DOCUMENT RESUME

05112 - [B0485403]

[The Consumer Product Safety Commission Has No Assurance That Product Defects Are Being Reported and Corrected]. HRD-78-43; B-139310. February 14, 1978. 26 pp. + appendices (14 pp.).

Report to the Congress; by Elmer B. Staats, Comptroller General.

Issue Area: Consumer and Worker Protection: Identification of Hazardous Consumer Products (909).
Contact: Human Resources Div.
Budget Function: Health: Prevention and Control of Health Problems (553).
Organization Concerned: Consumer Product Safety Commission.
Congressional Relevance: House Committee on Interstate and Foreign Commerce; Senate Committee on Commerce.
Authority: Consumer Product Safety Act, as amended (15 U.S.C. 2064(b)). 16 C.F.R. 1115.

The Consumer Product Safety Act requires manufacturers, distributors, and retailers who have information that a consumer product contains a defect or does not meet a safety standard and could create a substantial product hazard to report this fact to the Consumer Product Safety Commission. The Commission can order such products to be recalled, repaired, replaced, or the purchase price refunded, and it can give public notice of the hazard. When a hazard is identified, the Commission asks the firm for more information on the product and on plans to correct the hazard. The Commission staff assists in preparing plans and Commissioners approve those found acceptable.
Findings/Conclusions: From May 1973 through June 1977, 495 substantial product hazards had been reported to or identified by the Commission. The Commission estimated that, through June 1977, approximately 6.6 million defective products (18%) had been corrected. However, the Commission has no program to make sure that firms are made aware of their responsibilities to report potential hazards and, except for the definition in the act, has not further defined "substantial product hazard." As a result, industry sometimes does not know when to report hazards, and there have been inconsistencies in defining hazards within the Commission. Also, the Commission staff has not been timely in evaluating and forwarding cases to the Commissioners, and the Commission has not adequately monitored corrective action.
Recommendations: The Commission should: develop a plan to inform manufacturers, distributors, and retailers of their responsibilities to report substantial product hazards; better define the criteria for identifying such hazards; revise its procedures to provide a reasonable time period to review and forward cases to the Commissioners; and more actively keep track of firms' corrective actions to remove substantial hazards from the market. (Author/HTH)

5403

REPORT TO THE CONGRESS

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

The Consumer Product Safety Commission Has No Assurance That Product Defects Are Being Reported And Corrected

The Consumer Product Safety Act requires manufacturers, distributors, and retailers that have information that a consumer product contains a defect or does not meet a safety standard and could create a substantial product hazard, to report this fact to the Consumer Product Safety Commission.

The Commission can order such products to be recalled, repaired, or replaced, or the purchase price refunded, and it can give public notice of the hazard.

However, the Commission does not have a program to inform industry of these requirements; consequently hazardous products may not be reported to the Commission. Hazards that are reported are not being promptly acted upon to determine what corrective action, if any, firms are to take. In those cases in which firms are required to correct substantial hazards, the Commission is not adequately monitoring them to be sure that prompt corrective action is being taken.

HRD-78-48

FEBRUARY 14, 1978

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

B-139310

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

This report shows that the Consumer Product Safety Commission has no assurance that product defects are being reported and corrected. The report discusses improvements the Commission should make to protect consumers from hazardous products.

Our review was prompted by congressional interest in Commission activities. Our review was made 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).

Copies of this report are being sent to the Acting Director, Office of Management and Budget, and the Chairman, Consumer Product Safety Commission.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

THE CONSUMER PRODUCT SAFETY COMMISSION HAS NO ASSURANCE THAT PRODUCT DEFECTS ARE BEING REPORTED AND CORRECTED

D I G E S T

If the Consumer Product Safety Commission determines after an administrative hearing that a product presents a substantial hazard, it may, in the public interest, order a manufacturer, distributor, or retailer to give public notice of the defect, repair the defect, replace the product, or refund the purchase price.

The Consumer Product Safety Act defines a substantial product hazard as a

--failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or

--defect in a product which creates a substantial risk of injury to the public.

The act requires manufacturers, distributors, and retailers who have information which reasonably supports a conclusion that a product could create a substantial hazard, to inform the Commission immediately--unless it knows the Commission already had been informed of the hazard. The Commission defines immediately to be within 24 hours. The Commission can also take action on a product which it believes presents a substantial hazard.

Once a possible substantial product hazard is identified, the Commission asks the firm for more information on the product and how it plans to correct the hazard. Commission staff assists the firm in preparing a plan to correct the defect, and if the plan is acceptable to the Commissioners they approve it.

From May 1973, when the Commission began operations, through June 1977, 495 substantial product hazards had been reported to or identified by the Commission--representing about 36.4 million products containing defects. The Commission estimated that through June 1977 approximately 6.6 million defective products (18 percent) had been corrected.

However, the Commission has no program to make sure that firms are made aware of their responsibilities to report potential substantial product hazards. (See p. 6.)

Except for the definition in the Consumer Product Safety Act, the Commission has not further defined "substantial product hazard," nor has it defined those factors it uses in evaluating possible substantial hazards. As a result

--industry has not known, in many instances, when to report substantial hazards to the Commission and

--there were inconsistencies between the Commissioners and the Commission staff in defining those hazards that create a substantial product hazard.

GAO also found that the Commission staff had not been timely in evaluating, analyzing, and forwarding substantial product hazard cases to the Commissioners for approval. Commission guidelines for processing cases have not been met. (See p. 13.)

Although some of the time guidelines may be unrealistic, the Commission should more actively watch over the processing of substantial hazard cases.

Once agreements to correct defects were finalized, the Commission was not adequately monitoring them to be sure that the necessary action was being taken. (See p. 20.) GAO reviewed selected cases in the fall of 1975 and again in March 1977

and found that although area office monitoring improved during this period, the Commission was not, in all cases, verifying that corrective action was being taken, nor conducting spot checks to determine if consumers were benefiting from the corrective action.

