

KEEP US INFORMED -- IT CAN BENEFIT YOU

Dr. David Pittle, Commissioner  
Consumer Product Safety Commission

Good afternoon. It is a pleasure for me to have been invited to address your organization today.

From conversations I have had with various industry and consumer groups, it is clear to me that I need to let you know exactly what the Consumer Product Safety Commission is. I would also like to share my thoughts with you about the relationship between the Commission, the insurance industry, and manufacturer.

Prior to 1972, the Congress had adopted a piecemeal approach to Federal regulation affecting product safety. For example, the Flammable Fabrics Act dealt with safety of consumers in relation to the flammability of products made from fabric; the Federal Hazardous Substances Act attempted to protect consumers from certain enumerated classes of hazardous substances. However, the work of the National Commission on Product Safety ( a study commission set up during President Johnson's administration) culminating with its landmark report in 1970, estimated that some 20 million Americans were injured yearly from associations with consumer goods. The Commission estimated that some 110,000 consumers were permanently disabled and another 30,000 were killed. These surely led to a considerable number of insurance claims.

This report led to the enactment of the Consumer Product Safety Commission, an independent Federal regulatory agency. The Commission was activated in May 1973 by the swearing in of four of its five commissioners. I joined the Commission as the fifth commissioner in October of 1973. The primary goal of the Commission, as mandated by Congress, is to protect the public against the unreasonable risks of injury associated with consumer products. The Commission also has the responsibility to assist consumers in evaluating comparative safety of consumer products, to develop uniform safety standards, and to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

Our Act gives us the authority to regulate the safety aspects of an estimated 10,000 consumer products. The Act also transferred to us the administration of the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, the Flammable Fabrics Act, and the Refrigerator Safety Act. Under the authority of the Consumer Product Safety Act and the transferred Acts, the Commission is empowered to take all possible action to eliminate or sufficiently reduce unreasonable risks of injury associated with consumer products.

The power of the Commission is far reaching and broad. For example, the Commission, when confronted with an unreasonable risk of injury to the American consumer, may take action ranging anywhere from doing nothing to informing the public about the problem, encouraging The Establishment of voluntary standards, initiating a mandatory standards development procedure, initiating a procedure to develop a ban of the product or immediately going to court and requesting that the product be removed from the shelves by recall, repair, refund, or other action.

Since its initiation, the Commission has been primarily concerned with two actions. First, to continue the work transferred to the Commission by the "other" Acts, such as the Flammable Fabrics Act, the Federal Hazardous Substances Act, and PPPA. The Commission has attempted to keep all proposed standards and bans initiated by predecessor agencies (FDA and FTC) under these Acts current, and to finalize those actions that should be finalized.

Secondly, the Commission has been concerned with how it should proceed with the authority and the mandate given to it by Congress to regulate the safety of the bulk of those 10,000 not covered by the other Acts. Let me divide these roughly by level of hazard and associated remedy.

As a management guide, we created an objective priorities identification system. We utilize our National Electronic Injury Surveillance System which is comprised of statistically located hospital emergency rooms. This system reports the frequency and severity of all injuries associated with consumer products. An examination of these data as later adjusted by allowance for the age of certain persons injured, such as the very young, resulted in our recently announced Consumer Product Hazard Index.

We realize that this system is not perfect. We are planning to upgrade the system: e.g., institute poll taking in the flammable fabrics area to determine what numbers of flammable fabrics related injuries are incurred; an audit of death certificates to determine the product associated with various deaths; and a physician's office survey modeled after the Neiss System to get a statistically valid picture of injuries reported to physicians' offices. Further, the Commission realizes it cannot condition all of its actions upon the Consumer Product Hazard Index because this is, albeit computerized, a body count. The Commission realizes it must remain flexible enough to deal with situations presented which have not yet accumulated a large number of injuries or deaths.

The Commission has been utilizing since its inception a specific provision of the law set forth in Section 15(b). This particular section requires all manufacturers, distributors and retailers to immediately report to the Commission any information involving a product manufactured or sold by them that either fails to conform to an applicable consumer product safety standard or contains a defect which could create a "substantial risk of injury." Failure to do so is a violation of Federal law and could result in civil and criminal penalties -- both to the company and its executive officers.

This provision of law is applicable now. In our initial months, we have been receiving notifications, pursuing these notifications to determine if the follow-on action by the manufacturer has been appropriate and, in those cases where we consider that follow-on weak and insufficient, we will inform the public and try convincing the manufacturer other actions should be taken voluntarily before going into court.

I urge you to read Section 15(b) and the attending regulations which outline what is required of you under the law. You may write the Consumer Product Safety Commission, Washington, D.C. 20207. We must be credible not only with people we regulate but also for whom we regulate -- the consumers. To do this, we attempt to keep our actions and our processes open to the public. Therefore, we published a policy requiring that any time the Commission or any member of the Commission staff meets with a party interested in a matter pending before the Commission, this meeting may take place only after the notice of the meeting has been published in the Federal Register, and anyone who is interested is allowed to attend that meeting unless some overwhelming reason would prevent it, such as the discussion of proprietary trade data. Further, meetings by the Commission or the Commission staff with parties who are not discussing matters pending before the Commission but may potentially have business before the Commission are listed on a public calendar. This public calendar is available to anyone's examination and meetings may be attended by any interested party. We believe that this policy, although it creates a substantial administrative burden, will serve to increase the public's confidence in what we do and help the public to understand why we take the actions we do.

