REPORT TO THE CONGRESS

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

Better Enforcement Of Safety Requirements Needed By The Consumer Product Safety Commission

Safety requirements are issued by the Consumer Product Safety Commission to protect consumers from hazardous products. The Commission must insure that these requirements are followed and enforced.

The Commission (1) does not know whether safety requirements have been effectively implemented and (2) has not been timely or successful in referring cases to the Department of Justice for prosecuting those violating the requirements.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses improvements, including a recommended legislative amendment, needed to insure that Consumer Product Safety Commission safety requirements are followed and enforced.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

The Commission was given an opportunity to provide written comments on the report's contents but did not do so. In interpreting its Freedom of Information Act policy, the Commission said it could not accept our draft reports for review and comment when we require that the drafts be safeguarded from premature public disclosure. Consequently, we are issuing the report without their written comments. However, we did discuss the report with Commission representatives and their views have been incorporated where appropriate.

Copies are being sent to the Director, Office of Management and Budget; the Attorney General; and the Chairman, Consumer Product Safety Commission.

Comptroller General
of the United States

Contents

ABBREVIATIONS

CPS Act	Consumer Product Safety Act
FDA	Food and Drug Administration
FHS Act	Federal Hazardous Substances Act
GAO	General Accounting Office

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

BETTER ENFORCEMENT OF SAFETY REQUIREMENTS NEEDED BY THE CONSUMER PRODUCT SAFETY COMMISSION

D I G E S T

The Consumer Product Safety Commission was established in 1972 to protect the public against unreasonable risks of injury associated with consumer products. The Commission (1) issues safety requirements under the five laws it administers to protect consumers from hazardous products and (2) inspects manufacturers, distributors, and retailers for adherence to those requirements. Each of the five laws provides the Commission several tools to enforce compliance with its safety requirements, such as seizures of products, injunctions, cease and desist orders, and civil and criminal penalties.

GAO sought to find out how effective the Commission has been in protecting consumers against unreasonable risks of death, injury, or serious or frequent illnesses through its compliance and enforcement activities.

After GAO's review at Commission headquarters in Washington, D.C., and Commission field offices in Atlanta, Cleveland, and Seattle, GAO concluded that the Commission has not been timely and systematic in assuring industry compliance with safety requirements. GAO found that:

--Not all compliance activity was planned to insure that manufacturers, packagers, and importers were identified and notified of safety requirements.

--Followup inspections were not made to verify industry compliance with safety requirements after hazardous products were found.

--Compliance actions were not adequately evaluated to determine their effectiveness.

Following are some detailed instances showing that the Commission did not know whether its safety requirements were being complied with or that consumers were being protected from hazardous products.

--A product ban was not enforced effectively because an environmental impact statement, required by law, was not prepared promptly. (See p. 9.)

--Hazardous products remained on the market. (See p. 10.)

--The Commission did not evaluate the scope and effectiveness of its compliance efforts. (See p. 11.)

--Compliance verification for toys was limited by court orders because safety requirements did not adequately define the hazards associated with toys and the Commission did not issue testing procedures. (See p. 13.)

--Inspections were not made to determine whether firms were violating safety requirements after hazardous products were identified by consumer volunteers. (See p. 15.)

--Commission procedures did not define the criteria the Commissioners and the Department of Justice use in approving cases for prosecution. (See p. 23.)

--Criminal cases referred to Justice for prosecution were declined because the cases were too old or the violation was de minimis or was promptly corrected. (See p. 22.)

--The Commission staff prepared criminal cases that were later closed without prosecution. The Commissioners had not delegated the responsibility to the staff to determine which cases should be developed and submitted to the Commissioners for consideration of prosecution or which should be closed. (See p. 24.)

GAO recommends that the Commission:

--Formalize procedures to insure its compliance activity is adequately planned, implemented, and evaluated so that firms subject to safety requirements are identified, notified of the requirements, and inspected on a selected basis to verify compliance. (See p. 19.)

--Issue requirements promptly, in accordance with court rulings, better defining toy hazards and toy test procedures so it can resume its toy compliance activity. (See p. 20.)

--Specify the criteria the Commissioners use to approve a case for referral to Justice and develop procedures for implementing the criteria. (See p. 34.)

To further strengthen the Commission's work, GAO recommends that the Congress amend the Federal Hazardous Substances Act to provide the Commission additional authority to assess civil money penalties for violations of safety requirements issued under that law and the Poison Prevention Packaging Act. (For suggested legislative language, see app. V.) This amendment should include provisions which:

--Authorize the Commission to assess civil money penalties for violations.

--Provide for adjudicating alleged violations pursuant to the Administrative Procedure Act (5 U.S.C. 554-57).

--Make the Commission's assessment of civil money penalties final, unless they are appealed to the U.S. Court of Appeals within a specified time (5 U.S.C. 706).

--Allow the Commission to compromise any of its civil money penalties either before or after assessment.

The Commission has taken several actions that have reduced its case-processing time and

Commission officials recognize that further action is needed. The Commission's General Counsel agreed that civil money penalties could be a helpful enforcement tool. (See pp. 29 and 30.)

If GAO's recommendations are implemented, the Commission should be able to better carry out its mission to protect the public from unreasonable risks of injury. (See p. 34.)

CHAPTER 1

INTRODUCTION

The Consumer Product Safety Commission was created as an independent regulatory agency by the Consumer Product Safety Act (CPS Act) (15 U.S.C. 2051) in October 1972 and started operations on May 14, 1973. The Commission's purpose is to protect the public against unreasonable risks of death, personal injury, or serious or frequent illness associated with consumer products.

The Commission derives its authority from the CPS Act and four other laws previously administered by other agencies.

1. The Flammable Fabrics Act, as amended (15 U.S.C. 1191).

2. The Federal Hazardous Substances Act, as amended (FHS Act), (15 U.S.C. 1261).

3. The Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471).

4. The act of August 2, 1956 (Refrigerator Safety Act) (15 U.S.C. 1211).

The Commission (1) issues safety requirements--which industry must follow--to protect consumers from hazardous products and (2) inspects--primarily through its Bureau of Compliance--manufacturers, distributors, and retailers for adherence to the requirements. Each law provides the Commission several tools to enforce compliance with safety requirements issued under that law, including product seizures, injunctions, cease and desist orders, and civil and criminal penalties.

An estimated 20 million consumers are injured each year through the use of consumer products, of which 110,000 are permanently disabled and 30,000 are killed. The Commission also estimates that there are more than 10,000 different consumer products and more than 2.5 million manufacturers, importers, packagers, distributors, and retailers who are subject to Commission regulations.

COMMISSION ORGANIZATION AND FUNDING

The Commission consists of five Commissioners appointed by the President with the advice and consent of the Senate. The President designates one of the Commissioners as Chairman,

who serves as the principal executive officer. The Executive Director, appointed by the Chairman with the other Commissioners' approval, is responsible to the Chairman for directing the Commission's operations.

The Commission's headquarters staff is in Washington, D.C., and Bethesda, Maryland. It also has 13 area offices [1/] located throughout the United States. As of June 30, 1975, the Commission's staff (including temporary employees) was 920--586 in headquarters and 334 in the area offices. The Commission's organization chart, showing offices, bureaus, and area offices, is shown in appendix I.

Commission activities are categorized under five major functions--hazard identification, hazard strategy analysis, regulatory development, information and education, and compliance and enforcement. The Commission's fiscal year 1975 staffing and funding of these functions, plus administration, were as follows:

Function	Staff positions (note a)	Appropriated funds (000 omitted)
Hazard identification	145	$ 5,494
Hazard strategy analysis	23	2,332
Regulatory development	96	6,120
Information and education	63	3,891
Compliance and enforcement	370	11,951
Administration	193	6,837
Total	890	$36,625

[a]Authorized personnel at June 30, 1975.

DESCRIPTION OF COMMISSION PROCEDURES

The Commission maintains the National Electronic Injury Surveillance System as its principal method of identifying product hazards. Injuries associated with consumer products are reported to the Commission from the emergency rooms of 119 selected hospitals throughout the United States. Supplemental product injury, illness, and death data is provided by private physicians, State governments, other Federal agencies, and indepth injury investigations by the Commission.

[1/]Before January 16, 1976, there were 14 area offices. The Commission closed its New Orleans area office on that date.

The Commission uses data from various sources to determine which products are the most hazardous and how to protect consumers from them. Primarily, its consumer protection program includes (1) developing and enforcing product safety requirements and (2) informing and educating consumers. Commission safety requirements are published in the Code of Federal Regulations (title 16). The Commission uses several media to inform and educate consumers, including press releases; radio and television spot announcements; brochures; responses to telephone questions; and films, speeches, and training seminars for interested groups.

The largest Commission function (in terms of staff and financial resources) is compliance and enforcement. Compliance and enforcement consist of monitoring conformance with the safety requirements, i.e., safety standards, rules, and regulations issued under the five laws the Commission administers. This includes inspecting manufacturers, distributors, retailers, and importers; collecting and testing product samples; and applying the administrative and legal remedies necessary to enforce compliance with the safety requirements. Legal and administrative remedies vary according to the law involved, but generally include injunctions, cease and desist orders, product seizures, and criminal and civil penalties. Criminal and civil penalty provisions of the five laws the Commission administers are summarized in appendix IV.