GAO recommends that the Commission:

--Develop a plan to inform manufacturers, distributors, and retailers of their responsibilities to report substantial product hazards. (See p. 11.)

--Better define the criteria for identifying substantial product hazards. (See p. 11.)

--Revise its procedures to provide a reasonable period of time to review and forward substantial hazard cases to the Commissioners. (See p. 18.)

--More actively keep track of firms' corrective actions to remove substantial hazards from the market. (See p. 26.)

The Consumer Product Safety Commission said that GAO was basically accurate in its analysis of problems, deficiencies, and accomplishments of the Commission in implementing the substantial product hazard program. The Commission said that it had already made changes to this program, and had begun to carry out most of GAO's recommendations. (See app. I.)

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ABBREVIATIONS

CPS Act Consumer Product Safety Act

GAO General Accounting Office

CHAPTER 1

INTRODUCTION

Section 15 of the Consumer Product Safety Act (CPS Act), as amended (15 U.S.C. 2064(b)), provides that every manufacturer, distributor, and retailer of a consumer product who obtains information that such product (1) fails to comply with an applicable consumer product safety rule or (2) contains a defect which could create a substantial product hazard, shall immediately inform the Consumer Product Safety Commission.

The Commission was established by the CPS Act and began operations in May 1973. It estimates that more than 10,000 consumer products and more than 2.5 million manufacturers, importers, distributors, and retailers are subject to its regulatory authority.

The primary purpose of the Commission is to protect the public from the unreasonable risks of injury from consumer products--which are generally defined as any article for use in and around a household, a school, or in recreation. In addition to administering this law, four existing laws 1/ were transferred to the Commission previously administered by other Federal agencies.

The Commission has 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.

SUBSTANTIAL HAZARD PROGRAM

This program is part of the Commission's major function of compliance and enforcement. Subsection 15(a) of the CPS Act defines a substantial product hazard as a

--failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public or

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1/The Flammable Fabrics Act, as amended (15 U.S.C. 1191); the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261); the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471); and the act of August 2, 1956 (Refrigerator Safety Act) (15 U.S.C. 1211).

--product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

The Commission's Division of Product Defect Correction is responsible for administering the substantial product hazard program. This program was initially administered by the Bureau of Compliance and Enforcement. In March 1974, an ad hoc section 15 group managed the program until it was designated the Office of Product Defect Identification in February 1975. With the Commission's May 1977 reorganization, the office was redesignated the Division of Product Defect Correction and now reports to the Associate Executive Director for Compliance and Enforcement.

The Product Defect Division receives reports of potential product defects, performs and coordinates necessary technical evaluations, negotiates agreements with firms for corrective action, monitors overall corrective action, and forwards recommendations to close substantial product hazard cases 1/ to the Commission. The division has recently been assigned several lawyers and has requested responsibility to issue subpoenas to better carry out its duties. Other Commission bureaus assist the Product Defect Division as needed, and the Commission's 13 area offices perform inspections and have primary responsibility for monitoring firms' actions to correct defective products.

Substantial product hazard cases are opened in two ways: voluntarily by industry in response to the reporting provisions in the act, or by the Product Defect Division when it receives information from other sources, such as accident investigations and consumer complaints, about consumer products which it determines could create a substantial product hazard. The requirements for firms to notify the Commission of possible substantial product hazards applies to consumer products under the CPS Act and the four transferred acts.

If the Commission determines, after providing an opportunity for a hearing in accordance with section 554 of title 5 of the United States Code, that a product presents a

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1/A case is opened when the Commission is informed or has knowledge of a product hazard that could create a substantial product hazard, and closed when the Commission determines there is no substantial hazard, or the hazard no longer exists.

substantial hazard and that corrective action is required to adequately protect the public from such hazards, it may order the manufacturer, distributor, or retailer to give public notice (such as issuing a press release) about the product, and when in the public interest, it may order such firm to repair or replace the product, and/or to refund the purchase price, whichever action the firm elects to take.

Although the law gives the Commission authority to order corrective action, the Commission believes that the most expeditious method of preventing a substantial risk of injury to the public is to encourage voluntary correction of the defective products. Therefore, the Product Defect Division handles most product defect notices by negotiating voluntary and nonbinding corrective measures (e.g., they cannot be enforced) with firms that provide for the same public notice and remedy options as were discussed above. They are considered voluntary because no adjudicative process is involved. The law's legislative history encourages the voluntary removal of hazards associated with products because formal procedures are more expensive and time consuming. As of June 30, 1977, only one formal order for corrective action had been issued by the Commission.

A "corrective action plan" 1/ is submitted by the firm and the Product Defect Division staff reviews it for adequacy of the remedy, and negotiates appropriate changes to insufficient plans. Corrective action plans are forwarded to the Commissioners for their approval, although firms do not have to await approval before implementing them. Generally, after the Commission approves corrective action, industry submits periodic progress reports to the Commission. The Commission relies on these voluntary agreements and progress reports to insure product defects are corrected and to evaluate the success of its program.

During fiscal year 1974, the Commission's first full year of operation, it processed 143 product defect cases. Through June 30, 1977, the Commission processed 495 cases involving about 36.4 million defective items which could create substantial product hazards. The Commission estimated that about 6.6 million defective products (18 percent) had been corrected.

1/A plan that outlines the manner in which a product defect is to be corrected, including notice to the public, removing the hazardous products, and steps to prevent a recurrence of the product defect.

SCOPE OF REVIEW

We reviewed the Commission's program for substantial product hazards at its headquarters in Washington, D.C., and Bethesda, Maryland, and at its area offices in Chicago and New York City to determine how (1) effectively the Commission was informing industry of its reporting requirements under the Consumer Product Safety Act, (2) adequately and timely it removed hazardous products from the marketplace and consumers' hands, and (3) effectively it was monitoring industry's corrective action to eliminate product hazards.

