



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

MINUTES OF COMMISSION MEETING
April 11, 1997
4330 East West Highway
Bethesda, Maryland

The April 11, 1997, meeting of the U.S. Consumer Product Safety Commission was convened at 10:00 a.m., in open session by Chairman Ann Brown. 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. Options for the Project on Child-Resistant Packaging of Household Products Containing Petroleum Distillates and Other Hydrocarbons (Ballot due 2/18/97)

The Commission voted 2-1 to publish an Advance Notice of Proposed Rulemaking (ANPR) on child-resistant packaging of household products containing petroleum distillates and other hydrocarbons. Voting to approve was Chairman Ann Brown and Commissioner Thomas H. Moore. Commissioner Mary Sheila Gall voted to direct the staff to develop a "Request for Information" for Federal Register publication and to utilize other available information sources instead of an ANPR, and filed a statement regarding this matter, copy attached.

2. Notice of Public Hearing on Commission's Agenda, Priorities and Draft Strategic Plan (Ballot due 3/5/97)

The Commission voted unanimously (3-0) to approve a Federal Register notice announcing a public hearing on May 13, 1997 concerning the Commission's Agenda and Priorities for fiscal year 1999 and its Draft Strategic Plan for submission to Congress September 30, 1997.

3. April Regulatory Agenda (Ballot due 3/6/97)

The Commission voted unanimously (3-0) to approve the Commission's semi-annual regulatory flexibility agenda and agenda of regulatory actions the Commission expects to be under development or review by the agency during the next year.

Ballot Vote Decisions, continued

4. Draft Letter of Denial--Petition HP 95-1 Requesting Development of a Rule to Require Youth Batting Helmets to be Manufactured with a Faceguard (Ballot due 3/21/97)

The Commission voted 2-1 to approve with changes the draft letter of Commission denial of Petition HP 95-1, from the American Academy of Facial Plastic and Reconstructive Surgery. Chairman Ann Brown and Commissioner Thomas H. Moore voted to approve the letter. Commissioner Gall voted not to approve and filed a statement regarding this matter, copy attached.

5. Extension of "No PD" Program, (OS# 3932) (Ballot due 3/24/97)

The Commission voted unanimously (3-0) to extend on a permanent basis the "No PD" program, begun in August 1995, under which the Compliance staff will under certain circumstances refrain from making a preliminary hazard determination.

Agenda Item: 1997 Midyear Review

The Commission was briefed by the Executive Director on the status of fiscal year (FY) 1997 resources and projects and on proposals for adjustments in the agency's operating plan for the balance of the fiscal year. These matters were detailed in a briefing package from the Executive Director dated April 4, 1997.

Following brief discussion, the Commission decided to proceed at today's meeting to a vote on the proposed revisions to the FY 1997 operating plan.

On motion of Chairman Brown, the Commission voted unanimously (3-0) to approve the proposals for the allocation of agency resources as detailed in Attachment B of the staff briefing package of April 4, 1997. The Executive Director will keep the Commission apprised of the progress of the approved proposals and of new funding proposals should additional funds become available by year end.

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

For the Commission



Sadye E. Dunn
Secretary



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February 18, 1997

**STATEMENT OF THE HONORABLE
MARY SHEILA GALL ON VOTE NOT TO ISSUE
AN ADVANCE NOTICE OF PROPOSED RULEMAKING
ON PETROLEUM DISTILLATES**

I voted not to publish an Advance Notice of Proposed Rulemaking (ANPR) on child-resistant packaging of household products containing petroleum distillates and other hydrocarbons. It has not been demonstrated to me that the staff has sought other, non-regulatory mechanisms to collect the information to narrow the scope of any proposed regulation. I recognize that an ANPR is optional under the Poison Prevention Packaging Act, but it remains the initiation of regulation. I believe that the Commission staff ought to exhaust all reasonable means of information collection before initiating regulation.

Despite my opposition to an ANPR at this time, I encourage the staff to use all reasonable information collection avenues open to it. An appropriate Request for Information should be developed by the staff for publication in the Federal Register, soliciting information from potentially affected communities and other interested persons. This request should be supplemented by requests for information from trade associations and from industries known to manufacture, package and distribute petroleum distillates. I encourage the pertinent industries to cooperate with the staff to provide it with the best available information. I will review this information with great interest as it is reported and collected.



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March 19, 1997

**STATEMENT OF THE HONORABLE MARY SHEILA GALL
IN OPPOSITION TO THE DRAFT LETTER OF DENIAL
TO THE AMERICAN ACADEMY OF PLASTIC AND
RECONSTRUCTIVE SURGERY CONCERNING
A REGULATION TO REQUIRE FACEGUARDS ON
YOUTH BATTING HELMETS**

I am voting not to send the draft letter of denial attached to the ballot dated March 5, 1997, despite the fact that I *voted to deny* the petition. My reasons for voting not to send the draft letter of denial are specific to the language of the letter itself.

In the five and a half years that I have served on the Commission, letters denying petitions have been direct expositions of why granting the petition is not warranted. These denials have been consistently upheld by the courts when petitioners have sought judicial review, most recently in *O'Keefe's, Inc., v. U.S. Consumer Product Safety Commission*. This draft denial letter represents a significant departure from past Commission practice. It sets forth an argument *in favor of* granting the petition, even while it denies it. I do not believe that a petition denial letter is an appropriate place to explain why the request of the petitioner is *warranted*. Such an approach, in essence, defers action on the petition. I do agree that it is worthwhile to share staff-developed safety information on youth baseball league equipment with representatives of these leagues

I am also concerned that the draft letter of denial is inconsistent with the spirit of Section 3(j) of the Federal Hazardous Substances Act. That section requires that the Commission deny a petition based on a voluntary standard only when that standard is in existence. Here the Commission's draft letter appears to be denying the petition based on the expectation of the Commission majority that voluntary activities which may occur can achieve the same result. Since there are appropriate grounds for denying the petition, the portions of the letter that cite the evidence to support an ANPR are apt to confuse the petitioners.

I voted to deny the petition because I do not believe that the Commission could find that batting helmets without faceguards constituted an unreasonable risk of injury, based on the information contained in the petition and other information reasonably obtainable by the Commission. Such findings are necessary to classify them as banned hazardous products under the Consumer Product Safety Act or banned hazardous substances under the Federal Hazardous Substances Act.