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THE CONSUMER PRODUCT SAFETY ACT: CONSUMER IMPACT[1]

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ABSTRACT

The main purpose of the Consumer Product Safety Act is to protect the consumer from unreasonable risk associated with consumer products. Terminology relating to the act, including consumer products and reasonable and unreasonable risks, is defined. The act has the authority to establish safety standards in two ways: on its own initiative or by petition from consumers and industry. The act also deals with products representing a substantial hazard. Once a preliminary determination is made, defects are classified as due to either quality control or design. Violators are then requested to submit voluntary corrective action plans. Civil and criminal penalties can be assessed if the agency's mandates are not complied with.

Keywords: Consumer Product Safety Act, risk, safety standards, product hazards, design defects, quality control defects, voluntary corrective action plans.

INTRODUCTION

Some of the functions of the Consumer Product Safety Commission, some pertinent sections of the Act, and some of the commission operating procedures will be described here. From this, one should be able to judge the impact of this commission on Wood Products and Wood Construction.

The Consumer Product Safety Act was signed into law in 1972, primarily as a result of the findings of a National Study Commission on Product Safety. Their findings were that 20 million Americans are injured each year as a result of incidents involving consumer products found around the home. Of those injured, 110,000 are permanently disabled and 30,000 are killed, at an annual cost to the nation in excess of $5.5 billion.

The primary purpose of the Consumer Product Safety Act is the protection of the public against unreasonable risk of injury associated with consumer products. This Act provided for the establishment of the Consumer Product Safety Commission and also empowered the Commission to develop and enforce uniform safety standards for consumer products and to ban unreasonably hazardous consumer products from the marketplace. The Act was designed to enable the development of uniform consumer product safety standards while minimizing conflicting state and local regulations. We are also to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries, and assisting consumers in evaluating the comparative safety of consumer products.

Congress defined "Consumer Product" ". . . as any article, or component part thereof, produced or distributed (I) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise, or (II) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation or otherwise . . . ." Excluded from its jurisdiction are tobacco and tobacco products, motor vehicles or motor vehicle equipment, economic poisons, aircraft and aircraft components, boats and food, drugs, devices, and cosmetics.

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ESTABLISHING CONSUMER PRODUCT STANDARDS

Section 7 of the Consumer Product Safety Act gives the Commission the authority to set consumer product safety standards. The Act states that a consumer product safety standard shall consist of one or more of any of the following requirements: performance, composition, contents, design, construction, and finish or packaging of a consumer product. The Act also requires that any requirement of a mandated standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with a product and that the requirements of mandated standard shall wherever feasible be expressed in terms of performance requirements.

There are two basic ways that a consumer product may become the subject of standards development. First, the law allows interested persons the right to petition the Commission to begin standard development. Petitions can come from individual consumers, organized consumers, or industry; or the Commission on its own initiative may begin standards development.

For the Commission to evaluate petitions received from industry or consumers or to initiate action on its own, a data base is needed to determine what consumer products are associated with injuries and the severity and frequency of these injuries. To provide this data, the National Electronic Injury Surveillance System (NEISS) was established. This system is a random sampling of hospital emergency rooms located across the country. These emergency rooms report to our data bank in Washington all injuries associated with consumer products that come under our jurisdiction. This is an important tool since it indicates where problems lie. A number of these injury reports are then further investigated. This investigation involves an interview with the injured party and perhaps witnesses to the injury. The relationship between the consumer, his environment, and the product is determined.

Injury data and these in-depth investigations are then studied to determine if there appears to be an unreasonable risk of injury associated with the consumer product. Risk can be defined as the possibility of suffering injury or loss. Persons using consumer products always place themselves in this situation where there is the possibility of suffering a loss or injury. However, this should not be construed negatively because the consumer is striving for an important benefit from using the product. This benefit or gain is usually worth the risk. The real question involving the risk of using a consumer product is whether or not the risk is reasonable. A reasonable risk is defined as one where the consumer:

(a) understands by way of adequate warning that a risk exists,

(b) understands by way of common knowledge that a risk exists,

(c) can appraise the probability of an occurrence of a hazard,

(d) can appraise the severity of the associated injury,

(e) knows how to cope with the risk,

(f) cannot obtain the same benefit in less risky ways,

(g) would not if given the choice pay additional costs to eliminate or reduce the danger, and

(h) voluntarily accepts risk to obtain benefit.

Risks are not reasonable when even one of the above is not satisfied.

The NEISS data is then analyzed, and categories of products are ranked by frequency and severity of injury. Products high on the list are subjected to strategy analysis to determine what can be done to reduce the risk. The following items are considered:

1. Would a mandatory standard reduce the risk of injury?
2. What voluntary industry standards address the same risk of injury and would that industry standard be adequate if it were a mandated standard?
3. Could warning labels or owner manuals reduce the risk of injury?

4. Could information and educational programs raise public awareness or change consumer use patterns that would reduce the number of injuries?

The cost of these remedies balanced against the risk of injury that is trying to be reduced must also be considered. If the analysis determines that the risk of injury cannot be reduced by any of the above methods or by a combination of these methods, the product may be banned if it presents an unreasonable risk of serious injury or death.