We reviewed CPS Act provisions relating to substantial product hazards and prohibited acts and penalties; reviewed Commission policies, operating procedures, and regulations; examined records and product hazard case files; analyzed selected cases; and interviewed Commission officials and representatives.

CHAPTER 2

POSSIBLE SUBSTANTIAL PRODUCT HAZARDS ARE NOT BEING IDENTIFIED AND REPORTED

The CPS Act requires industry to notify the Commission when it has information that a consumer product could create a substantial risk of injury to the public. The Commission does not have a program to inform industry of the reporting requirement, nor has it specified the criteria to be used to determine which hazards may be reportable. Therefore, industry may not be reporting all possible substantial product hazards.

GREATER EMPHASIS TO INFORM INDUSTRY OF REPORTING REQUIREMENTS NEEDED

The CPS Act requires industry to notify the Commission immediately after concluding that a substantial product hazard could exist. The Commission issued a regulation on "Substantial Product Hazard Notifications" (16 C.F.R. 1115) in February 1974 in which it (1) defined "immediately" as within 24 hours after obtaining information that reasonably indicates that a defect or failure to comply with a safety standard has occurred; 1/ and (2) specified that the initial notification should, at a minimum, identify the product; specify the nature and extent of the defect; and provide information on the number of products made, distributed, and in the hands of consumers--if available.

The Commission may seek civil or criminal penalties when it finds that someone did not immediately report a product that does not comply with a safety standard, or that contains a defect that could create a substantial product hazard. Civil money penalties, not to exceed $2,000 for each violation--$500,000 maximum for a related series of violations--can be imposed against anyone who knowingly violates the law. Criminal penalties can be sought against those knowingly and willfully violating this section of the law, and include a fine not to exceed $50,000 and/or up to 1 year imprisonment.

1/In September 1977, the Commission published in the Federal Register a proposed revision to its regulation in which it would allow firms a certain number of days to investigate product-related deaths or grievous bodily injuries before reporting them.

An inherent responsibility of the Commission in implementing the product defect notification requirements is to inform industry of such requirements. As was discussed in our report "Better Enforcement Of Safety Requirements Needed By The Consumer Product Safety Commission" (HRD-76-148, July 26, 1976), the Commission has no program to routinely identify all manufacturers, distributors, and retailers and to inform them of their responsibilities under the CPS Act.

The Commission has used several methods to inform firms of the reporting requirements:

--During product defect investigations, firms were provided with copies of the CPS Act and applicable regulations.

--Occasionally Commission staff attended conferences, made speeches, and generally informed manufacturers of their responsibilities to report possible substantial hazards.

--The Commission's Office of Communications developed a seminar for manufacturers, distributors, and retailers which discussed substantial hazard reporting requirements.

The seminar developed by the Office of Communications included a 1-hour presentation on substantial product hazard reporting requirements. The seminars were 1-day programs conducted for industry by the Commission's area offices. An estimated 4,400 representatives from business were reported to have attended these seminars through June 30,1977.

Firms should be informed of their defective product notification responsibilities so they know that when they identify a possible substantial product hazard, it should be promptly reported to the Commission and they should take needed corrective action. Informing firms of their reporting responsibilities when they are being investigated for defective products is too late to gain the voluntary reporting of defects.

While section 15 of the CPS Act and the Commission's substantial hazard regulations require industry to report product defects that could create a substantial hazard, the existence of the requirements themselves cannot be presented in a U.S. court as constructive receipt of such responsibilities in seeking the criminal prosecution of a firm for violating the

reporting provision. Before the Department of Justice will seek criminal prosecution of manufacturers, distributors, and retailers for violating these requirements, the Commission must show that firms knowingly and willingly violated the law after receiving notice of noncompliance from the Commission.

The Commission recognizes the need to inform industry of its reporting requirements. However, Product Defect Division officials said that the Commission does not have a program to inform industry of these requirements because of limited staff.

BETTER CRITERIA NEEDED TO IDENTIFY SUBSTANTIAL HAZARDS

The CPS Act defines a substantial product hazard as a (1) failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public or (2) product defect which--because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise--creates a substantial risk of injury to the public. The Commission has not further defined it.

Both industry and the Commission have had problems in applying the law's broad criteria for substantial hazards to actual cases. The result has been indecision on the part of industry in reporting product hazards and confusion and inconsistency within the Commission in deciding upon the substantial nature of such hazards.

Industry does not know when to report hazards

Commission officials are aware that industry does not in all cases know when to report a defect which could create a substantial product hazard. The Commission's Associate Executive Director for Compliance and Enforcement told the Commissioners in June 1977 that many substantial hazards are not being reported by industry, and that the Commission needs to develop and provide industry a better criteria for what it is expected to report.

A defect which clearly presents a substantial product hazard in the eyes of the Commission is not always clear to industry. For example, in August 1975 a manufacturer knew that two children suffered partial finger amputations due to injuries associated with its baby stroller. However, the firm did not notify the Commission of the defect until October 10, 1975, 9 days after it received another letter

describing a third child's partial finger amputation. Although the firm informed the Commission of the problem, it did not believe that the defect could create a substantial product hazard. However, the Commission believed the defect created a substantial hazard and requested the firm to prepare a plan for correcting the defect, which it did and the Commission approved.

Industry's indecision in reporting possible hazards has also proven quite expensive for it. In March 1977 the Commission assessed a $325,000 civil money penalty against a manufacturer of electric percolators. The penalty resulted from a difference in interpretation between the firm and the Commission as to when the firm believed a defect could create a substantial hazard, and when it should have notified the Commission. The Commission is currently reviewing other cases for possible violations to the requirements for reporting product defects, and may assess additional civil money penalties.

