



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

Record of Commission Actions  
Commissioners Voting by Ballot  
Placed in the Record at Open Commission Meeting  
July 12, 1995

At the July 12, 1995, meeting of the U.S. Consumer Product Safety Commission, the staff briefed the Commission in open session on issues related to the agency's budget for fiscal year 1997. (Ref. staff briefing package dated June 28, 1995) No decisions were made.

Chairman Ann Brown convened today's meeting. Commissioner Mary Sheila Gall and Commissioner Thomas H. Moore were present.

Ballot Vote Decisions. The following decisions made by ballot vote of the Commissioners were placed into the record.

1. Issues Concerning Toy Labeling and Reporting Rules (Ballot due 6/26/95)

The Commission decided three issues that were not directly addressed when the Commission, on February 27, 1995, issued rules interpreting the labeling and reporting requirements of the Child Safety Protection Act (CSPA):

(1) Labeling of Exempt Products: By unanimous vote (3-0), the Commission directed the staff to draft an amendment to the CSPA rules explaining that products exempt from the small parts regulation (16 C.F.R. 1501.3) do not require labeling under the CSPA;

(2) Reporting for Exempt Products: By vote of 2-1, with Chairman Brown and Commissioner Moore voting for and Commissioner Gall voting against, the Commission directed the staff to draft an amendment to the CSPA rules explaining that products exempt from the small parts regulation (16 C.F.R. 1501.3) are subject to the reporting requirements of the CSPA;

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Issues Concerning Toy Labeling and Reporting Rules, continued

(3) Small Parts Contained in a Toy or Game: By vote of 2-1, with Chairman Brown and Commissioner Moore voting for and Commissioner Gall voting against, the Commission directed the staff to draft an amendment to the CSPA rules explaining that a firm's reporting obligation under the CSPA is based on the condition of the product at the time of the choking incident.

Chairman Brown, Commissioner Moore and Commissioner Gall filed separate statements concerning their votes on these toy labeling and reporting issues.

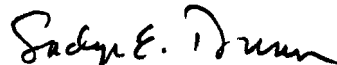
2. Revised Draft Federal Register Notice to Issue Final Rule to Revise the Testing Protocols Under the Poison Prevention Packaging Act (Ballot due 7/6/95)

The Commission voted unanimously (3-0) to issue the final rule to revise the child and adult tests for special packaging under the Poison Prevention Packaging Act and publish the Federal Register notice as drafted in accordance Commission directions given at the Commission meeting of June 15, 1995.

3. Proposed Civil Penalty Settlement: Howland Caribbean Corporation, toys and rattles, CPSC Docket No. 95-C0013, (OS# 5058) (Ballot due 7/7/95)

The Commission voted unanimously (3-0) to provisionally accept the settlement agreement and order containing a civil penalty in the amount of \$75,000. Unless a commenter asks the Commission not to accept the Settlement Agreement and Order within 15 days after publication in the Federal Register, the Agreement and Order will be deemed finally accepted on the 16th day.

For the Commission:



Sadye E. Dunn  
Secretary

Attachments (3)

UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

The Chairman

Statement of Chairman Ann Brown  
Toy Labeling and Reporting of Choking Incidents  
June 26, 1995

I voted today to require the reporting of choking incidents involving products exempt from the small parts regulation that are subject to the Child Safety Protection Act (CSPA). I strongly believe that it is important for the Commission to receive information on reportable choking incidents involving all products subject to the CSPA even if those products are exempt from the small parts regulation. Information received can be used by the Commission to identify injury trends or to identify particular products that may be particularly susceptible to choking incidents.

I wish to emphasize, however, that just because the Commission receives reports on choking incidents regardless of whether the products are subject to or exempt from the small parts regulation it does not necessarily mean any action by the Commission is necessary or appropriate. Each report must be reviewed on a case-by-case basis.