Consumer product safety requirements vary in scope depending on which law they are issued under, the products they regulate, and the hazard addressed. For example, a safety requirement may specify standards for the performance, contents, design, construction, packaging, or labeling of a particular product or type of product. Or, if no such standard exists for a product determined to be hazardous, the Commission may ban it from the market. Most product safety requirements at the time of our review were originally issued by other Federal agencies under the four acts that were transferred to the Commission. The products or product categories covered by safety requirements are listed in appendix II.

Compliance and enforcement is a headquarters controlled function, with considerable participation by the area offices. The Commission's Bureau of Compliance (1) provides manufacturers, distributors, and retailers advice and guidance necessary to promote compliance, (2) develops programs to verify compliance, and (3) selects appropriate administrative and legal remedies to achieve compliance.

The Commission, through compliance programs, directs its compliance efforts at selected target product lines. The Bureau of Compliance prepares compliance programs--each addresses a specific consumer product hazard--that contain the general operating instructions the area offices are to use to insure compliance.

The Bureau of Compliance, through the Commission's Office of Field Coordination, provides compliance and enforcement direction and support to the area offices, including planning; develops compliance policy, guidelines, program and enforcement strategies; and reviews area office recommendations for legal action against those who violate the safety requirements.

The Office of Field Coordination, working with the Bureau of Compliance and other offices and bureaus, assures that area office resources can support compliance and enforcement activities and other area office operations. The Bureau also relies on the support of other headquarters offices, such as the Bureau of Engineering Sciences and Bureau of Biomedical Science for technical evaluations and support and the Office of General Counsel for legal advice.

SCOPE OF REVIEW

We made our review at Commission headquarters in Washington, D.C., and Bethesda, and at its field offices in Atlanta, Cleveland, and Seattle to determine whether Commission efforts insured that

--industry complied with safety requirements,

--products not complying with safety requirements were removed from the market, and

--penalties were imposed against those violating safety requirements or cases were referred to the Department of Justice for prosecution.

We reviewed the laws the Commission administers, the legislative history of the CPS Act, and Commission compliance and enforcement policies, program plans and procedures, and regulations; examined records, files, reports, and documents; performed spot compliance checks at selected retail stores in three geographic areas of the country; and interviewed Commission officials and representatives. We also examined Commission actions against violators by reviewing legal cases the Atlanta, Cleveland, and Seattle field offices submitted to headquarters recommending administrative or legal action.

CHAPTER 2

NEED TO INSURE THAT CONSUMERS ARE BEING PROTECTED FROM PRODUCTS NOT MEETING SAFETY REQUIREMENTS

The Commission did not know the extent to which industry was complying with safety requirements. Inadequate compliance program planning, lack of systematic implementation of compliance actions, and limited program evaluation have contributed to some hazardous products remaining on the market.

The Commission needs to develop a more systematic approach for achieving compliance. It must insure that (1) safety requirements are complied with, (2) hazardous products are removed from the market, and (3) compliance programs are applied in a consistent manner.

NEED TO IMPROVE THE IMPLEMENTATION OF COMMISSION COMPLIANCE POLICY

Commission policy is to achieve compliance in a swift, vigorous manner by enforcing all safety requirements and using appropriate administrative and legal remedies against violators. The Director, Bureau of Compliance, said the Commission's policy should motivate manufacturers, importers, distributors, and retailers to comply with safety regulations.

The Commission has several tools to insure that violative products (products not meeting a safety requirement), identified through compliance inspections and sample tests, are promptly removed from the market, the distribution chain, and the consumer, when appropriate. The Commission can use injunctions and cease and desist orders to prevent the continued manufacture, distribution, and sale of products and it can seize violative products being offered for sale.

Under certain laws it administers, such as the Federal Hazardous Substances Act, the Commission can require the repurchase of products violating safety requirements. Repurchase requires manufacturers, distributors, and retailers who sold a banned hazardous product to repurchase it from the person or firm that bought it. FHS Act compliance activities are generally planned around that law's repurchase provisions because the Commission believes it is a quick and cost-effective method for removing violative products from the market.

The Bureau of Compliance issues compliance programs to guide area offices in inspecting manufacturers, distributors, and retailers. For example, a compliance program may instruct area offices to conduct retail store surveillances, conduct followup inspections of distributors and manufacturers, and prepare recommendations to prosecute violators.

The Bureau of Compliance plans most of its compliance effort by product category (e.g., toys, mattresses, and baby cribs). However, the Bureau has no written policy or guidance for preparing a compliance program. A Bureau official said that the lack of formal guidance permits planners and managers to think individually in formulating compliance strategy.

As of June 30, 1975, the Commission administered safety requirements covering about 70 products and product categories. (See app. II.) The Commission conducted compliance activity in 8 program categories during fiscal years 1974 and 1975 and planned 10 compliance programs for fiscal year 1976. (See app. III.)

We reviewed Commission compliance activities for four product categories--aerosol sprays containing vinyl chloride, toys, aspirin products, and mattresses. We selected these categories because they (1) represented four significant categories from the standpoint of product hazards and (2) were categories to which the Commission devoted considerable resources.

Aerosol products

Aerosol products containing vinyl chloride (either as a propellant or other ingredient) may have been used in as many as 2,000 household products subject to the Commission's jurisdiction. The Commission and industry estimated that between 1969 and 1974 about 1.2 billion cans of these products were produced and supplied by more than 350 manufacturers and packagers. 1/

In August 1974 the Commission issued a safety requirement under the FHS Act (16 C.F.R. 1500.17) banning the

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1/ As used herein, manufacturers are firms that produce products and packagers are firms (including manufacturers) that package products for sale to consumers.

distribution and sale of all household aerosol products that contained vinyl chloride, effective October 7, 1974. It based its decision on (1) several deaths of a chemical plant's employees due to liver cancer attributed to vinyl chloride, (2) animal studies in which the inhalation of vinyl chloride produced tumors in rats, and (3) the regulatory action in April 1974 of three Federal agencies--the Occupational Safety and Health Administration, the Environmental Protection Agency, and the Food and Drug Administration (FDA)--to restrict further use of vinyl chloride. Because the potential hazard was serious and immediate and a safe level of exposure to vinyl chloride could not be demonstrated, the ban required manufacturers, distributors (including packagers), and retailers to repurchase such aerosolized products they had sold to consumers or others in the distribution chain.

By early October 1974 the Bureau of Compliance had prepared a draft compliance program that called for (1) identifying household aerosol products containing vinyl chloride, (2) identifying manufacturers of such products, and (3) notifying all identified manufacturers of the ban and requesting information from them, including a statement as to how they were complying with the Commission's requirements. The draft also stated that compliance inspections would be made at manufacturers, distributors, and retailers to insure that violative products already sold were being repurchased. The draft did not specify the action to be taken to prevent further distribution and sale of such products, but did state the remedies that were available--seizure, prosecution, and injunctions--to enforce compliance and to remove violative products from the market.

Although the compliance program was never implemented, the Commission notified 239 manufacturers and packagers of aerosol products containing vinyl chloride of the terms of the ban and asked them to provide production, distribution, and other product information.

One hundred ninety-two firms responded to the Commission's letter. Of these, (1) 87 said they had produced or were producing aerosol products containing vinyl chloride, (2) 92 said their products either never contained vinyl chloride, were for industrial use only, or were subject to other agencies' jurisdiction, and (3) 13 either were no longer in business or received duplicate letters from the Commission.

In the fall of 1974, the Commission inspected nine manufacturers--that produced an estimated 75 to 80 percent

of all aerosols for household use--to review their repurchase programs. Although Bureau of Compliance officials said the Commission should have determined whether manufacturers had stopped distributing and selling the banned products, the Commission only inspected the repurchase program. Seven firms had started repurchase programs--in accordance with FHS Act requirements--and the area offices were monitoring them. One of the two other firms used vinyl chloride for industrial purposes and was not subject to the Commission's ban. The other firm refused to permit Commission inspectors into its plant and filed suit to prevent the Commission from enforcing the repurchase provisions as shown below.

As of October 1975, the Commission had inspected 184 distributors and retailers to determine whether they had been notified of the ban and its repurchase requirements and whether they had stopped selling the banned products. The Commission found that:

--152 distributors and retailers had been notified and had stopped selling the banned products.

--An estimated 764,000 cans had been returned to the manufacturers or otherwise taken off the market.

--31 distributors and retailers notified by the manufacturers of the ban had not stopped selling the banned products.

--30 distributors and retailers had not been notified.

As of February 29, 1976, the Commission had not initiated any legal action against those violating the ban.

During the fall of 1974, several manufacturers sued the Commission because it had not filed an environmental impact statement for disposing of repurchased aerosol sprays containing vinyl chloride. In December 1974 the U.S. Court of Appeals for the Ninth Circuit stayed (suspended) the repurchase requirement until the Commission complied with the National Environmental Policy Act. 1/

1/ The National Environmental Policy Act (42 U.S.C. 4321) requires Federal agencies to prepare environmental impact statements when their proposed actions may significantly affect the environment.