The Commission is currently revising its substantial product hazard regulations which should assist industry to more clearly understand what information is required to be reported. The draft regulation would require industry to report any incident involving "a (1) death or (2) grievous bodily injury such as mutilation, amputation/dismemberment, disfigurement, unless it has clear evidence that the injury was not caused by a defect in such product." In June 1977, the Commission Chairman stated that the new regulation would be issued shortly, after some minor modifications. These proposed regulations were issued for comment in the September 16, 1977, Federal Register.

Commission inconsistently identifying substantial hazards

According to the Commission's "Policy and Procedures Regarding Substantial Product Hazards" regulation (16 C.F.R. 1116), upon opening a case the Commission staff preliminarily determines whether the product presents a substantial hazard (only the Commissioners can make a formal determination). The only criteria in the regulation is a reiteration of the definition in the CPS Act.

The Commission's operating criteria was broadened in a July 1974 directive to the area offices establishing guidelines for identifying possible substantial hazards:

--Incidents which have resulted in death or serious injury.

--Incidents which resulted in hospitalization.

--Multiple incidents involving the same product which could be safety related.

--Incidents involving products highly ranked in the Commission's frequency-severity hazard index.

In the fall of 1975 the Product Defect staff also started using a hazard rating form to provide it an objective ranking of factors to evaluate potential substantial hazards. Three rankings were used--high, medium, and low--for four factors. These four factors covered distribution of the product, household exposure, usage, and injury-severity value. No definition of the high, medium and low ranges was given for the first three factors; but a breakdown was provided for the injury-severity value. These four ranking values were converted to a composite high, medium, or low score for deciding whether to: (1) collect additional information, (2) open a case, or (3) take no action.

Consistency in determining whether or not a defect was a potential substantial hazard according to this rating form was up to the staff's interpretation of the broad criteria. Commission representatives said they operated the hazard rating very loosely so it could remain flexible enough to function as a decisionmaking tool for the variety of products subject to Commission jurisdiction.

In our review of 45 cases opened through June 30, 1976, only 9 were subjected to this rating exercise. In fiscal year 1977, the Product Defect Division discontinued the ranking, although the staff was using the form as a guide when reviewing possible substantial hazard cases.

The lack of more definitive criteria for determining when a product defect presents a substantial product hazard has caused confusion and inconsistency between the Commissioners and the Commission staff. For example, the need for better criteria in defining a substantial product hazard was the inconsistency between the Commissioners and its staff involving hazardous Christmas tree lights. During the last few years, the Commission surveyed retailers, importers, and distributors to assure that consumers were not being exposed to hazardous tree lights. As a result of these surveys, the staff identified a number of hazardous lights and recommended

that the Commissioners approve corrective action plans it had negotiated with various firms. The Commissioners did not accept all the corrective action plans, rejecting some plans for products that appeared to contain the same hazards as similar products for which it accepted corrective action plans.

For example, in case A, the Commission's laboratory reported that some tree lights had cracked bulb sockets as well as exposed wire. The staff recommended that the Commissioners approve the proposed corrective action because users were exposed to electrical shock. The Commissioners approved the corrective action plan. In case B, the laboratory reported that other tree lights had cracked sockets and exposed bare wire, and the staff again recommended corrective action because of exposure to electrical shock. However, the Commissioners ruled that case B did not present a substantial product hazard.

Although the Commission said it gives the Product Defect Division guidance by evaluating each corrective action plan and discussing it with the staff, the Product Defect staff said that the Commissioners do not always discuss what factors they considered in making decisions on substantial hazardous defects. The staff said that when there is any doubt about the substantial nature of a product defect, it follows the Commission's directive which generally states that in order to give the greatest possible protection to the public, it will resolve any questionable cases in favor of a finding that the product could present a substantial hazard (e.g., error on the side of safety). The staff forwards such cases to the Commissioners.

CONCLUSIONS

The lack of industry awareness of its reporting requirements, and the lack of more definitive criteria for identifying substantial product hazards has resulted in some substantial hazards not being promptly reported.

The Commission does not have a program to routinely identify and inform industry of substantial product hazard reporting requirements. It operates a piecemeal information program generally based upon inspections at firms responsible for a suspected product hazard and through seminars.

Criteria to identify substantial product hazards is too broad. Industry does not know when to report product hazards and confusion exists within the Commission in deciding upon the substantial nature of such hazards.

The proposed revised rules for substantial product hazards may help industry in deciding when to report hazards, but more definitive criteria is still needed for the Commission to make substantial hazard determinations.

COMMISSION COMMENTS AND OUR EVALUATION

In commenting on a draft of this report, the Consumer Product Safety Commission said it had already developed and partially implemented a plan to inform industry of its responsibilities under the CPS Act, and that firms' awareness has been increased. However, this plan is not written. Even though the Commission has attained more input from firms by soliciting written comments on a proposed regulation, the Commission does not have an organized or systematic method for the continued identification of manufacturers, distributors, and retailers to make them aware of their responsibilities under the CPS Act.

The Commission also said that it can better define the criteria for identifying substantial product hazards. It said its staff has been instructed to prepare guidelines, recognizing that such guidelines must remain flexible to deal with the unanticipated as well as anticipated hazards.

RECOMMENDATIONS TO THE COMMISSION

We recommend that the Commission develop a method for identifying and informing industry of its responsibility to report substantial product hazards. We also recommend that the Commission better define the criteria for identifying substantial product hazards so its regulations will be more useful to its staff and those responsible for reporting such hazards.

CHAPTER 3

IMPROVEMENT NEEDED IN PROCESSING SUBSTANTIAL HAZARD CASES

As industry, consumers, and the Commission staff identify product defects which they believe could create a substantial hazard to the consumer, these defects are assessed by the Product Defect Division staff. Commission processing of substantial product hazard cases has not been timely. Consequently, consumers were not being promptly alerted to such hazards, and hazardous products were not being promptly removed from the market and consumers' hands.