I also voted not to require labels warning of a small parts hazard for toys and games intended for children over three if the same products would otherwise be exempt from the small parts requirements when they were intended for children under three. The products at issue are writing materials, modeling clay, and fingerpaints and other paint sets.

While I previously voted to label these products when they are intended for children over 3 years, the data available indicates that the absence of labeling should result in negligible risk. Further, under the Commission's existing regulation, a product intended for children under three that is exempt from the small parts regulation can have a small part that presents a choking hazard. It would be anomalous to require the same product, when it is intended for children over three, to bear a label that says the product is not for children under 3 years because of the choking hazard.

The choking reporting regulation was written in a way to limit the reporting requirements to information necessary to provide the Commission sufficient information to understand the nature and content of the choking incident. It places a minimal burden on industry. My vote today should not increase that burden.



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**STATEMENT OF COMMISSIONER THOMAS HILL MOORE  
ON THE TOY LABELING AND REPORTING RULES**

June 26, 1995

I am voting today to direct the staff to draft an amendment to the Child Safety Protection Act (CSPA) rules explaining that products exempt from the small parts regulation are subject to the reporting requirements of the CSPA. In addition, I am also voting to direct the staff to draft an amendment to the CSPA rules explaining that a firm's reporting obligation under the CSPA is based on the condition of the product at the time of the choking incident.

The Commission exempted certain items from the small parts ban because it believed that the risk of injury posed by the product was outweighed by the functional benefit that's provided by the product. However, the policy reason which supported an exemption from the small parts ban does not exist when it comes to reporting choking incidents involving these exempted products. On the contrary, information reported about a product, whether exempt from the small parts regulation or not, could provide important safety and hazard related data which could potentially affect future Commission direction and decisions. Moreover, the choking hazard report does not place an extraordinary burden on the reporting firm.

Without question, the purpose of the choking hazard reporting requirement is to advise the Commission of hazards. An accumulation of evidence showing an exemption is too broadly drawn might lead the Commission to rethink or clarify its position. In my judgement, limiting the reporting requirement only to toys subject to the small parts ban also limits our ability to effectively serve the public's interest.

In that same light, for reporting purposes, the key event is the choking incident. Whether a small part that caused a choking incident was contained in a toy or game is relevant to our consideration. Less relevant for reporting purposes, however, is how the small part's "de-containment" occurred.

**STATEMENT OF THE HONORABLE  
MARY SHEILA GALL ON PROPOSED RULE CHANGES  
UNDER THE AUTHORITY OF THE  
CHILD SAFETY PROTECTION ACT**

**June 22, 1995**

I voted against the staff recommendations that the Child Safety Protection Act (CSPA) be interpreted to require labeling and reporting for previously exempted products. I also disagree with the staff's interpretation that the CSPA requires the reporting of choking incidents where the small part in question constituted a fragment of, or debris from, a toy or game.

I did so because I believe that the language in the CSPA demonstrates that when Congress wanted to impose labeling and reporting requirements on specific products, it did so, and the specificity of the language in the CSPA is not authority for the Commission to revisit the issue of exempt products. Besides the fact that the CSPA provides no statutory authority for imposing labeling or reporting requirements, the staff has not identified what hazards it expects the labels to warn people against, or what useful information that it expects to receive from the reports.

Similar considerations motivated my vote against an interpretation of the CSPA that requires reporting of choking incidents involving parts of toys or games, where the parts exist at the time of the choking incident. This interpretation seems to me to require reports of choking that involve fragments of, or debris from, a toy or game. I do not believe that debris or fragments constitute "small parts" of toys or games within the meaning of the CSPA. Nor do I believe that any useful function will be served by requiring such reports, since the data collected will tell the Commission and its staff only what we already know: That children can choke on any small object and that any toy or game can be reduced to fragments or debris small enough to choke a child. We should always remember that when we impose a reporting requirement we may impose penalties on persons who do not make the required report. It is unwise public policy to propose to penalize people for not providing data when the Government Agency receiving the data has no very good idea what it intends to do with it.