The Bureau of Compliance issued interim guidelines to all area offices in January 1975 cautioning them that only the repurchase provision was stayed by the court order and that the sale and distribution of aerosol products containing vinyl chloride were still banned. The guidelines provided for inspections, product seizures, and prosecutions at distributor and retail levels, but not for further inspections of manufacturers until the stay was resolved. Although it had issued the interim guidelines, the Commission did not plan any new compliance activity to enforce the ban until the environmental impact statement was prepared and the court lifted the stay.

Even though manufacturers and packagers identified several hundred aerosol consumer products containing vinyl chloride, the Commission conducted only a limited number of inspections to ascertain compliance with the ban. The Commission said that this was because:

--It lost a valuable enforcement tool when the court stayed the ban's repurchase provision.

--Any action taken before all products were identified would provide an unfair market advantage to manufacturers of products not yet identified and would be discriminatory.

--It assumed (based on industry representatives' comments) that industry discontinued using vinyl chloride before the ban was effective because other propellants were less costly. Also, manufacturers and packagers generally told the Commission they used vinyl chloride in aerosol products during a specific time period. However, many could not identify specific product batches in which vinyl chloride was used because not all products were coded to provide this information. In other instances, manufacturers and packagers did not know which propellant they used in some of their products.

In our opinion, the Commission's actions were inadequate because:

1. It did not determine how many banned products were in manufactuers', distributors', and retailers' inventories and it did not verify that the sale and distribution of the banned products were stopped.

2. Prompt action to protect consumers from identified hazardous products is more important than

manufacturers' market positions. All manufacturers, distributors, and retailers are responsible for conforming to the law, regardless of whether they are inspected.

3. Its problems in identifying aerosol products containing vinyl chloride, notifying manufacturers and packagers of the ban, and identifying banned products in the distribution chain, indicates a need for more Commission inspections, not the suspension of compliance activity.

We made spot checks during the spring of 1975 in 211 retail stores--158 in the Pacific Northwest, 20 in the Midwest, and 33 in the East--to determine whether 7 banned aerosol products were available for sale. We found 66 retailers selling them.

After telling Commission officials of our findings, only the Pacific Northwest area office followed up with inspections at the retailers where we identified banned aerosol products. That area office sent a letter to each of the 50 retailers we identified, informing them that they had banned aerosol products on their shelves and advising them to remove the products from sale. The area office conducted inspections at 21 of these retailers and found that 5 continued to sell the banned products. The area office sent the five retailers another letter advising them that the products were banned and to stop sales. No other action was taken against the retailers because of litigation several manufacturers had initiated against the Commission. (See p. 8.)

Although one area office followed up on the banned aerosol products we identified, the other two did not. The Commission Chairman said that the ban was not intended to be enforced at the retail level until the Commission obtained production and distribution data from manufacturers and packagers. He said, however, that followup action should have been taken on the identified violative products.

The Commission prepared an environmental impact statement and in August 1975 requested the court to remove the stay. The court lifted its stay on the repurchase provision of the ban on November 6, 1975.

In October 1975 the Commission knew that aerosol products containing vinyl chloride remained on the market. However, Commission officials said they did not have the factual data to develop a compliance strategy. They believed there were only small quantities of such products on the market

because industry had said vinyl chloride was not being used in aerosol products. Commission officials did not believe Commission resources should be directed to a large-scale compliance program because vinyl chloride in aerosol products would disappear from the market in the long run.

In December 1975, knowing that the Commission had not initiated compliance activity, the Department of Justice told the Commission it should enforce the repurchase provisions to maintain a good posture with the court. Justice also suggested the Commission seriously consider seizing known quantities of aerosol products containing vinyl chloride.

To insure compliance with the ban on aerosol products, the Commission initiated the following activity after the court lifted the stay on the repurchase provisions.

1. Published a Federal Register notice on February 6, 1976, explaining that the stay on the ban's repurchase provision was removed by the court and re-emphasized that the ban continued in effect.

2. Sent letters in February 1976 to the three manufacturers who initiated the court action requiring each to provide the Commission with its product codes, distributors, and plans for repurchasing the banned aerosol products.

3. Inspected each of the three manufacturers to
   --confirm information provided,
   --monitor their repurchase activity,
   --locate banned aerosol products for seizure, and
   --take whatever followup action that may be appropriate.

As of March 1, 1976, the Commission had not completed these actions nor evaluated the effectiveness in removing banned aerosol products from the market.

Toys

Over a million retail stores sell tens of millions of toys annually. Manufacturers (including importers) supply over 150,000 different toys and introduce an estimated 5,000 new toys on the market each year.

Each year, toys are involved in about 150,000 injuries serious enough to require hospital emergency room treatment. More than 55 percent of the injuries are to children under

age 10. Hazards consist of such things as propelled objects, sharp edges, small parts, and sharp points.

Toys are subject to safety requirements issued under the FHS Act. FDA issued the first toy safety requirements when it was responsible for the FHS Act and the Commission revised them after that law was transferred to it. These requirements cover certain groups of toys that contain possible mechanical, electrical, and thermal hazards. For instance, mechanical hazards are identified as external and internal components and small objects or sharp points that could cause aspiration, ingestion, laceration, or puncture wound injuries (16 C.F.R. 1500).

From 1972 through 1974 FDA and the Commission inspected retail stores and banned specific toys not complying with safety requirements. The two agencies banned about 1,500 toys under the FHS Act.

Bureau of Compliance representatives said that the Commission concentrated compliance inspections at retail stores. When inspectors found banned toys, the Commission generally relied on the voluntary removal of the toys. As of March 1, 1976, there had been no injunctions issued and only two successful toy seizures since the FHS Act was transferred to the Commission.

The Commission's activities included:

--A retail and wholesale inspection campaign against banned toys during the 1973 Christmas season.

--Consumer deputy 1/ retail surveillance campaigns for identifying banned toys and having retailers remove them from their shelves during the 1973 and 1974 Christmas seasons.

--Selected retailer inspections of what the Commission considered consumer complaints.

1/ Consumer deputies are not Commission employees. They are volunteers, usually recruited from local community groups to assist in retail surveillance programs for specific products. Commission inspectors verify potential violations that consumer deputies identify before compliance action is taken.

Because the Commission did not have adequate records at headquarters, it did not know, and we were unable to determine from headquarters files, how many and which manufacturers and importers had been inspected for compliance. The Commission keeps a register of 544 toy manufacturers, 581 toy importers, and several hundred toy retailers. However, the register does not include many manufacturers listed in trade association and industry toy directories. In addition to those toy firms on its register, the Commission uses a Dun and Bradstreet list 1/ to identify toy manufacturers, importers, distributors, and retailers.

In 1974 the Commission used the Dun and Bradstreet list to distribute about 15,000 copies of a list of products banned by FHS Act requirements and the latest toy safety requirements. Because no records were kept, the Commission was unable to say how many or which toy manufacturers and importers had been advised of toy safety requirements.

In November and December 1974, legal challenges by toy firms and a consumer group resulted in two U.S. district court rulings that the Commission's toy safety requirements did not adequately define toy hazards and that the Commission was using a testing procedure which had not been officially issued. One court told the Commission to issue general safety regulations, such as performance requirements, whenever possible. The other court told the Commission to issue procedures to test toys--for determining their compliance with safety requirements--in accordance with rule-making provisions of the Administrative Procedure Act (5 U.S.C. 553), which includes public notice to allow interested parties to participate in the rule making.

Since these court rulings, the Commission has not directed any toy compliance activity under the FHS Act. Its staff believed that the court rulings negated the ban on other toys previously banned under FHS Act safety requirements and, therefore, that the Commission had no enforceable safety requirements. As of March 1, 1976, the Commission continued to develop safety requirements defining toy hazards and toy test procedures but had not issued either. Although it planned a children's toy compliance program for fiscal year 1976, the program was not implemented because the safety requirements and test procedures were not issued.

1/ A commercial service that has sales, marketing, and financial information on most U.S. industries and over 3 million firms.

Special packaging for aspirin

Aspirin is the substance most frequently ingested with poisonous effects to children under 5 years of age.

In 1970 the Congress passed the Poison Prevention Packaging Act to provide special packaging and labeling of household products that can cause serious illness or injury to children. The law defined special packaging as containers considerably difficult for children under age 5 to open, but not too difficult for normal adults. The law also permits packaging a single size not complying with the special packaging requirement. This exemption is to make a conventional size available to persons such as the handicapped or elderly needing or desiring them. This exempt size must bear a conspicuous label stating that the package is for households without young children.

FDA issued safety requirements (21 C.F.R. 295) under the Poison Prevention Packaging Act (FDA administered this law before it was transferred to the Commission in May 1973) requiring special packaging and labeling on several products, including aspirin, packaged after January 10, 1973. Aspirin products packaged before that date were exempt, as were the special exempt packages provided for by law. The Commission revised the safety requirements (16 C.F.R. 1700) in August 1973. Thus, determining whether a product is in violation requires the Commission to obtain each firm's (1) packaging dates and (2) designated exempt size.

FDA did not perform any aspirin inspections before the law was transferred to the Commission. The Commission's compliance activity for aspirin products started in mid-1973 and consisted of two compliance programs and one consumer deputy program.