CASE PROCESSING NOT TIMELY

Substantial hazard cases are opened by the Commission staff when (1) a person or firm reports that a product contains a defect that could create a substantial product hazard, or (2) it receives information concerning a product defect from other sources, such as a consumer complaint. These cases are logged in, numbered, and controlled by the Product Defect Division staff until they are closed by the Commission.

If, after obtaining data and assessing the hazard, the Product Defect Division preliminarily determines that a substantial hazard exists, it assists the firm in preparing a plan for correcting the defect (e.g., issue a joint press release, refund the product's purchase price), and negotiates any adjustments to the plan it believes are needed for an effective remedy. This hazard assessment process involves an evaluation of the hazard, often including engineering analyses, and a consensus judgment by the Product Defect Division as to the substantial nature of the hazard.

Commission procedures state that within 30 calendar days from the day a case is opened, the Commission staff is required to forward to the Commission a (1) firm's corrective action plan for its review and acceptance, (2) recommendation that formal due process hearings be conducted to declare the product a substantial product hazard, or (3) proposed consent agreement--formalizing the corrective action agreed to--in which the firm waives its rights to a formal hearing. In those cases where the staff determines that the product does not present a substantial hazard, it recommends that the Commission close the case. The Commission processed almost all cases with informal corrective action plans through June 1977.

The Commissioners either (1) approve the corrective action plan, concurring with the Product Defect Division's substantial product hazard determination; (2) reject the plan because they do not agree that a substantial product hazard exists; or (3) reject the plan because they do not believe the plan is adequate to correct the defect.

Through June 30, 1977, the Commission opened 495 potential substantial hazard cases, of which 150 were still active (i.e., the Commission had not closed them). Prior to leaving office in June 1976, the former Chairman directed that cases opened prior to October 25, 1975, the effective date of the "Policy and Procedures Regarding Substantial Product Hazards" regulations, be closed since the formal close-out procedures embodied in that regulation did not apply to those cases. Therefore, during April and May 1976 the former Chairman, former Executive Director, and Product Defect Division staff closed 270 cases because they (1) considered the hazard to be less than substantial based on available data, technical evaluations, and general substantial hazard criteria; (2) determined that the corrective action taken at that time was reasonably complete; or (3) believed that no further corrective action could be expected.

Prior to October 25, 1975, only 11 corrective action agreements received Commission approval. After that date, Commission procedures required the Product Defect Division to forward all proposed substantial product hazard determinations and corrective action plans to the Commissioners for their approval within 30 days.

Commission actions to protect consumers from substantial product hazards have been slow. We reviewed all 33 cases which were opened and forwarded to the Commission between October 25, 1975, and June 30, 1976. The average processing time was 77 days, ranging from 23 to 196 days. In many instances over 100 days elapsed before cases were forwarded to the Commissioners. This extends the length of time consumers are exposed to such hazards. The following examples illustrate the delays in processing substantial hazard casework.

Case A

On October 23, 1975, the manufacturer of a baby stroller reported to the Commission a defect which resulted in three partial finger amputations to children. The project officer resigned from the Commission in December 1975; however, no replacement was hired and the case was not reassigned to

another officer until March 1976. During this time the case was being reviewed by Commission technical offices and bureaus.

On April 12, 1976, the Product Defect Division determined that the defect presented a substantial hazard. On May 20 the Commission decided not to approve the firm's proposed corrective action unless the company would agree to issue a press release. The firm subsequently agreed to issue a press release, however, it was not issued until August 2, 1976. As a result of these delays, 9 months passed before the public was notified of the hazard.

Case B

The Commission received an anonymous complaint in mid-August 1975 that a potentially hazardous worm probe (tool that puts an electrical charge into the ground so worms will come to the surface) was being marketed, mostly through mail order sales. The Commission inspected the firm and performed engineering analyses of several probes. Although the Commission received no reports of deaths associated with this firm's worm probe, 11 deaths associated with other worm probes were reported to the Commission. The Product Defect Division's analysis of the firm's worm probes found that the electric current flow was sufficient to cause nerve damage and/or death by electrocution. On October 17, 1975, the Product Defect Division notified the firm that the worm probe presented an imminent hazard 1/ under section 12(a) of the CPS Act. The Product Defect Division believed, however, that the most expeditious way to handle the case was to encourage the manufacturer to voluntarily correct the hazard through a substantial hazard program recall. The Product Defect Division therefore recommended that the manufacturer develop a corrective action plan that would provide for it to recall products sold and to remove the product from future sale. The manufacturer recommended a plan that called for it to (1) send letters to mail order purchasers explaining the problem with the worm probe, and indicating that it would refund the full cost and postage and (2) post similar information

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1/An "imminently hazardous consumer product" is a product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury. The Commission may request a U.S. district court to seize an imminently hazardous product, and/or enjoin the manufacturer, distributor, or retailer from selling it.

signs in stores that sold the probe. It also agreed to place paid advertisements in a local newspaper in the city in which the firm sold its worm probes through retailers.

Although the firm discussed corrective action with the Commission staff in November 1975, the Product Defect Division did not foward a corrective action plan to the Commissioners until February 19, 1976. Part of the reason for this lapsed time was attributed to verifying the information the firm provided the Commission. The firm was located several nundred miles from a Commission area office, making it difficult for the staff to follow up.

When the Commission accepted the corrective action plan on March 25, 1976, it also required the manufacturer to place ads in certain newspapers warning the public of the dangers associated with the worm probe. However, the Commission's acceptance of the corrective action plan came 5 months after the Product Defect Division concluded that the worm probe was an imminent hazard to consumers.

