



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

MINUTES OF COMMISSION MEETING
February 8, 1995
4330 East West Highway
Bethesda, Maryland

The February 8, 1995, meeting of the Consumer Product Safety Commission was convened at 10:00 a.m. in open session by Chairman Ann Brown. Commissioner Mary Sheila Gall was present.

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

1. Request by Syntex Corporation to Extend Comment Period for Proposed Rule to Require Child-resistant Packaging for Certain Naproxen Preparations (Ballot due 1/4/95)

The Commission voted unanimously (2-0) to approve a Federal Register notice extending until March 1, 1995, the period for submitting comments on the Commission's proposed rule to require child-resistant packaging for naproxen preparations containing 250 mg or more of naproxen per package.

2. Revised Draft Federal Register Notice to Issue Final Rule to Require Child-resistant Packaging for Mouthwash Containing 3 Grams or More of Ethanol Per Package (Ballot due 1/9/95)

The Commission voted unanimously (2-0) to issue a final rule to require child-resistant packaging for mouthwashes with 3 grams or more of absolute ethanol per package, and to approve a Federal Register notice issuing the final rule.

3. Proposed Civil Penalty Settlement: Boley Corporation, toys, CPSC Docket No. 95-C0006 (OS# 3490) (Ballot due 1/10/95)

The Commission voted unanimously (2-0) to provisionally accept the Settlement Agreement and Order containing a civil penalty in the amount of \$60,000. 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.

Ballot Vote Decisions, continued

4. Supplemental Ethics Regulations (OS# 3922) (Ballot due 1/24/95)

The Commission voted unanimously (2-0) to approve " Supplemental Standards of Ethical Conduct for Employees of the Consumer Product Safety Commission," concerning outside employment, which, with the concurrence of the Office of Government Ethics, will be published as a supplement to the government-wide Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635).

5. Final Statement of Enforcement Policy for Art Materials (Ballot due 1/27/95)

The Commission voted unanimously (2-0) to approve a final statement of enforcement policy for art materials to explain more clearly how the Commission will enforce the requirements of the Labeling of Hazardous Art Materials Act ("LHAMA"), which amended the Federal Hazardous Substances Act in 1988.

6. Proposed Civil Penalty Settlement: General Nitewear Corporation, sleepwear, CPSC Docket No. 95-C0007 (OS# 3798) (Ballot due 1/31/95)

The Commission voted unanimously (2-0) to provisionally accept the Consent Order Agreement containing a civil penalty in the amount of \$110,000. Unless a commenter asks the Commission not to accept the Consent Order Agreement within 15 days after publication in the Federal Register, the Order will be deemed finally accepted on the 20th day.

Agenda Items

1. Toy Labeling/Reporting Requirements

The Commission was briefed by the staff on final labeling and reporting requirements that would implement the Child Safety Protection Act of 1994. (Ref: staff briefing package dated February 2, 1995.) No decisions were made at today's meeting.

This concluded the morning session. The meeting resumed at 2:30 p.m.

2. Five-Gallon Buckets

The Commission considered the status of CPSC and industry actions to address the risk of children drowning in five-gallon buckets. In preparation for today's meeting, the staff provided the Commission with an update of reported deaths and non-fatal incidents, information on Engineering and ASTM activities related to voluntary labeling and performance standards, and information on industry's information and education campaign. (Ref: staff package dated February 7, 1995.)

Following discussion, on motion of Chairman Brown, the Commission voted unanimously (2-0) to terminate the Commission's rulemaking proceeding on five-gallon plastic buckets initiated with the publication of an Advance Notice of Proposed Rulemaking (ANPR) on July 8, 1994, and to direct the staff to prepare for Commission approval an appropriate Federal Register notice withdrawing the rulemaking proceeding.

Chairman Brown and Commissioner Gall each filed a statement concerning the matter of terminating the rulemaking proceeding on five-gallon buckets. Copies of the statements are attached.

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

For the Commission:



Sadye E. Dunn
Secretary

Attachments

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

Statement of Chairman Ann Brown
Five-gallon Buckets
February 8, 1995

The Chairman

I have voted today to terminate the Commission's rulemaking proceeding for five-gallon buckets. In view of the progress made by the bucket industry in placing English and Spanish warning labels on five-gallon buckets, its commitment to an ongoing information and education campaign, the significant cost to the Commission and industry that could result in attempting to redesign buckets to meet a performance standard with no assurance that such a standard would be practicable and reasonable for all buckets, or even a majority of buckets, it makes sense to terminate the proceeding.

On May 19, 1994, the Commission unanimously voted to start a rulemaking proceeding by publishing an advance notice of proposed rulemaking (ANPR) to address the hazard of toddlers drowning in five-gallon plastic buckets. This hazard has been a hidden one not appreciated by parents and caregivers. An estimated 36 toddlers drown each year in five-gallon buckets.

