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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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RELEASED

HUMAN RESOURCES  
DIVISION

JULY 10, 1979

B-139310

*[Review of Consumer Product Safety Commission's Rejected  
Petition Requests]*

The Honorable Henry A. Waxman  
House of Representatives

Dear Mr. Waxman:

On September 11, 1978, you requested that we review the adequacy, objectivity, and fairness of the petition-screening procedures used by the Consumer Product Safety Commission's Office of the Secretary and Office of the General Counsel. <sup>in the Commission's interest</sup> You also requested that we determine whether the Commission exercises good faith efforts to encourage the upgrading and resubmission of petitions found technically deficient.

<sup>After</sup> We examined <sup>ing</sup> all the requests we could locate that the Commission staff had rejected as not meeting Commission petition criteria between January 1, 1977, and October 19, 1978,

<sup>GAO</sup> We generally agreed with the staff's decisions to reject requests. We did not find any examples similar to the request to ban asbestos used in artificial fireplace ash (which the Commission staff had not accepted as a petition because the petitioner did not follow Commission regulations). We did find weaknesses in the Commission's handling of petition requests which its staff rejected and in the referral of these requests to other staff for further consideration.

Regulations implementing section 10 of the Consumer Product Safety Act (16 C.F.R. 1110) allow any person or consumer organization to petition the Commission, requesting it to proceed with issuing, amending, or revoking a consumer product safety rule. Such a request should be filed with the Commission's Office of the Secretary, and as a petition, it must be accepted or rejected within 120 days of receipt by the Office.



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The regulations state that the petition must (1) set forth the facts which support the claim that issuing, amending, or revoking a consumer product safety rule is necessary, (2) contain an explicit request to initiate Commission rule-making, and (3) briefly describe the substance of the proposed ruling which it wants the Commission to issue. Therefore, even though a party intended to petition, the Commission does not classify a request as a petition until the Office of the General Counsel determines that it is a petition in accordance with Commission regulations.

#### PROCEDURES FOR REVIEWING PETITIONS

The Commission's Office of the General Counsel and Office of the Secretary are responsible for screening petition requests filed under section 10. If a request pertains to a topic or product which is not in the Commission's jurisdiction, the Office of the Secretary forwards the request to the appropriate Government agency and informs the requester of this action.

Requests within Commission jurisdiction are reviewed by the Office of the General Counsel to determine, among other things:

- Can the problem identified by the petition be reduced or eliminated by developing a safety standard?
- Does the petition explicitly request the Commission to initiate rulemaking?
- Do the request's supporting data justify the action requested by the petitioner?
- Have the Commissioners acted recently on a similar petition?
- Can the problem identified in the request be handled in another manner--such as a product recall under section 15 of the act?

If the Office of the General Counsel determines that a petition meets the Commission's regulations, it forwards the petition to the Office of Program Management for further investigation and the preparation of a briefing package--a

staff analysis of the petition. The petition and briefing package are then sent to the Commissioners for formal acceptance or rejection of the petition. Commission regulations governing requests that are not considered petitions under section 10 of the act state:

"Any other documents filed with the Office of the Secretary that are determined by the Office of the General Counsel not to be petitions under section 10 of the CPSA [Consumer Product Safety Act] shall be evaluated for possible staff action. The Office of the Secretary shall notify the writer of the manner in which the Commission staff is treating the document. If the writer has indicated an intention to petition the Commission, the writer shall be informed by the Office of the Secretary of the procedure to be followed for petitioning."

If the Office of the General Counsel determines that a request does not meet the Commission's petition requirements, the requester is told why and is given a copy of the regulations governing petitions. If requested by the petitioner, the Commission staff will provide further assistance.

#### ANALYSIS OF PETITIONS NOT ACCEPTED

The Office of the Secretary had 101 cases in its "not a petition" file that had been rejected between January 1, 1977, and October 19, 1978. We identified three additional cases in the Commission's Office of the General Counsel that were not in the Office of the Secretary's files.

Five of the 104 files represented duplicate cases in that correspondence relating to one request was filed in two different files. Of the other 99 files

--13 were not petitions, but related to other Commission matters (such as requests for clarification of rules, additional support for other Commission actions, and administrative matters);

--26 were requests that dealt with matters outside the Commission's jurisdiction; and

--60 were requests that had been rejected by the staff as petitions.

Requests related to matters outside the Commission's jurisdiction

Commission regulations (16 C.F.R. 1110.8) require that petitions relating to matters outside the Commission's jurisdiction be forwarded to the agency having responsibility for the matter. For example, a petition relating to automobiles should be referred to the National Highway Traffic Safety Administration; a petition relating to pesticides should be sent to the Environmental Protection Agency.