Case C

On March 12, 1975, the Commission received a consumer complaint regarding defective wiring in an imported under-the-cabinet fluorescent light. The staff collected samples of the product from a retailer, and forwarded them to the Commission's engineering laboratory in late March. On June 23, 1975, the laboratory staff concluded the product could present an electrical shock hazard. Its analysis showed poor quality workmanship as the manufacturer relied on electrical tape to isolate live electrical terminals.

On August 5, 1975, an area office inspection to follow up on the laboratory report found that 15,000 lamps had been imported. The importer sold 12,600 to one retailer and had no reports of injuries, only malfunctions. During this inspection an additional 12 samples were collected for laboratory analysis. On October 14, 1975, the laboratory staff again concluded that the product was capable of presenting an electrical shock hazard due to poor quality and inconsistant workmanship.

The Product Defect Division notified the importer of the laboratory's analyses on October 21, 1975. It told the firm it concluded that the lights could create a substantial product hazard and asked the firm to provide all information pertaining to the product and the potential hazard within 10 working days. The letter also instructed the importer to

submit a corrective action plan that would include a method for notifying the public of the product hazard. Because it had not received a reply, the area office staff personally delivered another copy of the same letter to the firm on November 14, 1975.

Once again the firm failed to respond and on January 30, 1976, the Product Defect Division wrote another letter telling the firm that since its procedures for handling substantial product hazards had been changed (e.g., requiring the staff to open a case and transmit it to the Commission within 30 days), it had opened a case. The Product Defect Division restated that the fluorescent lights contained several defects which could create a substantial product hazard, and gave the firm another 15 days to forward its corrective action plan.

The firm partially replied on February 10, 1976, saying that all of the staff was new because its plant had relocated and that the president was in the Orient and would not return until March. No product defect information was provided. An incomplete reply was received from the importer's president on July 15, 1976, saying that the item had been discontinued and all of the fluorescent lights in inventory were returned to the foreign manufacturer. He also said that display signs would be mailed to the firm's major distributor and that any merchandise returned would be destroyed and customers given credit.

For the next 5 months this case lay dormant in the Product Defect Division files. The staff did not verify the information the importer provided, nor did it monitor the proposed corrective action. The case was not sent to the Commission for approval. Commission representatives said they assumed the corrective action was taken and, therefore, they were in no hurry to send the case to the Commission for close out.

In December 1976 the Product Defect Division decided to inspect the importer to verify that the hazardous lights were returned or destroyed. The area office inspection revealed that the corrective action plan was not implemented. The importer's major distributor had never been informed of the recall. During this inspection, the Commission was told that the management of the firm changed, and that the number of defective products was 20,000--not 15,000 as first reported--with over 17,000 still in the consumers' hands.

The president of the firm, (who was more cooperative than his predecessor) issued a recall notice on January 12, 1977, to its disbributors in six States. A joint press release was finally issued February 4, 1977, alerting consumers to the hazard--19 months after the Commission first concluded that the product could present a dangerous shock hazard.

In discussing the Commission's untimely processing of its substantial hazard casework, Product Defect Division officials attributed it to

--a continual turnover of project officers because most were temporary personnel;

--staff replacements generally not being hired until after other staff members left the Commission and new employees requiring time to be trained for their job; and

--new cases generally being added to the casework of the remaining project officers.

UNREALISTIC CASE PROCESSING REQUIREMENTS

Substantial product hazard cases were not being opened and forwarded to the Commission for approval within 30 days as specified in Commission procedures. This requirement may be unrealistic considering the time needed to conduct engineering hazard analyses on product samples. The Director of the Product Defect Division told us that almost every substantial hazard case involves some type of engineering analysis.

Several of the cases discussed earlier indicate that the time needed to analyze samples was one of the reasons for untimely case processing. For example, in case B it took 25 days for the sample analysis. For case C the first sample analysis took 77 days; and the second group of samples took an additional 35 days to analyze. Such time frames are not uncommon.

The Commission's Directorate for Engineering and Sciences performs most of the engineering analyses on samples collected by the Product Defect Division. We compared the time Engineering and Sciences took to perform all the hazard analysis investigations for the Product Defect Division during April 1, 1976, through April 1, 1977. There were 55 investigations performed with an average response time of 49 days from the date the analysis was requested until it was completed.

Although we did not review the engineering analyses to determine if the time required to perform them was reasonable, Engineering and Sciences representatives said the 49-day average turnaround time was reasonable. They added that this average time also included "unproductive time," such as the time the staff had to wait for more data or additional samples to be provided for it to complete analyses.

The Commission's draft revised regulations for substantial product hazards propose to eliminate the 30-day processing time frame. The Commission Chairman called it a rule "nobody could live with." As an alternative control to insure that substantial hazard cases are promptly forwarded to the Commission, the Product Defect staff recommended that it (1) prepare and submit monthly reports to the Commission showing the status of each case and (2) brief the Commission more frequently to obtain its guidance on substantial hazard policy and on specific case development.

CONCLUSION

The Commission's review of possible substantial product hazard cases reported to it has been lengthy, resulting in consumers not being promptly notified of such hazards and firms' corrective actions not being promptly started. If the Commission does not promptly obtain corrective action plans or if firms do not promptly initiate the necessary corrective action, Commission procedures should provide the staff guidance to consider alternatives for promptly alerting consumers to the hazardous products, and effecting the appropriate corrective action.

Commission guidance for processing and reviewing possible substantial product hazard cases is not being followed, and it appears that the 30-day guideline is not realistic because of the time needed to perform necessary analyses. Although the guidelines are being revised, they should not necessarily be eliminated. Such time guidelines are effective tools for the staff to monitor and control case processing and for Commission management to evaluate the program's effectiveness. The Commission should determine what is a reasonable time to review and forward cases and corrective action plans to the Commission for its approval, and revise its procedures accordingly.

