



**Economic and Social
Council**

Distr.
GENERAL

TRADE/WP.6/2002/2/Add.2
24 September 2002

ENGLISH ONLY

ECONOMIC COMMISSION FOR EUROPE

COMMITTEE FOR TRADE, INDUSTRY
AND ENTERPRISE DEVELOPMENT
Working Party on Technical Harmonization
and Standardization Policies

Twelfth session, 28-30 October 2002
Item 4 of the provisional agenda

**UNECE FORUM ON MARKET SURVEILLANCE
(Geneva, 29 October 2002)**

Information on the US Consumer Product Safety Commission (CPSC)

This background paper has been submitted by the US Consumer Product Safety Commission (CPSC) and prepared by Mr. Mr. Alan H. Schoem, Director, Office of Compliance, CPSC.

It is presented for **information** to delegates and is reproduced in the form and language in which it was received by the secretariat.

In this paper, I provide information on the U.S. Consumer Product Safety Commission, its duties and responsibilities and how it conducts marketplace surveillance to enforce laws it administers. Additional information about the Commission is available from its web site at www.cpsc.gov.

BACKGROUND

The U.S. Consumer Product Safety Commission (“CPSC” or “Commission”) is an independent federal regulatory agency established by Congress in the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051-2084. The Commission began operations in May 1973. The Commission is responsible for (1) protecting the public against unreasonable risks of injury associated with consumer products, (2) assisting consumers in evaluating the comparative safety of consumer products, (3) developing uniform safety standards for consumer products and to minimize conflicting State and local regulations, and (4) promoting research and investigation into the causes and prevention of product related deaths, illnesses, and injuries. 15 U.S.C. § 2051(b).

Except as noted below, the CPSC is responsible for all consumer products produced or distributed for sale to or use, consumption or enjoyment of consumers in or around homes, hotels and motels, schools and in recreation. 15 U.S.C. § 2052. We are responsible not only for the safety of common household products like hair dryers, toasters, waffle irons, halogen lamps, playpens and toys, but also products such as mobile amusement rides, furnaces, and fire sprinklers. It is estimated that the Commission has responsibility for about 15,000 different types of consumer products.

The Commission is not responsible for true industrial products or for motor vehicles, or motor vehicle equipment, foods, drugs and cosmetics, pesticides, tobacco products, airplanes, boats, firearms or fixed site amusement rides. 15 U.S.C. 2052 (1)(A)-(I). These products generally are regulated by other U.S. agencies.

In creating the Commission, Congress gave it responsibility for administering not only the CPSA but also the Federal Hazardous Substances Act, 15 U.S.C. §§ 1261-1278; the Flammable Fabrics Act, 15 U.S.C. §§ 1191-1204, the Poison Prevention Packaging Act, 15 U.S.C. §§ 1471-1476; and the Refrigerator Safety Act, 15 U.S.C. §§ 1211-1214. Each of those statutes gives the Commission responsibility for regulating various product hazards including hazards associated with children’s products, chemical hazards, the flammability of clothing, and poisoning to children under 5 years caused by various chemicals and drugs.

Congress gave the Commission broad authority to carry out its responsibilities. For example, the Commission has the authority to issue mandatory safety standards, see e.g., 15 U.S.C. §§ 2056, 2058; 15 U.S.C. § 1262; 15 U.S.C. § 1193, and to ban products where a standard is not feasible. 15 U.S.C. § 2067. The Commission can compel firms to recall products if, after an adjudicative hearing, the Commission establishes the necessity for remedial action. 15 U.S.C. §§ 2064, 1274. The Commission can seek civil and criminal penalties for violations of its statutes and regulations and can seek to enjoin violations in U.S. federal courts. See, e.g. 15 U.S.C. §§ 2069, 2070. In addition, the Commission can go to court for authorization to seize products that violate its statutes and regulations. 15 U.S.C. § 2071

In addition to regulatory action, and equally important, the Commission works with industry to develop voluntary standards, educate industry on our rules and regulations, and educate consumers on the safe use of products. The Commission's preferred method of operating is to work cooperatively with the industries it regulates and to take regulatory action only when necessary and appropriate.

CPSC Enforcement Authority

The Commission's Office of Compliance is responsible for enforcing the Commission's laws, rules and regulations. The office is responsible for:

- Identifying and investigating potentially hazardous products
- Enforcing mandatory standards and regulations
- Recalling hazardous products
- Educating industry about mandatory standards and certain safety-related voluntary standards and showing firms how to recall products
- Working with industry to improve product design
- Identifying the need for mandatory and voluntary standards

The Office of Compliance conducts investigations of potential product defects and regulatory violations. Where appropriate, it seeks voluntary remedial action commensurate with the magnitude of the product hazard or violation. The office provides advice and guidance to industry about the requirements of regulations issued under the statutes the Commission administers and also provides advice and guidance to firms on how to conduct recalls. With the approval of the Commission, the office also monitors compliance with selected voluntary standards that address safety issues.

Where the Commission staff is unable to obtain voluntary remedial action, it may, with Commission authorization, seek to compel such action through an adjudicatory proceeding. The Office of Compliance is responsible for such proceedings. It is also responsible for seeking civil penalties against firms that violate Commission rules and regulations. If civil penalties cannot be obtained voluntarily, the Office of Compliance will recommend that the Commission seek penalties in federal court.