The first program was in the fall of 1973. The Bureau of Compliance directed the area offices to inspect five aspirin packagers to determine their compliance with special packaging and labeling requirements. Because of the lack of records at headquarters, Commission representatives could not tell us which and how many firms were inspected, but they estimated about 70. Although they estimated that about 10 violations were found, the Commission made only one successful seizure (125 packages of aspirin).

The second program was in the spring of 1974. It consisted of consumer deputies' surveillance of retail stores to identify aspirin and furniture polish packaged in violation of the safety requirements. The Commission's participation was

limited to training and monitoring the deputies and performing followup inspections for selected products without special packaging and labeling.

Consumer deputies inspected 1,307 retail stores and found 571 selling products without special packaging and labeling. However, Commission records did not show, and Bureau of Compliance representatives could not say, how many stores were selling violative aspirin products and how many were selling furniture polish. The Commission inspected 43 of the 571 stores and followed up by inspecting 28 manufacturers and packagers to determine if the packages identified were violating the safety requirements. Commission records at headquarters did not show and Bureau representatives were unable to tell us the inspections' results. Therefore, the Commission did not know how many of the retail stores, manufacturers, and packagers were violating the special packaging and labeling requirements for aspirin.

Between May 1973 and the spring of 1975 the Commission inspected about 150 aspirin manufacturers and packagers. During this 2-year period, Commission inspectors and consumer deputies reported that hundreds of retail stores offered many brands of aspirin without safety closures and warning labels, including the four major brands. To determine whether the packages were violating safety requirements, the Commission would have had to perform followup inspections at those firms. However, the Commission performed few of these and did not determine whether these products violated safety requirements.

In March 1975 we spot checked 95 retail stores carrying aspirin to determine whether it was being sold in safety packages. We found 32 retailers selling aspirin in noncomplying packages. Among these noncomplying packages were three of the four major brands. The Commission could not say if these products were violating the safety requirements or if they were exempt because they were packaged before the effective date or were for use by families without small children.

The third Commission program, in the spring and summer of 1975, was designed to determine the compliance status of all aspirin manufacturers and packagers in the United States. The Bureau of Compliance sent the area offices a list of about 90 aspirin manufacturers and packagers with instructions to identify any additional firms and to inspect all of them.

In April 1976 the Bureau of Compliance reported that it had identified and inspected 272 aspirin manufacturers

and packagers. This report showed that more than 90 percent of the firms were complying with the packaging requirements (i.e., their packages contained a safety closure). Most violations were for improper labeling.

Mattress flammability standards and labeling requirements

The Department of Commerce, under the Flammable Fabrics Act, issued mattress flammability standards that became effective in June 1973. The Commission amended the mattress safety requirements in June 1973 (16 C.F.R. 302) after the law was transferred to it. The Commission reissued them in December 1975 (16 C.F.R. 1632). These requirements are to protect the public against the unreasonable risk of mattress fires leading to death, personal injury, or considerable property damage and provide the test methods for determining a mattress' ignition resistance when exposed to lighted cigarettes.

Besides setting mattress flammability standards, the safety requirements (1) specify the testing equipment, procedures, and criteria for evaluating mattress flammability, (2) require manufacturers to (a) perform prototype and production testing, (b) keep records of mattresses produced and tested, and (c) label mattresses as complying with the standards, and (3) permit manufacturers to produce and sell noncomplying mattresses for 6 months after the standards' effective date, if labeled as not complying with the flammability standard.

By the summer of 1973, the Commission:

--Identified about 2,050 mattress manufacturers from a Dun and Bradstreet listing and two trade associations' listings.

--Sent each manufacturer copies of the safety requirements.

--Requested each to inform the Commission of its compliance status. Also, firms producing noncomplying mattresses before December 1973 were asked to submit samples of the warning labels they planned to use to identify noncomplying mattresses. Of the 2,050 manufacturers, 686 responded.

The first of two Commission compliance programs was in the fall of 1973 and was directed at the 1,364 manufacturers who had not informed the Commission of their compliance status. Each area office was to perform a specified number

of inspections and collect mattress samples from a certain number of manufacturers to be tested for conformity with the safety requirement. By mid-1974, 238 firms were inspected, of which 201 were subject to the mattress requirement--the other 37 were out of business or did not manufacture mattresses. Of the 201 firms, 30 violated the requirement and legal action was initiated against them. Most violations were against recordkeeping and testing requirements. Eleven of 69 mattresses sampled failed the Commission's flammability test and were found to be hazardous. The Commission did not seize any mattresses. Commission officials said that the firms did not have any more violative mattresses in their inventories or had removed violative mattresses from the market after being notified.

The second program, started in the summer of 1974, was to be the same as the first except that the area offices were to give special attention to firms suspected of noncompliance. The inspections were to determine whether the firms had made the required flammability tests and were complying with recordkeeping and labeling requirements.

The Commission inspected 193 firms--18 found in violation during the first program and 175 that responded to the Commission's letter. Thirty-five firms violated the recordkeeping and labeling requirements. Legal action was initiated against 26 of them; however, the Commissioners decided not to prosecute the other 9 because they were considered de minimis [1/] violations.

Three of 15 mattresses tested failed flammability tests. One firm destroyed the remaining eight mattresses in inventory after being informed of the violation. A second firm's mattress failed a State test conducted for the Commission, but was found in compliance after the Commission conducted a followup test. A third firm attempted to recall violative mattresses after being advised that they failed the flammability test. It was able to locate and destroy 24 mattresses.

In December 1975 the Commission evaluated its two mattress compliance programs. Although not drawing a conclusion about the programs' effectiveness, the Commission estimated that there was a 30- to 40-percent noncompliance rate for those manufacturers inspected, due in part to the mattress industry's poor understanding of the mattress safety requirements and its legal obligations under them.

[1/] A violation that was a minor breach of the law or safety requirements.

The evaluation concluded that (1) the changing composition of the industry (firms continuously enter and leave) and the communication problems that result make compliance unlikely until a firm is inspected and (2) there is a lack of economic motivation which the Commission can use to stimulate increased compliance. The evaluation recommended that the Commission selectively pursue violations of safety requirements and develop criminal cases which could be significant, because only then would there be some impact on the industry.

NEW COMPLIANCE PROGRAM PLANS

In the spring of 1975, the Bureau of Compliance started developing plans for 10 compliance programs for fiscal year 1976. (See app. III.) The Bureau considered these 10 program categories the areas most needing compliance activity.

We reviewed the 10 planning documents (most were being prepared during our fieldwork) and discussed them with Commission officials to determine whether they provided, or would provide for (1) identifying and notifying firms of safety requirements, (2) inspecting firms on a sample basis for compliance, (3) following up on violations, and (4) evaluating the compliance effort's success.

Four of the 10 programs planned to provide all these elements--flammability of children's sleepwear, bicycles, fireworks, and monitoring cease and desist orders issued under the Flammable Fabrics Act. The other programs did not provide for some of following elements:

--Four did not identify manufacturers, packagers, and importers of the products (special packaging of prescription drugs, special packaging of household chemical products, flammability of carpets and rugs, and children's toys).

--Three did not (1) notify manufacturers, importers, and packagers of the compliance terms and (2) request them to inform the Commission of their compliance status (continuing guarantees manufacturers filed under the Flammable Fabrics Act, special packaging of household chemical products, and flammability of carpets and rugs).

--Three did not followup on manufacturers or monitor retailers to insure their continued compliance and correction of violations found (aerosols containing

vinyl chloride, special packaging of prescription drugs, and children's toys).

--One did not evaluate compliance programs so that adjustments could be made to future program compliance needs (continuing guarantees which manufacturers filed under the Flammable Fabrics Act).

CONCLUSIONS

The Commission was not assurred that industry was complying with safety requirements and that consumers were being protected from hazardous products. Some hazardous products remained available for consumer purchase.

--Not all compliance activity was planned to insure manufacturers, importers, and packagers were identified and notified of safety requirements.

--Followup inspections did not verify industry's compliance with safety requirements after hazardous products were found.

--Compliance actions for toys stopped because safety requirements did not adequately define the hazards and the Commission had not issued toy test procedures.

--The failure to prepare an environmental impact statement required by law contributed to ineffective enforcement of the ban on aerosol products containing vinyl chloride.

--Compliance actions were not evaluated to determine their effectiveness.

New procedures are needed to insure the Commission's compliance activity is adequately planned, implemented, and evaluated. The Commission also needs to promptly issue toy requirements better defining toy hazards and toy test procedures so it can resume its toy compliance activity.

RECOMMENDATIONS TO THE COMMISSION

We recommend that the Commission formalize its compliance planning and execution so that its programs will provide for:

--Identifying manufacturers, importers, and packagers of products subject to safety requirements and directing its compliance activities to them.

--Notifying firms of safety requirements and the terms of compliance.

--Inspecting firms, on a selected basis when appropriate, and examining their records and products to verify compliance.

--Following up with reinspections at manufacturers, importers, and packagers and monitoring distributors and retailers to insure continued compliance and correction of violative conditions.

--Evaluating the results of its compliance progams.

