



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Ann Brown
Commissioner Mary Sheila Gall
Commissioner Thomas H. Moore

ITEM:

Policy Statement on Consumer Product Safety Act Section 15(b) Reporting and Proposed Revision to the Interpretative Rule on Consumer Product Safety Act Section 15(b) Reporting

DECISION:

The Commission voted (2-1) to approve draft Federal Register notices to (1) issue a final policy statement containing an interpretation of section 15(b) of the Consumer Product Safety Act (CPSA) and (2) to propose for public comment an amendment inserting the same interpretation in the policy statement into the existing Interpretative Rule on reporting under section 15(b) of the CPSA at 16 CFR Part 1115. Chairman Brown and Commissioner Moore voted to approve the proposed statement and to approve the proposed revision to the Interpretative Rule. Commissioner Gall voted to not approve the proposed statement and to approve the proposed revision to the Interpretative Rule. Commissioner Gall filed a statement regarding her vote, copy attached.

For the Commission:

A handwritten signature in blue ink, appearing to read "Todd A. Stevenson", is written over a horizontal line.

Todd A. Stevenson
Acting Secretary

* Ballot vote due May 21, 2001



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**STATEMENT OF THE HONORABLE MARY SHEILA GALL
IN OPPOSITION TO POLICY STATEMENT AND IN FAVOR OF
ISSUANCE OF PROPOSED REVISION TO REGULATIONS
CONCERNING PRODUCTS MANUFACTURED OR DISTRIBUTED
OUTSIDE OF THE UNITED STATES**

May 21, 2001

I am voting today against publication of a formal statement of Commission policy declaring that information concerning products manufactured or distributed outside of the United States must, under certain circumstances, be reported to the Commission. I am, however, voting in favor of issuing an Advance Notice of Proposed Rulemaking (ANPR) containing a proposed revision to the Commission's interpretive rules under Section 15(b) of the Consumer Product Safety Act (CPSA), that would incorporate the policy statement into the rules. My vote reflects my belief that: (1) a reporting requirement does exist in certain circumstances when a manufacturer learns of hazards in products that are manufactured or distributed outside of the U.S.; and (2) interpretive rulemaking is the proper mechanism to inform the regulated community of that requirement.

It is clear that information about product hazards that have manifested themselves in countries outside of the United States may, under certain circumstances, trigger a reporting requirement under Section 15(b) of the CPSA. I have voted to approve civil penalties based partially on the fact that the U.S. manufacturer experienced problems with a product first in a non-U.S. country. I may find in the future that other manufacturers have incurred an obligation to report because of their experiences with a product outside of the U.S. But a statement of policy is not the best way to make declarations about the extraterritorial application of U.S. law, nor is the existing record sufficient to justify the policy statement.

I note, for example, that the original statement of policy applied to "Potentially Hazardous Products *Distributed* Outside the United States." (emphasis added) The revised statement of policy now says that it applies to "Potentially Hazardous Products *Manufactured or Distributed* Outside the United States." (emphasis added) The briefing package notes this change as if it were nothing but a clerical insertion. But the implications may be very broad. When a non-U.S. manufacturer enters the U.S. market for the first time, does the entire safety history of the product now being imported suddenly become relevant to whether that manufacturer has a reporting obligation to the Commission?

Other commentators have identified other difficulties with the extraterritorial application of the Commission's reporting requirement, such as the imputation to a U.S. manufacturer of knowledge gained by an overseas distributor. One commentator in favor of the statement of policy congratulated the Commission for its "effort to expand its reporting requirements." Even if this result was not the one envisioned by the proposed statement, it is clear that that is how it is perceived.

The extraterritorial application of Section 15(b) of the CPSA is a topic that requires considerable study by the Commission, and careful coordination with other agencies of government that have more expertise in such matters. The Commission also needs to consider whether the claimed extraterritorial effect of Section 15(b) is consistent with trade treaties to which the U.S. government is a party, or with other international laws. Finally, to what extent is a reporting requirement fair to the regulated community in the context of international distribution and communication arrangements?

The best way for the Commission to obtain answers to the preceding questions is for the Commission to undertake rulemaking. I have, therefore, voted to publish an ANPR inviting comment on an interpretive regulation that contains the elements of the policy statement. I recognize that the Commission is not required to do three-stage rulemaking to create or amend interpretive regulations. I believe, however, that the Commission will benefit by adding the extra ANPR stage to solicit as many comments as possible and let the regulated community know that its comments are being actively solicited before the Commission moves forward.