REPORTING DANGEROUS PRODUCTS

The U.S. Congress recognized that manufacturers, importers, distributors and retailers often are in the best position to know if they have a dangerous product, for example, through consumer complaints, ongoing product evaluation, or quality control procedures. Therefore, when Congress created the Commission, it required manufacturers, importers, distributors and retailers who obtain information that reasonably supports the conclusion that one of their products has a defect that *could* create a substantial product hazard to immediately report that information to CPSC, unless they have *actual* knowledge that the Commission has been adequately informed. 15 U.S.C. § 2064(b)(2). In 1990 Congress broadened the reporting requirement to require firms who obtain information that reasonably supports the conclusion that a product creates an unreasonable risk of serious injury or death to report that information to the Commission. 15 U.S.C. § 2064(b)(3). That additional reporting requirement removes the element of defect from the reporting requirement.

CPSC receives more than 300 product hazard reports a year from manufacturers, importers, distributors and retailers, but we do not just rely on firm reports to investigate whether a product is hazardous. We initiate our own investigations when we learn of potential product hazards. For example, we obtain product hazard information from a variety of sources including consumer complaints to CPSC's toll-free hotline; written correspondence from consumers, Congress, state/local governments, other federal agencies, coroners, medical examiners, fire marshals, trade associations, fire investigators, and medical technicians. We also collect information through our web site; news clippings, death certificates, product liability claims, trade complaints, police reports, CPSC's National Electronic Injury Surveillance System (NEISS) and from CPSC's National Injury Information Clearinghouse.

If a firm fails to report to CPSC as required by law, it is subject to civil penalties of up to \$1.65 million dollars. So far this year, eight firms have paid a total of more than \$3.4 million in civil penalties to settle staff allegations that they failed to report information as required by law.

PRODUCT RECALLS

When a firm reports to CPSC about a potentially hazardous product, CPSC staff evaluates the information reported along with any additional information it has or obtains. We conduct any necessary technical evaluation. This process can take several months or more. The staff then preliminarily determines whether it believes a product is defective and presents a substantial product hazard. If the staff makes a preliminary determination of hazard, it seeks appropriate remedial action typically referred to as a recall. Firms may elect to repair the defect in the product, replace the defective product with a similar product that does not have a defect or refund the purchase price of the product. 15 U.S.C. §§ 2064(c) and (d), 1274(b) and (c). Generally, the staff follows the same procedure for staff initiated investigations.

In 1995, the Commission initiated a program whereby if a firm reports a product problem to the Commission, and in cooperation with the staff, initiates a recall of the product within 20 working days of the report, the Commission staff does not make a preliminary determination of hazard. The Commission formally adopted this program in 1997. 62 Fed. Reg. 39,827 (July 24, 1997). Today, about two-thirds of CPSC's recalls are conducted under this Fast Track Product Recall program. The program is advantageous to firms because the CPSC staff does not make a preliminary defect determination and there is less bureaucracy. Rather than evaluating whether a product has a defect, we work with the recalling firm on its recall program. The program is beneficial to consumers because we announce recalls more quickly and consumers get more timely notice. Accordingly, recalling firms recover more products under this program. It is beneficial to CPSC because it saves resources and time.

ENFORCEMENT OF MANDATORY SAFETY STANDARDS

CPSC has issued a number of mandatory safety standards and banning rules. For example, we have regulations requiring disposable and novelty lighters to be child-resistant to activation by children under 5 years of age. Toys for children under 3 years of age that have small parts are banned. We have regulations for fireworks and the flammability of children's sleepwear and general wearing apparel. We also have requirements for numerous other products including pacifiers, rattles, lawn mowers and a number of chemicals.

It is a violation of U.S. law to import into the U.S or to distribute or sell in the U.S., a product that violates a CPSC mandatory safety standard or banning rule. 15 U.S.C. §§ 2068, 1263, 1192. Firms that import, distribute or sell a violative product are subject to civil penalties of up to \$1.65 million and subject to criminal penalties, as well.

Many products sold in the United States today are manufactured in other countries. CPSC investigators work closely with U.S. Custom's officials at ports throughout the United States to interdict products that may violate CPSC mandatory safety standards and to keep them from entering the United States. We also conduct surveillance of domestic manufacturers to assure their products comply with our laws. In addition, we purchase samples of products from retailers and evaluate those products to assure they comply with our safety standards.

If we find products being sold in the U.S. that violate our standards or bans and that present a serious risk of injury to consumers, we work with the firm that put the products into the market to recall them. Firms that manufacture, import, distribute or sell products in the United States that violate mandatory safety standards or banning rules also are subject to civil and criminal penalties.

CONCLUSION

The U.S. Consumer Product Safety Commission is responsible for protecting consumers in the United States from hazards presented by dangerous consumer products. The CPSC's goal is to save lives and keep consumers safe by reducing the risk of injury and death associated with consumer products. The Commission's preferred approach in carrying out its responsibilities is to work cooperatively with the firms it regulates. However, the Commission does not hesitate to use its authority where voluntary action is not forthcoming.

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