RECOMMENDATIONS TO THE COMMISSION

We recommend that the Commission establish procedures that, in those instances in which firms do not promptly agree

to initiate appropriate corrective action, provide the staff guidance to consider alternatives for alerting consumers to hazardous products and insuring that corrective action is taken against such products.

We also recommend that the Commission determine what is a reasonable period of time to review substantial product hazard cases and forward them to the Commission, and that the Commission revise its procedures accordingly.

COMMISSION COMMENTS

Although the Commission has not issued procedures to provide the staff guidance in those cases in which firms do not promptly start corrective action, the Commission said that subsequent to the completion of our review the staff will come promptly to the Commission if a firm indicates that it will not recall a product, or if the proposed repair seems out of line with previously accepted correction plans.

The Commission said that it has decided to revise its procedures to provide a reasonable period of time for the staff to review and forward substantial product hazard cases to the Commissioners. It said that its staff has been working on these procedures, and plans to send a proposed regulation to the Commissioners for their consideration in early calendar year 1978.

CHAPTER 4

IMPROVEMENTS NEEDED IN MONITORING THE CORRECTION OF PRODUCT DEFECTS

The responsibility for correcting product defects or removing hazardous products from the market rests with industry. The Commission monitors industry's actions to correct product defects to insure that unsafe or violative products are corrected or removed from the market.

Commission actions to monitor industry's corrective action programs have been limited and rely to a great extent upon reports submitted by industry. The time and effort the Commission puts into identifying substantial hazards and processing such cases has little effect on the consumer unless the Commission insures that such hazardous products are corrected or removed from the market.

INADEQUATE MONITORING OF CORRECTIVE ACTION

Commission Order 9010.40--Substantial Hazards In Consumer Products--specifies that area offices are responsible for monitoring substantial product hazard corrective action plans. These procedures were initially effective in July 1974, but were significantly revised in October 1976.

The Commission order stated that when a possible substantial product hazard had been identified before October 1976, the Product Defect Division had assisted the firm in (1) developing a corrective action program to correct the product defect or (2) removing hazardous products from the market. Once the corrective action plan had been established, the Commission's home area office was responsible for monitoring it. The home area office is the one which is assigned primary responsibility for the monitoring effort--usually the area office located closest to the manufacturer or importer responsible for the corrective action plan.

Commission procedures were that once the Product Defect Division and the firm agreed on a plan to correct a substantial hazard, the division forwarded to the home area office:

1. A detailed report describing the corrective action plan, including details of any repair, refund, or replacement action; a description of the method to

be used to notify consumers of the hazard and corrective action; and the details of how the firm was to report to the Commission how it is progressing with the corrective action.

2. Suitable backup material to provide the area office a thorough understanding of the defect and the corrective measures to be taken.

3. Any recommendations for monitoring the corrective action.

Upon receipt of the above data, the area office contacted the firm and arranged a visit to insure that the firm and the Commission mutually understood the hazard, the corrective action, and the progress reporting.

As firms submitted their progress reports, the area offices reviewed them and forwarded to the Product Defect Division a summary of the progress for each firm, with any comments it had. If the area office determined that a firm's progress was not acceptable, or if after visiting the firm or performing spot-check inspections at distributors, retailers, or consumers the area office determined that the effectiveness of the corrective action was not satisfactory, it reported this to the Product Defect Division requesting assistance and direction. However, Commission procedures did not specify the action the Product Defect Division would take in these cases.

The July 1974 order said that once a firm's corrective action was essentially complete, the home area office was to advise the Product Defect Division and request instructions to perform close-out spot-check inspections. The Product Defect Division specified the number and type of spot checks to be made. When these checks were completed, the home area office submitted a summary report to the Product Defect Division. If the division found the corrective action to have been satisfactory, it recommended that the Commission close the substantial hazard case.

Although the area offices were told they had responsibility to monitor corrective action plans, the Product Defect Division maintained direct control over the actions to be taken.

In the fall of 1975, we went to two Commission area offices--Chicago and New York--to find out how they were monitoring substantial hazard cases. We found that the area offices

were not, in most cases, inspecting manufacturers, distributors, and retailers to verify that corrective action was taken and that progress reports were accurate. In those cases in which the area offices received progress reports which showed that corrective action was not progressing satisfactorily, they took no action.

Chicago Area Office

We randomly selected 10 substantial hazard cases which the Chicago Area Office was responsible for monitoring, and found that the area office:

--Had not been furnished corrective action plans by the Product Defect Division.

--Had not verified the number of defective items produced and sold, nor the number and the seriousness of the complaints which the firm had received.

--Had not inspected any firms to determine whether the recall progress was satisfactory, or to verify the accuracy of the progress reports.

--Conducted close-out inspections at only two manufacturers (at the request of the Product Defect Division) but did not verify corrective action at distributors and retailers.

Area office officials told us that they did not inspect any firms to determine why some firms' progress in correcting substantial product hazards appeared to be unsatisfactory because the Product Defect Division had not requested them to perform any inspections. Area office officials also said that they did not verify the accuracy of progress reports because they were not required to verify firms' progress in correcting defective products.

New York Area Office

Our review of 10 substantial hazard cases in New York also disclosed that its monitoring efforts were inadequate. We found that the area office did not

--have sufficient information to develop a complete understanding of the product hazard,

--have the firms' corrective action plans,

--assure that progress reports were received or were reviewed for adequacy of reported information,

--make spot-check inspections of firms to see if consumers were benefitting from the corrective actions except when requested by the Product Defect Division, and

--evaluate the data reported to the Product Defect Division in its monthly status reports.

The area office's substantial hazard file information was incomplete, and contained no corrective action plans. To monitor firms' progress, the area office used draft corrective action plan work sheets (information that firms submitted to the Product Defect Division before corrective action was negotiated), or it followed specific instructions from the Product Defect Division.