We recommend also that the Commission promptly issue toy (1) safety requirements that adequately define the hazards associated with toys and (2) test procedures.

CHAPTER 3

NEED FOR MORE EFFECTIVE ACTION AGAINST VIOLATORS OF SAFETY REQUIREMENTS

The Commission has had delays in preparing and referring criminal cases to the Department of Justice and has had little success in getting Justice to prosecute cases. On the average, the Commission has taken more than a year to process a case to the point where it was either referred for prosecution or closed.

During the Commission's first 25 months of operation, about 47 percent of the cases brought before the Commissioners were closed without being referred to Justice or obtaining approval for some other legal or administrative remedy. Of 25 cases referred for prosecution during this period, Justice rejected 16 because they either were too old, involved de minimis violations, or involved violations promptly corrected by the violator.

The Commission's delays and limited success in having Justice prosecute cases were caused by

--inadequate procedures for identifying cases suitable for prosecution and

--insufficient delegation of authority to the staff for determining which cases should be developed and forwarded to the Commissioners for referral to Justice.

Although the Commission has taken steps to improve its case processing, additional actions are needed.

NEED TO BETTER IMPLEMENT ENFORCEMENT POLICY

The Consumer Product Safety Act provides for the Commission to initiate, prosecute, defend, or appeal any court action in the name of the Commission to enforce the laws subject to its jurisdiction, through its own legal representatives with the concurrence of the Attorney General or through the Attorney General. Current arrangements with Justice require the Commission to simultaneously forward criminal cases to Justice for review and to the local U.S. Attorney for filing in Federal court. Justice has not authorized the Commission to prosecute its own cases.

Commission compliance policy and procedures do not clearly define the conditions for a criminal case to be referred to Justice for prosecuting a person or firm who violated a safety requirement. Although Commission policy is to seek prosecution of all violators, adequate procedures to implement this policy have not been issued. As a result, area offices and Bureau of Compliance staffs prepare many cases that are not approved by the Commissioners for referral or are not accepted by Justice for criminal prosecution.

During the 25-month period of May 14, 1973, through June 30, 1975, 159 cases were forwarded to the Commissioners. Of these, 28 cases were approved for referral to Justice, 52 were approved for other action (e.g., cease and desist order or notice of enforcement), 71 were closed without action, and 8 were awaiting a final Commission decision. In accordance with Commission policy, each case forwarded to the Commissioners was processed through the entire case-processing cycle, even when the area office, Bureau of Compliance, and/or Office of General Counsel believed it should have been terminated.

Through February 27, 1976, the Commission referred 25 of the 28 cases to Justice for criminal prosecution. Justice declined to prosecute 16 of these because (1) too much time had elapsed since the violation occurred, (2) the violations were de minimis, or (3) the violations were promptly corrected. Of the remaining nine cases, four were pending at Justice and five had been filed in Federal court. In each case Justice filed, the defendant pleaded guilty.

Enforcement tools

Commission enforcement policy is to seek civil and criminal penalties against violators and to use every appropriate remedy available to insure compliance. The Director, Bureau of Compliance, stated that the purpose of enforcement is to penalize those violating safety requirements and to help promote voluntary compliance by others subject to safety requirements.

Whereas product seizures and injunctions are legal actions the Commission can use to remove hazardous products from the market, civil and criminal penalties are administrative and legal remedies directed at the people and firms violating safety requirements. Each of the five laws the Commission administers provides criminal penalties. To successfully prosecute a person or firm, in most instances the

Commission must show that the violator acted knowingly, willfully, or not in good faith. For certain violations, just showing that there was a violation will obtain a conviction.

For instance, for the Commission to prosecute a retailer who received and sold a product banned under the Federal Hazardous Substances Act, the Commission must show that the defendant either bought or sold the product in interstate commerce knowing at the time it was banned. However, if the Commission seeks to prosecute a firm or person for buying or selling a refrigerator that cannot be opened from the inside as required by the Refrigerator Safety Act, the Commission must only show that the defendant bought or sold that refrigerator in interstate commerce.

Maximum criminal penalties vary under each law. The penalties range from a $500 fine and/or 90 days imprisonment to a $50,000 fine and/or 1 year imprisonment. (See app. IV.)

The Commission can also impose or seek (through Justice) civil penalties under two laws it administers--the CPS Act and the Flammable Fabrics Act. CPS Act civil penalties can be as high as $2,000 for each violation with a maximum penalty of $500,000 for any related series of violations. Civil penalties for certain Flammable Fabrics Act violations can be as high as $10,000 for each violation with no maximum for a related series of violations. (See app. IV.) To assess civil penalties under the CPS Act, the Commission must show that a firm or person knowingly violated a safety requirement. Under the Flammable Fabrics Act, the Commission must only demonstrate that a Commission order (e.g., cease and desist order) had been violated to assess civil penalties.

Inadequate Commission compliance procedures

The Commission has issued several directives to assist area office staff (1) perform compliance inspections, (2) collect product samples, and (3) make legal recommendations to the Commissioners when violations are identified. However, these procedures do not set forth criteria for determining violations of the various laws and regulations or the legal documentation needed to support such violations. Also, there are no formal procedures (1) to guide the Bureau of Compliance and the Office of General Counsel in preparing cases for the Commission's consideration and approval or (2) that incorporate Justice's criteria for accepting criminal cases for prosecution.

The directives state that the Commissioners make all decisions to prosecute or close civil and criminal cases. If violations are identified through compliance inspections or sample analysis, legal recommendations (either for or against prosecution) are routed through the Bureau and General Counsel for initial review and evaluation before submission to the Commissioners.

Because the Commissioners have not delegated any responsibility for closing cases, certain criminal cases with little or no prosecution potential were initiated in the area offices, routed through the Bureau and General Counsel for review and further development, and finally closed by the Commissioners. Some of these cases were developed with staff recommendations that criminal prosecution be sought and others when the staff believed that the case was not suitable for prosecution but it still was required to process the case as it would if recommending prosecution.

The following examples indicate that the Commission needs to establish criteria for identifying cases for prosecution.

Case A

An area office inspector found that a firm, which manufactured an oven cleaner, was not packaging and labeling the product according to Poison Prevention Packaging Act safety requirements. The area office forwarded the case to the Bureau of Compliance recommending prosecution. The Bureau concurred and forwarded the case to the Office of General Counsel.

General Counsel disagreed with the area office and Bureau recommendations. It recommended the Commissioners not prosecute because (1) there was ample evidence that the firm was in compliance when it was reinspected and (2) the facts were not persuasive enough to support a criminal prosecution.

However, the Commissioners voted to refer the case to Justice for prosecution. Justice declined to prosecute because compliance was obtained and there was a delay in their getting the case for prosecution.

Case B

An area office inspector, accompanied by a State inspector, found a retailer selling fireworks banned under safety requirements of the FHS Act. Based on this inspection, the retailer was convicted under a State law.

Because the retailer was selling fireworks which were also banned under Federal law, the area office recommended the Commission seek prosecution. It developed the case and forwarded it to headquarters. However, the Bureau of Compliance disagreed. The Bureau recommended that (1) the case be closed (2) the area office keep the retailer under surveillance during the June-July fireworks season, and (3) any further violations be prosecuted under Federal law.

The Bureau reasoned that the State arrested the retailer and obtained a conviction and fine under State law and the Commission should not attempt to prosecute someone previously convicted of a State offense. The Bureau also pointed out that, although there was a clear violation of Federal law, the CPS Act's legislative history states that when violators have been adequately penalized under State law, the Commission is not expected to seek civil or criminal penalties under Federal law. The Bureau said State conviction and fine served to protect the public and penalize the violating retailer.

However, the commissioners voted to prosecute the retailer and directed the Bureau to reopen the case. The case was referred to Justice for criminal prosecution, but Justice declined because the State had successfully prosecuted the retailer.

Bureau officials said that they plan to ask the Commissioners to delegate authority to close cases for de minimis violations--cases with little prosecution potential--to reduce the work on cases that are likely to be closed. As of March 1976, the Bureau had not asked for this authority.

NEED TO PROCESS CASES MORE PROMPTLY

The Commission has not been timely in preparing criminal cases, forwarding them to the Commissioners, and referring them to Justice for prosecution. Of the 71 cases three area offices forwarded to headquarters between May 14, 1973, and June 30, 1975, the Commission averaged over 13 months to process each of the 22 cases that had been forwarded to the Commissioners. The Chairman has stated that the Commission's time to process criminal cases is too long and is not acceptable for efficient law enforcement. Since June 30, 1975, the Commission has improved its case processing, but more progress is still needed.

Commission procedures provided for the area offices to initiate cases and forward them to the Bureau of Compliance and Office of General Counsel for review and further development before being submitted to the Commissioners.

These procedures did not provide time guidelines and milestones for case development and review.

Area offices, with Bureau and General Counsel assistance as requested:

--Performed the compliance inspection and collected the product sample, if needed.

--Performed followup inspections, if needed, to (1) demonstrate that the person or firm knew of the safety requirement being violated and to (2) confirm that the safety requirement was violated.

--Held hearings to (1) consider additional evidence, (2) cite the violating firm or person, and (3) attempt to agree on a correction action plan, if needed.