To develop a standard, several steps are necessary. The procedure is started by notice in the *Federal Register*, which states the identity of the product, the nature of risk associated with the product, and the Commission determination that a safety standard is necessary to reduce the risk of injury. The notice must include information about any existing standard which may be relevant, an invitation for any person to submit an existing standard as the proposed consumer product safety standard, or to offer to develop the proposed consumer product safety standard.

After an offerer is chosen, the proposed standard is submitted to the Commission. After review, this proposed standard is then published in the *Federal Register*, and interested parties are invited to comment. Comments may be written or given orally at hearings. After comments and testimony given at oral hearings have been evaluated, the final standard is published. With this publication, the commission must address all substantive comments and explain how they are incorporated into the standard or why they have not been incorporated into the standard. Prior to publishing the final standard, the Commission must consider among other things, the need of the public for the consumer product subject to this standard and the probable effect of the standard on the utility, cost, or availability of the product and any means of achieving the objectives of the standard while minimizing the adverse effects of competition or disruption of manufacturing or other commercial practices.

DETERMINING SUBSTANTIAL PRODUCT HAZARDS

The Act also contains a section designed to deal with a higher degree of hazard that is stated in the Act as a substantial product hazard. This is found under Section 15 and is commonly referred to as the "tattle tale" section. This section states that when a manufacturer, distributor, or retailer obtains information that reasonably supports the conclusion that a consumer product fails to comply with an applicable consumer product safety rule or contains a defect that could create a substantial product hazard, that firm must notify the Commission. The notification requirements are not limited to products regulated under the Consumer Products Safety Act. Manufacturers, distributors, and retailers of consumer products that are subject to the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, the Flammable Fabrics Act, and the Refrigerator Safety Act must comply with the notification requirements.

When a manufacturer, distributor, or retailer reports a possible substantial hazard situation, the Office of Product Defect Identification staff will make a preliminary determination based on the information then available as to whether it believes the product presents a substantial product hazard. In making this preliminary determination, the staff considers: (A) The pattern of defect, which could be either a design defect or a quality control defect. A design defect could be present in 100% of the products distributed, whereas a quality control defect could be limited to a certain percent of the products produced or to a manufacturing shift of a specific lot of raw materials. (B) Distribution of the product requires knowledge of the presence of the product by geographic areas of the country or region and to a larger degree the number of products in consumer's hands. For example, distribution of electric toasters would probably be nationwide whereas the distribution of snow blowers or snow mobiles would likely be regional. (C) Household exposure means a review of the normal usage of the product within a family

unit. Is it used by all members like a toaster or electric light or is it limited to adults or mature children like power saws? If the availability is restricted, the household exposure would be considered medium to low. In this consideration, articles intended for use by children and senior citizens are given special weight. It has been found that children and senior citizens are less likely to be prepared to react quickly and properly to developing hazardous situations. (D) Usage analysis is a review of the injury associated with use of the product to determine if the product was being utilized as suggested by the manufacturer. Was the product being used in a forseeable but nonsuggested manner? (E) In evaluating severity, the expected injury is ranked from a high to a low with fatal injuries being given a numerical rank of 8 and abrasions to the hands or feet a rank of 1. Unfortunately, we do not have a neat formula for determining what is or is not a substantial hazard. This determination remains a subjective judgment. Obviously, if product distribution is nationwide, household exposure is high. If the injury occurred during suggested or forseeable usage and the severity ranking is high, the determination of "Could Create" a substantial hazard is likely. On the contrary, if product distribution is limited, household exposure is low. If the injury occurred in an unforseeable or nonrecommended usage and the severity of the injury is low, the judgment would probably be that the defect creates less than a substantial risk of injury.

VOLUNTARY CORRECTIVE ACTION PLANS

Following the staff opinion of a "Could Create" situation, the manufacturer, distributor, or retailer is asked to submit a voluntary corrective action plan. This plan may include several facets. For example, public notice might be required. This would be appropriate where there is a large distribution of a low priced item and the manufacturer, distributor, or retailer does not have a record system that would allow identification of the ultimate consumer. The plan may require mail notice to those consumers who can be identified from warranty, service, or sales records. The extent of public notice that is generally required depends on the ability of the manufacturer, distributor, or retailer to identify consumers.

In a corrective action plan, the manufacturer can elect to repair the product, replace the product with one of equal value, or refund the purchase price of the product. However, if a company disagrees with the Commission staff, then the Commission, after affording interested parties a hearing, may order the manufacturer, distributor, or retailer to give notice and to repair, replace, or refund on defective products.

A knowing failure to comply with Commisson order could bring civil fines ranging from $2,000 up to $500,000. In addition, a firm and responsible individual could be criminally charged and fined up to $50,000 and be imprisoned for not more than one year, or both.

Defects, whether of design, quality control, or labeling, can be costly in terms of liability to civil and criminal penalties, the cost associated with the voluntary corrective action plan, or complying with a Commission-mandated order.

CONCLUSION

The task of protecting the public against unreasonable risk of injury associated with consumer products has been assigned to this Commission by Congress. To accomplish this task, we need the cooperation and help of industry and consumers of professional organizations and academia. The Consumer Product Safety Commission is interested in all views on its activities and welcomes comments.