girl in the crib fell through the opening between the siderail and the mattress at the corner where the bolt had come out. The child cried one time, and her parents found her trapped with her head caught between the mattress and the siderail. Her body was hanging between the mattress and the siderail. The child's entire weight was supported solely by her head. The victim was blue in the face and unable to breathe when found. She suffered soft tissue damage to the neck and abrasions. Because the victim was unable to breathe, she could not give a second cry. This may explain the absence of any crying by the children involved in many of these cases. Examination of the bolt and the threaded insert into which it fit revealed that when the bolt was inserted through the siderail into the threaded insert, the bolt engaged by only $\frac{1}{8}$ inch, or $2\frac{1}{2}$ threads.

Wood screws may also fail by pulling out or loosening. In one case an entire crib collapsed because the wood screws pulled out of the wood components of the crib. A seven-month-old boy who was standing up in the crib at the time suffered fractures to the hand and wrist of his right arm, torn ligaments, and possible permanent disability of the hand and wrist. In other cases, wood screws holding the hooks to the cornerposts have pulled out and could not be retightened.

Some failures involve the hooks supporting the mattress hangers. (See Fig. 2.) These hooks may bend or break. In one incident the lowest metal hook on

one cornerpost of a crib broke causing the 21-month-old boy in the crib to fall to the floor. In another incident, the plastic hooks on a crib broke leaving the victim hanging to the crib rail. Breakage was across the plastic strip containing the hooks, occurring immediately above three of the hooks. The 18-month-old boy in the crib was left hanging onto the siderail. In a third incident, the plastic hooks themselves broke off. The ten-month-old boy in the crib was thrown to the floor and the mattress and spring fell on top of him. The child was found vomiting and bleeding from the right ear.

The Commission and its staff are currently aware of 33 in-depth investigations describing failures of omissions of crib hardware covering the period from 1980 to March, 1983. In 13 of these incidents, the children died. In 7 other cases, the children became entrapped but were freed, and in another 4 incidents, the children involved suffered bruises.

These and other incidents involving crib hardware failures or omissions during this period are included in a document titled "Summary of Sixty-seven Incidents Associated with Crib Hardware—January 1980-March 1983," which was compiled by the Commission's Directorate for Epidemiology. This document is available for inspection in the Commission's public reading room, 8th floor, 1111 18th Street, NW., Washington, D.C., or by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20227.

The Commission staff is also aware of approximately 10 incidents of breakage or deformation of hooks which occurred in 1978 and 1979.

Data concerning injuries to children in cribs were previously collected and published by the Commission in a document entitled *Hazard Analysis: Cribs*, (NIIC-1504-75-H207), dated December, 1975. This report lists eight cases involving full-size cribs in which various items of crib hardware failed. These incidents occurred from 1972 through 1974. Three of the victims involved in these incidents died. The others suffered hematoma to the head, contusions, abrasions, bruises, or no injury.

The staff continues to update its data concerning injuries associated with crib hardware failures and omissions.

B. Regulation Under CPSA Rather Than FHSA

Since 1974, crib manufacturers have

been required to report possible substantial hazards under section 15(b) of the CPSA. (15 U.S.C. 2064(b)).² The Commission has received several such reports concerning crib hardware failures or omissions. The Commission has also learned of hardware failures and omissions through death certificates, consumer complaints, news articles, and other sources.

The Commission believes that the exposure of children to hardware failures or omissions that are reported or discovered should be limited as quickly as possible. The Commission staff believes it can do this most effectively through the negotiation, litigation, and injunction processes available to it under section 15 and, where appropriate section 12, of the CPSA. (See CFR 1115.20 and 15 U.S.C. 2064 and 2061).

Under section 15 of the FHSA (15 U.S.C. 1274), the Commission can also negotiate and order (following an adjudicatory proceeding) public notice and recall of cribs with the hardware failures or omissions. However, such action under the FHSA can be initiated only after the Commission has issued an FHSA regulation applicable to the cribs. Since this "prior rulemaking" requirement does not exist under section 15 of the CPSA, the Commission believes that it would be more expeditious to act under the CPSA. In addition, an adjudicatory proceeding under section 15 of the CPSA provides affected person and firms with the same due process safeguards that they would have in an adjudicatory proceeding under section 15 of the FHSA.

For these reasons, the Commission preliminarily finds that it is in the public interest to regulate risks of injury to children from cribs with hardware failures or omissions under the CPSA rather than the FHSA.

C. Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the

²The original requirement was contained in 39 FR 6069 (February 19, 1974) and the current version of this requirement can be found at 16 CFR 1115.20, which was promulgated August 7, 1978.

agency certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

The regulation proposed below, if issued on a final basis, will not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce the risk of injury with which it is concerned will be taken following the procedures set forth in the CPSA rather than the FHSA.