--Transmitted the case, case summary, and penalty recommendations to headquarters.

Case processing at headquarters varied according to the law that was violated. Generally, the Bureau reviewed cases for their technical sufficiency, completeness, and legal adequacy and prepared the legal complaint. After this, General Counsel reviewed the case and prepared the legal opinion. Cases were then forwarded to the Commissioners for their consideration. If the Commissioners decided to seek criminal prosecution, General Counsel referred cases to Justice for filing in court. Cases were returned to the Bureau if they were closed or other action was directed.

The Commission did not know the total number of cases the area offices forwarded to headquarters during the period May 14, 1973, through June 30, 1975, because it did not maintain a case log until May 1974. Therefore, we went to three area offices--Atlanta, Cleveland, and Seattle--to find out. The three offices forwarded 71 cases--22 had been sent to the Commissioners by June 30, 1975, and the remaining 49 were in process at headquarters.

The 49 cases were in process an average of 387 days [1/] from the date the inspector identified the violation to June 30, 1975. The processing time for the 49 cases ranged from 174 to 777 days. The 22 cases forwarded to the Commissioners averaged 413 days from the date of inspection to the date the Commissioners approved the case for referral to Justice for prosecution or closed the case.

[1/] Case processing days are expressed in calendar days.

The following two cases demonstrate the Commission's delays in processing cases. In both examples, more than 600 days elapsed from the date the violation was found until the Commissioners voted to prosecute. In one example, the Commissioners referred the case to Justice for prosecution and the defendant pleaded guilty more than 800 days after the violation. The violator in the other case signed a consent agreement 775 days after the violation and the Commissioners were considering dropping plans to seek criminal prosecution about 900 days after the violation.

Case C

An area office found that a mattress manufacturer had violated the Flammable Fabrics Act's flammability testing, labeling, and recordkeeping requirements. Twelve days after the inspection, the area office forwarded the case to headquarters recommending prosecution.

The case remained in the Bureau of Compliance 492 days while being reviewed, and the area office made reinspections at the Bureau's request and found that the manufacturer was still in business and was still violating the requirements. Bureau representatives said that further action was not taken because this case was one of a number of similar mattress cases which the Bureau was developing for consideration as a single group. The cases were grouped so the Commission could develop a consistent position on prosecuting like cases, and thereby make a larger industry-wide impact on mattress manufacturers.

The group of mattress cases, including case C, was eventually sent to the Office of General Counsel. After its review, General Counsel returned some of the cases, including case C, for additional documentation--to better explain and document the violation--while the other cases remained in General Counsel. Sixty-three days after case C was received by General Counsel, it was forwarded to the Commissioners.

The Commissioners decided to seek criminal prosecution and initiate civil proceedings against the manufacturer for case C. The decision came 616 days after the area office found that the manufacturer violated the mattress safety requirement.

On November 20, 1975--about 775 days after the inspection--the Commissioners accepted a consent agreement with the mattress manufacturer to complete the civil action. As of April 16, 1976, over 860 days after the violation, the Commission had not initiated criminal action against the manufacturer and was considering dropping plans to seek criminal prosecution.

Case D

An area office inspector found a furniture polish manufacturer violating safety closure and labeling requirements of the Poison Prevention Packaging Act.

The case remained in the area office for 236 days while the product sample was tested, the firm reinspected, and the citation hearing held. Some of the delay was attributed to time headquarters spent in determining whether the product was a furniture polish subject to the safety requirements.

When the area office sent the case to the Bureau of Compliance, it recommended that the firm be prosecuted for selling mislabeled furniture polish, a Poison Prevention Packaging Act violation enforced under the FHS Act. The Bureau had the case for 169 days before forwarding it to the Office of General Counsel. Bureau representatives said that this case took over 5 months to process because the Bureau had a large backlog of cases.

The case was in General Counsel 225 days before it was forwarded to the Commissioners. During this time, General Counsel requested that the area office reinspect the manufacturer's plant. Because of the length of time the case remained open, the Commission wanted to determine whether the manufacturer was still violating the safety requirement--it was. The only other explanation General Counsel attorneys gave us for the time it took them to process the case was the backlog of cases.

The Commissioners decided to seek criminal prosecution of the manufacturer 646 days after the firm was found violating the safety requirement. The Commission referred the case to Justice 6 days later, and Justice filed it in U.S. district court. More than 800 days after the violation was identified, the manufacturer pleaded guilty.

Commission improvements in case processing

The Commission Chairman recognized that the Commission's average time to process a case was excessive and that this time frame did not provide for good enforcement of safety requirements.

A Commission representative said that during the first year to 18 months of operation, the Commission was not very efficient in developing cases for prosecution, thereby contributing to the untimely case-processing problems. He said

this was because the Commission was a new agency and lacked good management control of its case workload and central policy direction to develop cases for prosecution. Also, he said there were too many organizational layers involved --within the area offices, bureaus, and Office of General Counsel--which contributed to slow decisions on case recommendations. At times, cases had to be prepared over again because they were not prepared correctly the first time. However, this representative said much of this has changed and the Commission has improved the case development system and has reduced the time to process cases and forward them to the Commissioners.

Commission officials told us of the following changes the Commission has implemented.

1. For cases in which the Commission seeks prosecution under the FHS Act or the Poison Prevention Packaging Act, area offices are responsible for completing the case and the legal documents necessary for Federal court action. This includes determining the adequacy of the evidence and recommending appropriate penalties.

   The area offices are forwarding these cases and related documentation to the Commissioners, not routing them through the Bureau of Compliance and Office of General Counsel. The area offices concurrently send a copy of the case summary and recommendations to the Bureau of Compliance for review.

   This delegation of responsibility to the area offices covers only two laws the Commission administers. 1/ Cases processed under the other three laws are to continue as in the past (i.e., area offices send cases to the Bureau and General Counsel for review and further development before they are forwarded to the Commissioners).

2. The Bureau started a program to provide the area offices (a) monthly reports on the status of cases and (b) weekly reports that identify and

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1/ Area office personnel had experience processing FHS Act and Poison Prevention Packaging Act cases and this would aid the transition. They had no experience processing cases involving the other three laws.

discuss problems and give the area offices other guidance for carrying out their compliance and enforcement activities. The implementation of these changes has provided the Bureau a tool for tracking cases and a means for case followup.

3. The Bureau established liaison teams, consisting of representatives from its Legal Division and Inspection and Enforcement Division to serve the area offices as consultants and advisors when developing cases. The teams assist area office staffs by advising them on (a) policy and legal questions, (B) substantive issues related to specific cases, and (c) general guidance in conducting their compliance and enforcement activities.

4. The Bureau established target turnaround times for reviewing and processing cases in its two divisions to improve the control and processing of cases. The Bureau established a 2-week case turnaround in its Inspection and Enforcement Division and a 30-day turnaround in its Legal Division. These time frames apply to cases the Bureau receives under all five laws the Commission administers.

The action the Commission has taken to improve the timeliness of case processing has contributed to cases being forwarded to the Commissioners faster than in the past.

We compared the Bureau's processing time for the 36 FHS Act and Poison Prevention Packaging Act cases that went through the Bureau during our May 1973 through June 1975 analysis with 29 cases that the Bureau forwarded to the Commissioners between November 1975 and January 1976. The 36 cases averaged 189 days to complete Bureau review. Between November 1975 and January 1976, the Bureau forwarded the 29 cases to the Commission in an average of 64 days.

The reduction in days the Bureau of Compliance required to process a case was not matched by the area offices. Case development time in the area offices lengthened during the same time period. For instance, we compared FHS Act and Poison Prevention Packaging Act cases the three area offices forwarded between May 1973 and June 1975 with similar cases all area offices forwarded between November 1975 and January 1976. The three area offices forwarded 47 FHS Act and Poison Prevention Packaging Act cases to headquarters averaging 109 days. All area offices forwarded 27 similar cases to headquarters between November 1975 and January 1976, each case averaging 374 days.

Bureau officials said that the changes discussed on pages 29 and 30 contributed to both the reduction in case-processing time in the Bureau and the lengthening of case-processing time in the area offices. They believed that further reduction in the time to process cases can still be made in the Bureau and that a concerted effort is necessary to shorten area office case-processing time.

The Bureau is working with the area offices to improve their case-processing time. Bureau personnel are training the area office staff, working with them through the liaison teams, and assisting them by temporarily assigning Bureau personnel to the area offices. However, Bureau officials admit that the Bureau will have to continue assisting the area offices to (1) reduce their case backlog and (2) improve their time to develop and forward cases to headquarters.

As of October 31, 1975, the area offices had a backlog of 199 cases. Work on these cases was basically complete, except that case recommendations and summaries had not been prepared. Bureau officials said that part of the reason for the large backlog is (1) that not all cases the area offices identified were valid--the Commission could not demonstrate the alleged violation took place--or (2) they were for de minimis violations. The Bureau plans to propose that the Commissioners close cases that are for de minimis violations--cases which Justice might decline because they have little appeal to judge or jury.