Further, the Commission has decided that, as a policy, we must be reasonable in developing our regulations and standards. This means openness and complete public involvement to the extent that we can stimulate such involvement. However, once a regulation which we deem to be reasonable has been issued, it will be vigorously enforced. The issuance of a piece of paper without "teeth" behind it is of no use to anyone. The Consumer Product Safety Act provides civil penalties at \$2,000 a violation up to a total of a half million dollars, and criminal penalties of up to a \$50,000 fine and/or one year in jail. It is our opinion that the Congress put these penalties there for a reason, and that failure to use them by the Commission would be an administrative amendment of the law. This does not mean, of course, that the Commission is "itching" to use them; but we will use these provisions if compliance with our regulations is not forthcoming.

To develop tractable solutions for reducing the number of injuries, however, it is necessary to look beyond the formal structure of the Consumer Product Safety Act and examine more closely other preventative approaches.

Let us look at the injury set. I define risk as the possibility of suffering harm or loss. Persons using consumers products always place themselves in a situation where there is the possibility of suffering harm, loss, or injury. However, this should not be construed as being an "all bad" situation because the consumer is striving for an important benefit from using the product, and this gain or benefit is usually worth the risk.

The real question involving the risk of using a consumer product is whether or not that risk is "reasonable." To provide a basis for discussing risks, we define a reasonable risk as one where the consumer:

- A) Understands via adequate warning that a risk exists;
- B) Understands via common public knowledge that a risk exists;
- C) Can appraise the probability of occurrence of the hazard;
- D) Can appraise the severity of the associated injury;
- E) Knows how to cope with the risk;
- F) Cannot obtain the same benefits in less risky ways;
- G) Would not, if given the choice, pay an additional cost to eliminate or reduce the danger;
- H) Voluntarily accepts the risk to get benefits

Preventable risk is not reasonable when one of the above is not satisfied, and evidence abounds that unreasonable risks are common.

However, risk alone is insufficient to cause injury -- enter the consumer and the interface between person and product. Suppose we divide consumers into two (2) groups: sophisticated consumers who have some prior technical knowledge and experience or who read and follow instructions, and unsophisticated consumers who have little understanding of the product and ignore warnings and instructions. The stage is thus set for grossly categorizing injuries resulting from the interactions of consumer products and users.

#### Sophisticated Consumer/Reasonable Risk-Product

When a knowledgeable, intelligent-acting consumer is injured while using a "reasonable-risk" product, we say that an accident has occurred. The sequence of events leading to injury was not predictable, not foreseeable, and not repeatable. For example, suppose a consumer is carefully standing on a well-constructed ladder and loses his balance and falls because a bee stung his ear. This is an accidental sequence of events. I am not sure that any action taken by mere mortals can ever prevent all such occurrences. However, I am sure that we all agree that there are many injury situations involving person-product interaction which are, in fact, susceptible to prevention measures.

How can the insurance industry help? First, and I believe the most obvious, is to cooperate with us in terms of the information and data you have available concerning product injuries. I am troubled by several of my recent experiences at public hearings held by the Commission to determine whether or not certain consumer products represented unreasonable risks of injury. Various industry representatives would expound at length about how safe their products were and how few were the number of injuries associated with these products. I would then glance at the audience and see the faces of persons whom I knew to be insurance industry representatives and be astonished and disheartened to see their heads shaking initial disagreement over the injury figures. I think you know as well as any group in society when industry statistics are accurate and when they are not.

We need to receive from you the information we believe that you have concerning injuries, to help add validity to the information we receive under our Neiss System. I would urge you to examine Section 27(d) of our Act which indicates that parties who supply such information to the Commission at its request are immune from civil liability to parties other than the United States and the Commission. Consequently, also consider your responsibilities under Section 15. You may not be required by law -- but certainly as a matter of economics.

Further, I would urge the insurance industry to use its significant leverage in the manufacturing community. By setting rates -- and by examining and inspecting manufacturers' procedures and thereby adjusting rates accordingly -- the insurance industry has a unique opportunity as a third party to help reduce cost and injury. For example, you can spread the word to your insureds that one of the best ways to stay away from government regulation is to engage in voluntary efforts to make their products more safe.

Another step would be to urge your clients and perhaps your companies themselves to participate in the standards-setting efforts of our Commission. Section 7 of our Act is unique in that it allows any person, who wishes to, to participate in standards development before our Commission; and, if they are so inclined, they may even offer to develop the standard themselves. This means in those areas where there is a high incidence of claims or a high awareness of problems in the insurance industry, that perhaps the insurance industry itself or particular insurance companies might wish to pursue the standards-setting possibilities.

Another point I would hope that you, as insurance agents, would do would be to encourage your clients to conduct what we in the Commission call a "Safety Audit." This means that besides having committees to look at a product from a standpoint of marketability or desirability or appeal or durability, they should have someone with the responsibility to look at the safety of each product design. This means not only the safety from following instruction sheets perfectly, but working against the reasonably foreseeable abuse or misuse of a product. We believe that if the effort that were put into marketing a product were also put into reviewing that same product by a qualified individual from the standpoint of safety, most of the defects we see today would not be present.

Now these are just a few of my thoughts of what you as an industry might do to help further product safety and help our Commission. You may have ideas of your own. We would be more than happy to hear them, and would like to point out to you that the Consumer Product Safety Commission is eager to talk with representatives of your industry and engage in a meaningful interchange of ideas that will result in what I believe to be the goal of both of our organizations -- safer products for the consumer.

Thank you.