If the Commission issues a final rule based on the proposal published below, and then determines that it should act to eliminate or reduce the risk of injury which is the subject of the rule, the Commission will be required to initiate and follow through to completion appropriate judicial or administrative proceedings under one or more sections of the CPSA before it can impose any obligation on any person or firm.

Since a final rule based on the proposal imposes no obligation on any person or firm, the Commission hereby certifies that it will not have a significant economic impact on a substantial number of small businesses.

D. Environmental Considerations

The regulation proposed below falls within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. For this reason, neither an environmental assessment nor an environmental impact statement is required.

E. Conclusion and Proposal

After consideration of the information set forth above, and provisions of the FHSA and the CPSA, the Commission hereby proposes to regulate under the CPSA rather than the FHSA all possible risks of death or injury which may be associated with baby cribs having hardware failures or omissions except those risks of injury associated with any item of crib hardware now subject to regulations issued under the FHSA. Until issuance of any final regulation under section 30(d) of the CPSA, the Commission has authority to regulate under the FHSA any risk of injury described in this notice which these cribs may present.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, infants and children.

Therefore, under provisions of the Consumer Product Safety Act (section

30(d), Pub. L. 92-573, 86 Stat. 1207, as amended Pub. L. 94-284, 90 Stat. 503, Pub. L. 97-35, 95 Stat. 703; 15 U.S.C. 2079(d)), the Commission proposes to amend the Code of Federal Regulations, Title 16, Chapter II, Subchapter B, Part 1145, by adding new a § 1145.14, as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

§ 1145.14 Baby cribs with certain hardware failures or omissions; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act, possible risks of death or injury that may be associated with baby cribs having items of hardware which break, become loose, detach, or otherwise fail to perform their intended function, or which have been omitted; except those risks of injuries associated with baby cribs which are addressed by provisions of 16 CFR 1500.18(a)(13), Part 1508; § 1500.18(a)(14), Part 1509.

(b) Therefore, if the Commission finds regulation to be necessary, any such risks of death or injury which may be associated with baby cribs having any of the hardware failures or omissions described in § 1145.14(a) shall be regulated only under one or more provisions of the Consumer Product Safety Act.

Interested persons are invited to submit written comments by January 26, 1984. Comments may be accompanied by written data, views, and arguments, and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Received comments may be seen in the Office of the Secretary, Eighth Floor, 1111 18th Street NW., Washington, D.C., between 8:30 a.m. and 5:00 p.m., Monday through Friday.

(Sec. 30(d), Pub. L. 92-573, 86 Stat. 1207, as amended Pub. L. 94-284, 90 Stat. 503, Pub. L. 97-35, 95 Stat. 703; 15 U.S.C. 2079(d))

Dated: December 21, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-34314 Filed 12-23-83; 8:45 am]

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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
SECTION 30(d), CRIB HARDWARE PROPOSAL

December 15, 1983

I reluctantly dissent today on the issuance of the proposed 30(d) Consumer Product Safety Act (CPSA) rule with regard to crib hardware.

I share my colleagues' concerns about the tragic injuries and deaths associated with crib hardware. However, I do not believe that shifting to a potential litigation posture is the most effective and legally binding solution.

This Commission already has mandatory regulations under the Federal Hazardous Substances Act (FHSA) dealing with crib hardware (16 CFR 1508.6). We should explore possible amendments or revisions to those regulations as the most appropriate legal route to address crib hardware concerns.

Granted, any hazards to infants is a matter of urgency. However, haste can make waste, and in the long run the consumer may receive no protection while we litigate any of the Commission's subsequent actions following a 30(d) proposal.

The Fifth Circuit Court of Appeals in the urea formaldehyde foam insulation (UFFI) decision Gulf South Insulation v. U.S. Consumer Product Safety Commission (701 F. 2d 1137) said in substance that to transfer from the FHSA to the CPSA by way of a 30(d) rule we must: (1) show either that the risk cannot be regulated under the FHSA; or (2) that it is in the public interest to proceed under the CPSA. I doubt that we have met either test, especially since we could clearly regulate under the FHSA and have already done so with regard to other concerns with crib hardware (16 CFR 1508. 6).

Also since the staff indicated at the December 9 briefing that this is a "generic" problem (not manufacturer or product specific)

associated with crib hardware, rulemaking is the approach Congress set forth rather than the product specific Sec. 15 approach. (See Ford Motor Co. v. FTC 673 F. 2d 1008, 1981, 9th Circuit).

I know that the "generic" issue and rulemaking versus the adjudicatory approach has already been raised with regard to another recent Commission action. I am again afraid that years will go by without adequate notice, and without resolution to the problem with probable litigation.

Finally, I am not convinced that the voluntary standard process has been given a chance to operate here. Staff says "industry has indicated a willingness to cooperate." I suggest we explore that option, and convince industry of our concern and the problems involved, and that we get on with a practical, effective solution.

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