The Commission began its rulemaking proceeding in large part because with the exception of the gypsum industry and The Procter and Gamble Company, the bucket industry had not taken adequate steps to label its buckets voluntarily with a warning of the drowning hazard. Further, it had failed to initiate an aggressive information and education campaign to warn consumers of the risk of drowning.

Because of the Commission's vote to start a rulemaking proceeding, the bucket industry got the message. Industry understood, perhaps for the first time, that this Commission was serious about addressing the hazard of children drowning in five-gallon buckets. By letter dated January 17, 1995, counsel for five major bucket manufacturers, Bennett Industries, Plastics, Inc., Letica Corporation, North America Packaging Corporation (NAMPA), and Ropak Corporation, represented that those five companies comprise approximately 90% of the U.S. bucket market, and that approximately 80% of their buckets were now being labeled in both Spanish and English. Counsel also represented that those figures would increase in the upcoming months.

I fully expect these firms will honor their commitment to label their buckets. Indeed, to the extent buckets do not bear a drowning hazard warning, it may be appropriate for the Commission's Compliance staff to investigate whether it believes the failure to label rises to the level of a substantial product hazard under the Consumer Product Safety Act.

As a result of the ANPR, the five largest bucket manufacturers also began a substantial information and education program. They issued an audio news release and an audio public service announcement in late fall, 1994, warning of the bucket drowning hazard. They are in the final stages of producing a large color poster which will be widely distributed to a good cross section of organizations. To date, these firms have committed or spent approximately one quarter million dollars on this campaign.

More importantly, counsel to these firms has represented that the five firms are committed to continuing their information and education campaign over the next 2 1/2 years, for roughly an additional one quarter million dollars.

I am pleased with the new approach of the five bucket manufacturers identified above. Their commitment to educating the public about the hazard of drowning in buckets through labeling and an information and education campaign is laudable.

My decision to vote to terminate this rulemaking proceeding is not an easy one. When I voted for an ANPR, I expressed concern that warning labels and an information and education campaign alone might not be sufficient to reduce the drowning hazard. I still have that concern. I am heartened, however, by the fact that since September, 1993, when the California legislation requiring buckets sold in that state to bear warning labels in both English and Spanish took effect, the Commission is unaware of any deaths in California involving a labeled bucket.

The staff advises that to continue to seek solutions to the bucket drowning hazard through a performance standard is likely to involve significant staff time and Commission resources that would divert the Commission from other important activities. It also would take many years of work with no assurance of success. This Commission has a myriad of safety issues to address and limited resources. I believe it is best to concentrate those resources on problems that are more clearly solvable within a reasonable period of time.

In voting to terminate the rulemaking proceeding, I am not suggesting the bucket industry should stop looking for design solutions to the bucket drowning hazard. I encourage industry to continue to work on possible design alternatives to address the drowning hazard. For example, the Olin Corporation has developed a child access restrictor designed to fit easily in buckets. The device which Olin anticipates installing in its buckets by the end of the year has the potential to eliminate the drowning risk, does not interfere with the use of the buckets' contents, and is very inexpensive. Although this fix may not work for all products packaged in buckets, it shows that when industry puts its considerable ingenuity to work, it can come up with innovative, practical, and economical safety fixes. I commend Olin's efforts and urge industry to continue to explore other alternatives.

**STATEMENT OF COMMISSIONER MARY SHEILA GALL
ON
THE TERMINATION OF RULEMAKING PROCEEDINGS
REGARDING FIVE GALLON BUCKETS**

February 8, 1995

Today's decision by the Commission to terminate rulemaking proceedings on plastic five gallon buckets is an appropriate ending to the Commission's activities in this area. I am pleased that we were able to take decisive action, rather than allowing this project to continue into 1998. Based on today's update, it is clear that development of a voluntary performance standard and prototype solutions were unworkable, despite the best efforts of industry and our staff.

I am pleased that industry has stepped up to the task of voluntarily labeling and implementing the sort of targeted aggressive information and education campaign that was envisioned at the time of the Commission's last briefing on this subject. Although industry's efforts are laudable, they did not form the basis for my vote to terminate the proceedings.

As I had done previously, in preparing for today's meeting, I read all of the in-depth investigations that the Commission had received on bucket incidents since our last briefing. Once again, I found that the culprit was not the bucket. It was the absence of adult supervision. Much like our experience with baby bath seats and baby walkers, the product works just as it should. It is those charged with the responsibility of caring for young children who are creating the hazard. It is not the product.

My vote to end the Commission's activities in this area reaffirms my position that the Federal government cannot mandate changes in products as a substitute for responsible adult supervision. The deaths of these children are inexcusable. The fact that they were preventable is tragic.