ALTERNATIVE TO CRIMINAL PENALTIES

Most of the cases which the Commissioners closed without action were for FHS Act and Poison Prevention Packaging Act violations punishable by criminal penalties under the FHS Act. 1/ These are the same types of cases the Department of Justice has declined to prosecute because many of them were for de minimis violations or for violations promptly corrected after they were brought to the attention of the manufacture, distributor, or retailer. Justice stated such cases do not appeal to judge or jury.

Because of its difficulties in getting Justice to prosecute some of its cases, the Commission requested that the Congress give it the authority to prosecute its own

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1/Poison Prevention Packaging Act violations are subject to penalties under the FHS Act.

criminal cases. The Congress has not given this authority.

Another alternative that could help the Commission enforce safety requirements and protect consumers from hazardous products would be the authority to assess civil money penalties for certain violations of safety requirements.

As stated in appendix IV, civil penalties are available to enforce safety requirements under only two of the laws the Commission administers--the CPS Act and Flammable Fabrics Act. Criminal penalties are available under all five laws the Commission administers. Authority to impose civil money penalties under the FHS Act could improve the Commission's enforcement of safety requirements issued under that law and the Poison Prevention Packaging Act.

For instance, when referring FHS Act criminal penalty cases to Justice for prosecution, the Commission must show that the violator had actual knowledge that he violated the safety requirements. If that law provided for civil money penalties, similar to the provisions in the CPS Act, the Commission would need to show only that the violator should have known that he was violating the safety requirements. Also, using civil money penalties could eliminate the need for the Commission to group de minimis cases, as it did with some mattress cases (see p. 27), which contributed to case-processing delays. If the Commission could impose civil money penalties, it could improve its case-processing time and maintain a consistent position for handling similar cases.

The Administrative Conference of the United States was established in 1964 to study the efficiency, adequacy, and fairness of Federal agencies' administrative procedures and make recommendations to the President, the Congress, and/or the Judicial Conference of the United States on how to improve these procedures. In a 1972 recommendation, the Administrative Conference discussed the desirability of regulatory agencies making greater use of civil money penalties.

The Administrative Conference recommended that Federal agencies consider requesting that the Congress give them authority to use civil money penalties or other substitute penalties because they would be in the public interest. The Conference did not propose eliminating criminal penalties, but just providing another alternative. It stated that civil money penalties are an important and useful enforcement tool for agencies with a large number of cases to be processed and the availability of more severe penalties (i.e., criminal penalties) for use when appropriate. Civil money

penalties should (1) contribute to agencies obtaining quicker corrective action for violations and (2) demonstrate greater consistency in its judicial rulings.

The Administrative Conference stated that the use of civil money penalties would not reduce or eliminate the due process protection now provided under criminal penalty situations. Civil money penalties would be assessed in accordance with the Administrative Procedure Act (5 U.S.C. 554-57), and if appealed, could be reviewed by the U.S. Court of Appeals in accordance with that act (5 U.S.C. 706(e)). The Conference also suggested that agencies be allowed to compromise or mitigate any civil money penalty settlement either before or after assessment.

Although the Commission has civil penalty authority under both the CPS Act and the Flammable Fabrics Act, it had not used it as of June 30, 1975.

The Commission's General Counsel agreed that civil money penalties could be a helpful enforcement tool. General Counsel believed that such penalties would be beneficial because:

--Cases could be processed faster and at less cost than criminal cases, because less legal documentation and development are needed.

--Civil money penalties are more readily accepted by violators than criminal penalties.

--Smaller court cases would be eliminated, thereby reducing the court's workload and permitting the courts to concentrate on larger, more important cases.

CONCLUSIONS

Commission procedures for developing and processing criminal cases are not adequate, because they do not specify the criteria the Commissioners use when considering cases. Also, the Commission lacks procedures which incorporate (1) the criteria the Department of Justice uses when accepting Commission cases for prosecution or (2) its reasons for rejecting such cases. These procedures are necessary to insure that cases will be developed on a sound legal basis, that they will be acceptable to the Commissioners, and that they will meet Justice's requirements for prosecution.

Also, there is a need for the Commissioners to delegate responsibility to the Commission staff for determining

which cases should be developed and submitted to the Commissioners recommending referral to Justice for prosecution. This delegation should include establishing the criteria for closing a case. Such a delegation would not only speed up the development of cases, but it would also allow the staff to close cases with no prosecution potential early--before many Commission resources are expended.

The Commission has taken steps to reduce the time to process cases in the Bureau of Compliance, but the time to process a case in the area offices has increased. The Commission should establish additional guidelines and milestones for developing cases for criminal prosecution. Such procedures could reduce the time to develop cases in both the Bureau and the area offices.

We believe the Commission's enforcement of safety requirements issued under the FHS Act and the Poison Prevention Packaging Act could be strengthened if it had authority to impose civil money penalties under the FHS Act.

RECOMMENDATIONS TO THE COMMISSION

To insure that the Commission prepares criminal cases in a timely and effective manner that the Department of Justice is likely to accept for prosecution, we recommend that the Commission:

--Specify the criteria the Commissioners use to approve a case for referral to Justice and develop procedures for implementing the criteria.

--Delegate authority to the staff for determining which cases should be developed and submitted to the Commissioners recommending referral to Justice or other action.

--Establish procedures for the staff's use in processing cases for prosecution. These procedures should contain the case characteristics, legal remedies available, case processing milestones, and case-monitoring guidelines which the area offices and headquarters can use to develop cases which meet the criteria under which the Commissioners would consider referring the case to Justice.

MATTERS FOR CONSIDERATION BY THE CONGRESS

We recommend that the Congress amend the FHS Act to provide the Commission the additional authority to assess civil money penalties for violations of safety requirements

issued under that law and the Poison Prevention Packaging Act. This amendment should include provisions which:

--Authorize the Commission to assess civil money penalties for violations.

--Provide for adjudicating alleged violations pursuant to the Administrative Procedure Act (5 U.S.C. 554-57).

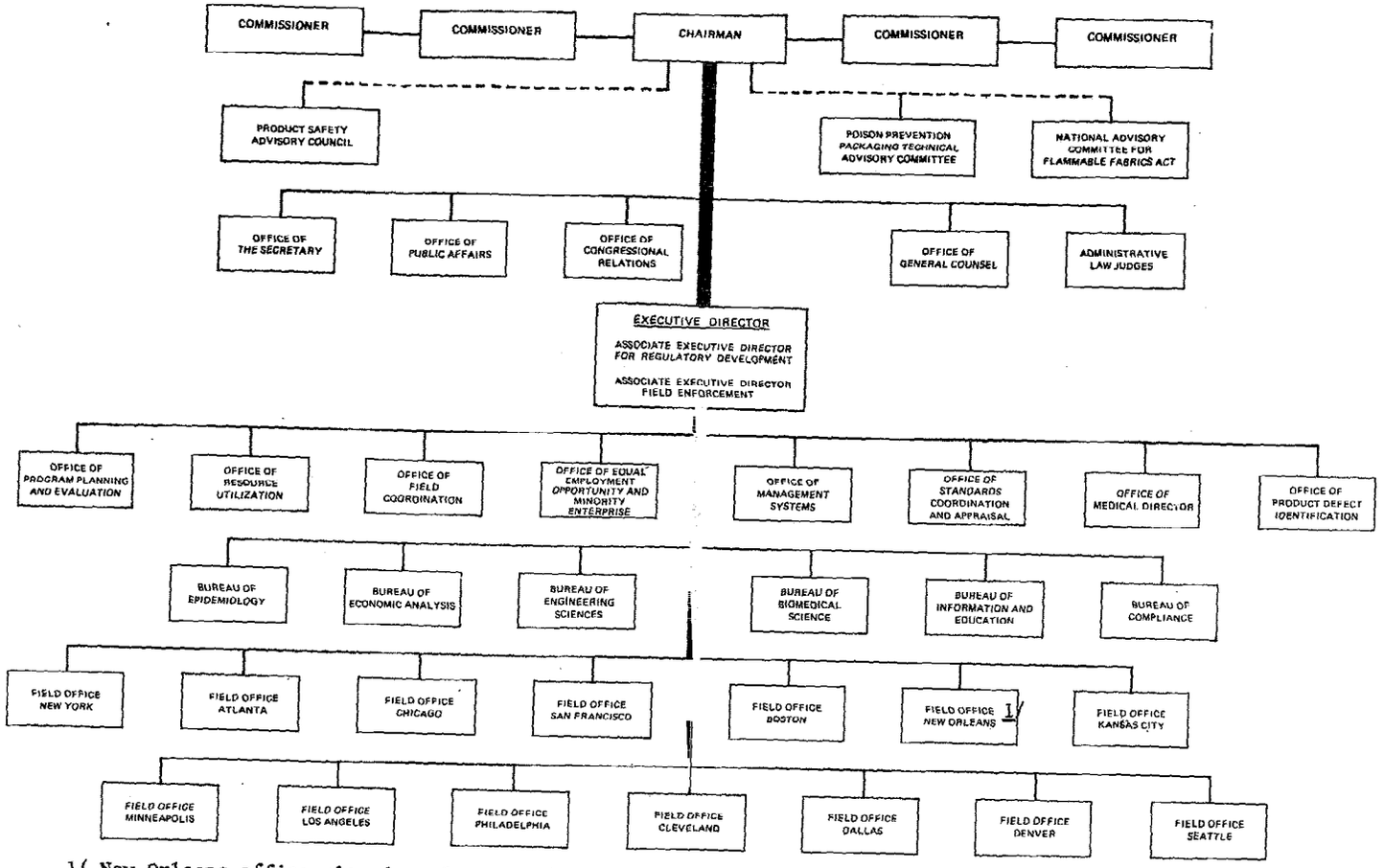
--Make the Commission's assessment of civil money penalties final, unless they are appealed to the U.S. Court of Appeals within a specified time (5 U.S.C. 706).