Of the 26 cases that related to matters outside the Commission's jurisdiction, 17 were properly referred to the appropriate agencies. For the nine cases in which the Commission did not make referrals: (1) two petitioners had submitted requests to both the Commission and the agency having jurisdiction over the product, (2) five petitioners were advised to contact either the appropriate agency or the manufacturer, and (3) two petitioners were told that the Commission lacked jurisdiction over the products cited in their requests.

Rejected requests

The other 60 cases were requests that the Commission staff did not accept as petitions because:

- The requesters had patents on improvements or attachments to products on which they wanted the Commission to issue a consumer product safety rule. In one case involving this type of request, the Office of the General Counsel told the requester that the Commission was not likely to issue a consumer product safety rule which would approve or favor a single patented product.
- The Commission had previously rejected similar requests.
- The Commission was working on a standard to eliminate the hazard in similar products.

--The request could be better handled as a product recall under section 15 of the act because it referred to a specific brand name product, not a generic product or product line.

--The request was vague or incomplete.

Two requests that the Office of the General Counsel had initially rejected were revised by the requesters, based on information and advice given by the Commission's staff; they were later resubmitted and accepted as petitions by the Commission's staff. In another case, a request that the staff initially did not accept was resubmitted and sent to the Commissioners, who approved the staff's rejection of the request.

At least 34 of the 60 requests were referred to the staff for consideration as possible product recalls under section 15 of the act or as input to other ongoing Commission actions. Although we did not find documents in the Office of the Secretary's files showing that the other rejected petition requests were referred to the staff, some of those requests might have been submitted to the staff for similar consideration.

#### PROBLEM AREAS WE NOTED

There are no formal Commission procedures governing document flow once the Commission informs a person or organization that a request was not accepted as a petition. Although most of the correspondence was retained by the Office of the Secretary, we found some cases in which that Office's files were incomplete (e.g., did not contain a copy of the request or the Commission's reply) and three cases in which it had no record of rejected requests for petitions. As a result, Commission management cannot be certain that the staff has adequately dealt with all rejected requests.

The Office of the Secretary maintains a log of rejected petition requests; however, this log did not show the status of all such requests. In comparing this log with the files, we found that 26 requests--some as much as a year old--had not been entered in the log. Also, in five instances correspondence relating to one request was filed in two different files, thus adding to the confusion as to how many cases had been processed.

In reviewing about 10 of the unaccepted petition requests that had been referred to the staff for consideration, we noted a few problems:

- Requests were considered controlled correspondence by the Office of the Secretary and were treated as such until a reply was sent to the requester. A Commission official said that the control case was closed when a letter was issued to the person or organization submitting the request informing them that the Commission staff had not accepted their request as a petition. In some instances subsequent correspondence on a case was not filed with the original request in the Office of the Secretary's files.
- In one case an unaccepted petition request, which had been referred to the Office of the Executive Director for staff consideration, was not forwarded to the appropriate staff. Because the request dealt with a smoke detector that the Division of Product Defect Investigation was pursuing as a product recall under section 15 of the act, the unaccepted petition should have been sent to that office. The Executive Director's staff, however, sent it to the Office of Program Management, which at the time was not dealing with smoke detectors, and that Office sent the request back to the Office of the Executive Director. Although the Executive Director returned the petition to the Office of the Secretary, no further action was taken.
- We could not determine if all rejected requests referred to the technical staff were received by the staff. One request was rejected because the Commission was considering a previous request on the same product. When we reviewed the materials the technical staff had on the product, we could not locate the information supplied on the denied request. In other cases, we could not locate rejected requests that were sent to the Office of the Executive Director for further analysis.

Commission staff comments

Commission officials acknowledged that Commission procedures for controlling rejected petition requests and for forwarding rejected petitions to the staff for consideration were weak. They suggested that one way to strengthen the system would be to forward all rejected requests to staff through the Offices of the Secretary and the Executive Director as controlled correspondence.

CONCLUSIONS

On balance, the Commission's <sup>the</sup> Office of the General Counsel and Office of the Secretary do a good job in screening petition requests submitted under section 10 of the act. The staff has also assisted petitioners with revising rejected requests to enable their resubmission for the Commissioners' review.

However, neither we nor the Commission's staff are certain that we have reviewed ~~all~~ rejected petition requests because ~~they were~~ not all entered into (1) the log maintained by the Office of the Secretary or (2) that Office's files. In addition:

- Procedures used by the Office of the Secretary and the Office of the Executive Director to control rejected petition requests were weak.
- The Office of the Secretary's files were not complete and the records were not sufficient to enable management, or others, to review the staff's handling of requests and to follow up on rejected requests referred to the technical staff.

RECOMMENDATION


We recommend that the Commission develop procedures for reviewing and controlling rejected petition requests.

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Unless you announce its contents earlier, we plan no further distribution of this letter until 30 days from its date. At that time, we will send copies to the Chairman, Consumer Product Safety Commission, and interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Gregory J. Ahart".

Gregory J. Ahart  
Director