--Allow the Commission to compromise any of its civil money penalties either before or after assessment.

Suggested legislative language embodying the provisions discussed is included as appendix V.

ORGANIZATION OF THE U. S. CONSUMER PRODUCT SAFETY COMMISSION

December 1975



1/ New Orleans office closed on January 16, 1976.

APPENDIX I

APPENDIX II

GENERAL PRODUCT CATEGORIES REGULATED BY SAFETY REQUIREMENTS ISSUED BY THE CONSUMER PRODUCT SAFETY COMMISSION

JUNE 30, 1975

Product/product category	Type of safety requirement (note c)
Consumer Product Safety Act:	
None	None
Federal Hazardous Substances Act:	
Acetic acid	Labeling
Adhesives, contact	Labeling
Aerosol products containing vinyl chloride	Ban
Ammonia, ammonia water	Labeling
Antifreeze, ethylene glycol-base (note a)	Labeling
Antifreeze, methyl alcohol-base	Labeling
Asbestos-containing garments for general use	Ban
Baby bouncers and walkers	Ban
Benzene	Labeling
Bergamot oil	Labeling
Carbolic acid (Phenol)	Labeling
Carbon Tetrachloride	Ban
Caustic poisons	Labeling
Charcoal briquettes	Labeling
Containers, self-pressurized	Warning required
Cribs (full size)	Ban
Cyanide salts	Ban
Diethylene glycol	Labeling
Deithylenetriamine	Labeling
Diglycidyl ethers	Labeling
Drain cleaners, liquid (note a)	Ban
Epoxy resins	Labeling
Ethylenediamine	Labeling
Ethylene glycol (note a)	Labeling
Fire extinguishers	Labeling
Fireworks	Warning required, ban
Formaldehyde	Labeling
Fuel kits with difluorodichloromethane	Warning required

APPENDIX II

Product/product category	Type of safety requirement (note c)
Federal Hazardous Substances Act (cont.):	
Gasoline	Labeling
Hydrochloric acid	Labeling
Hypochlorous acid	Labeling
Kerosene	Labeling
Lawn darts	Ban
Lead in paint	Ban, over 0.5% limit
Lye	Labeling
Methyl alcohol (methanol) (note a)	Labeling
Mineral seal oil (note a)	Labeling
Mineral spirits	Labeling
Naphtha	Labeling
Nitric acid	Labeling
Orris root, powdered	Labeling
Oxalic acid and salts of	Labeling
Paraphenylenediamine	Labeling
Petroleum distillates	Labeling
Potash, caustic	Labeling
Potassium hydroxide (note a)	Labeling
Silver nitrate (lunar caustic)	Labeling
Sodium arsenite	Labeling
Sodium hydroxide (note a)	Labeling
Stoddard solvent	Labeling
Sulfuric acid (note a)	Labeling
Toluene	Labeling
Toys (various)	Ban and Labeling
Turpentine (note a)	Labeling
Walker-jumper	Ban
Water-repellant mixtures, masonry	Ban
Xylene (xylol)	Labeling
Flammable Fabrics Act:	
Carpets and rugs	Standard
Mattresses	Standard
Sleepwear, children's sizes 0-6X	Standard
children's sizes 7-14	Standard
Vinyl plastic film	Standard
Wearing apparel	Standard

APPENDIX II

Product/product category	Type of safety requirement (note c)
Poison Prevention Packaging Act:	
Aspirin products	Special packaging
Antifreeze, ethylene glycol (note b)	Special packaging
Drain cleaners, liquid (note b)	Special packaging
Drugs	Special packaging
Ethylene glycol (note b)	Special packaging
Fuels	Special packaging
Furniture polish, liquid	Special packaging
Lighter fluid	Special packaging
Methyl alcohol (methanol) (note b)	Special packaging
Methyl salicylate	Special packaging
Mineral seal oil (note b)	Special packaging
Potassium hydroxide (note b)	Special packaging
Sodium hydroxide (note b)	Special packaging
Sulfuric acid (note b)	Special packaging
Turpentine (note b)	Special packaging
Refrigerator Safety Act:	
Refrigerator doors	Standard, opening

[a]Special packaging requirements also issued under the Poison Prevention Packaging Act.

[b]Labeling or ban also issued under the Federal Hazardous Substances Act.

[c]Safety requirements do not necessarily apply to all products in a product category and may vary as to the extent of coverage.

APPENDIX III

CONSUMER PRODUCT SAFETY COMMISSION

COMPLIANCE PROGRAM ACTIVITY

FISCAL YEARS 1974-76

Fiscal year	Compliance program
1974	Mattress flammability Full-size baby cribs Carpet and rug flammability Children's toys
1975	Aspirin and drain cleaner, special packaging Children's sleepwear flammability Mattress flammability Monitoring cease and desist orders Aerosolized products containing vinyl chloride Children's toys
1976	Monitoring continuing guarantees filed with Commission Children's sleepwear flammability Aerosolized products containing vinyl chloride Fireworks Bicycles Hazardous household products (including antifreeze, cleaning compounds, and acid cleaners) Prescription drugs, special packaging Carpet and rug flammability Children's toys Monitoring cease and desist orders

PENALTIES AUTHORIZED UNDER THE LAWS ADMINISTERED BY THE CONSUMER PRODUCT SAFETY COMMISSION

Act	Maximum penalties
Consumer Product Safety Act	Civil penalties--$2,000 for each violation and $500,000 for any related series of violations. Criminal penalties--$50,000 and/or 1 year imprisonment.
Federal Hazardous Substances Act	Civil penalties--none. Criminal penalties--$500 fine and/or 90 days imprisonment for first offense; $3,000 and/or 1 year imprisonment for second and subsequent offenses, or offenses committed with the intent to defraud or mislead.
Flammable Fabrics Act	Civil penalties--$10,000 for each violation, with no maximum for any related series of separate violations.[a] Criminal penalties--$5,000 and/or 1 year imprisonment.
Poison Prevention Packaging Act	Civil penalties--none. Criminal penalties subject to penalties under the Federal Hazardous Substances Act.
Refrigerator Safety Act	Civil penalties--none. Criminal penalties--$1,000 and/or 1 year imprisonment.

[a]Civil penalties are provided by the Federal Trade Commission Act (15 U.S.C. 45).

PROPOSED LEGISLATIVE LANGUAGE--AMENDMENTS

TO SECTION 5, FEDERAL HAZARDOUS

SUBSTANCES ACT (15 U.S.C. 1264)

(c) Any person who knowlingly violates any of the provisions of section 4 shall be subject to a civil penalty not to exceed $2,000 for each such violation except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. Any civil penalty under this section may be compromised by the Commission, and may be deducted from any sums owing by the United States to the person charged.

(d) In determining the amount of the penalty under subsection (c) of this section, or the amount agreed upon in compromise, the Commission shall consider the gravity of the violation and the appropriateness of such penalty to the size of the business of the person charged.

(e) If the Commission's determination that the person charged is liable for such penalty is made on the record pursuant to section 554 of title 5 of the United States Code, after notice and pooprtunity for a hearing, then in any civil action reviewing the determination of the Commission (or in any other civil action to collect such penalty), any findings on which such determination is based shall be conclusive if supported by substantial evidence on the record considered as a whole.

(f) As used in the first sentence of subsection (c) of this section, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

PRINCIPAL OFFICIALS OF THE CONSUMER PRODUCT SAFETY COMMISSION RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
COMMISSIONERS:		
S. John Byington, Chairman	June 1976	Present
Richard O. Simpson, Chairman	May 1973	June 1976
Barbara H. Franklin	May 1973	Present
Lawrence M. Kushner	May 1973	Present
Constance B. Newman	May 1973	Feb. 1976
R. David Pittle (note a)	Oct. 1973	Present
EXECUTIVE DIRECTOR:		
Vacant	June 1976	Present
Stanley R. Parent (acting)	Jan. 1975	June 1976
Frederick E. Barrett (acting)	May 1974	Jan. 1975
Albert S. Dimcoff (acting)	Apr. 1974	May 1974
Frederick E. Barrett (acting)	Dec. 1973	Apr. 1974
John W. Locke (acting)	May 1973	Nov. 1973
DIRECTOR, BUREAU OF COMPLIANCE:		
Mary K. Ryan	Jan. 1976	Present
Mary K. Ryan (acting)	Oct. 1974	Jan. 1976
Edward B. Finch	May 1973	Sept. 1974

[a]The Commission functioned with four Commissioners until Commissioner Pittle's appointment on October 10, 1973.

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