The New York office did not verify the accuracy of any progress reports it received from firms, and it did not evaluate the recall's progress, timeliness, or effectiveness. The area office inspected firms only when requested by the Product Defect Division.

We also found that firms did not submit progress reports in 7 of the 10 cases sampled. In four of seven cases the Product Defect Division requested the area office to visit the firms, and in the other three cases the area office was waiting for Product Defect Division instructions before doing anything. In one instance the area office had been waiting over 10 months for instructions from the Product Defect Division. The area office did not conduct any spot-check inspections to verify action taken in the 10 cases even though the Product Defect Division requested case close-out evaluations for 3 cases.

The area office's monitoring responsibilities were complicated by poor communication with the Product Defect Division. In one case a firm considered its corrective action complete and the area office waited 10 months for instructions from the Product Defect Division to close the case. In another case the area office visited a firm to conduct an inspection at the Product Defect Division's request and found that the Commission had closed the case.

MONITORING IMPROVES WITH REVISED PROCEDURES

Recognizing its recurring problems with the monitoring of product recalls and corrective action plans, the Commission

revised Order 9010.40 in October 1976. In September 1976 the Commission conducted a training seminar for area office personnel on the substantial hazard program.

The section of the order covering monitoring of product recalls was revised to state that area offices have primary responsibility for monitoring corrective action plans and that such recalls are priority work. Home area offices are to provide other area offices full information about the product distribution, method of correction, timetable for carrying out the corrective action, and the estimated completion date.

Area offices now have greater authority to monitor corrective action without waiting for instructions from the Product Defect Division. For example, the area offices initiate establishment inspections, follow up on firms that do not report progress, and plan and assign spot-check inspections to be conducted by it and other area offices.

The new procedures specify that the effectiveness of product recall programs should be evaluated by the home area office through spot-check inspections. The purpose of this procedure is to verify that the recall and other corrective action has been implemented through each level of the distribution chain, including the ultimate consumer. However, instead of waiting until a case is ready to be closed out, the new order specifies that spot checks should begin as soon as manufacturers notify their distributors about the recall.

When area office personnel determine that continued monitoring will serve no useful purpose, they are to evaluate the success of the corrective action and forward it to the Product Defect Division recommending that the case be closed out, or that other action be taken.

During March 1977 we returned to the Chicago and New York area offices to review their monitoring activities since the revised order was issued in October 1976. We reviewed seven cases that (1) had corrective action plans approved by the Commission and (2) the area offices had monitored since October 1976--five in Chicago and two in New York.

We found that the area offices (1) were more willing to accept their monitoring responsibilities, (2) communications between the Product Defect Division and the area offices were better, and (3) some improvements had been made in monitoring industry's corrective actions.

The area offices had details of the corrective action plans in their files for six of the seven cases. After the Commission approved the corrective action plan, we found that all of the firms were submitting timely progress reports.

However, several problems continued to exist and limited the effectiveness of the area offices in monitoring substantial hazard cases. For instance, in four of the seven cases the area offices did not inspect firms after corrective action was approved, and in six of the seven cases the area office did not verify the data reported by firms in their corrective action plans and progress reports. Also, the area offices were slow to conduct spot-check inspections to determine if corrective action plans were being carried out.

One case the New York Area Office was monitoring concerned duplicating machines that could overheat and create a possible fire hazard. The area office did not verify the recall data reported by the firm. Also, area office files showed that the firm requested that the case be closed on October 5, 1976, but no spot-check inspections were made until the day we visited the area office on March 30, 1977.

The other case we reviewed in New York concerned coffee percolators which presented a burn hazard because the glass could separate from the steel casing. The corrective action plan was approved on October 14, 1976; however, the area office had not made any spot-check inspections as of March 30, 1977, to verify the effectiveness of the firm's recall.

New York Area Office officials told us that the area office does not perform spot-check inspections until a case is to be closed out. They said the area office does not have the staff to conduct spot-check inspections at other times.

At the Chicago Area Office we reviewed five substantial hazard cases. In no instances had data reported to the Commission by firms been verified for accuracy. In addition, the area office conducted spot-check inspections for only two of the five cases to determine if consumers were actually receiving the benefit of the corrective action.

The acting director of the Chicago Area Office said that the area office does not normally verify the accuracy of a firm's progress reports. He also said that spot-checks are only conducted prior to closing a case because the area office does not have available staff to conduct them at any other time.

Even though Commission procedures specify that area offices are to perform spot-check inspections during the firm's implementation of the corrective action, neither area office was following the procedures. The importance of conducting early spot-check inspections to evaluate the effectiveness of a firm's corrective actions was illustrated in a case discussed in chapter 3. In the case which involved a possible shock hazard with fluorescent lights, 5 months elapsed before the area office discovered the firm had not implemented its corrective action plan.

CONCLUSIONS

The Commission's monitoring of corrective action plans has improved during the period of our review, but the Commission relies to a great degree upon unverified industry data and takes too long to evaluate the effectiveness of industry's actions. Ineffective recall actions have gone unnoticed by the Commission for extended periods of time. The longer these hazardous products remain on the market, the greater the risk that consumers may be exposed to such hazards.

We believe that the Commission should more actively monitor firms' corrective action by verifying data industry reports to the Commission and making more spot-checks of the effectiveness of firms' corrective action.

RECOMMENDATION TO THE COMMISSION

We recommend that the Commission more actively monitor firms' corrective actions to remove substantial product hazards from the market. Monitoring should include at least some (1) verification of industry-reported data and (2) spot checks into the effectiveness of industry's corrective actions.

COMMISSION COMMENTS

The Commission said it is more actively monitoring firms' corrective actions than it was before June 1977. It also said that Commission procedures dealing with the recall of defective products are being reviewed and revised.

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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

December 16, 1977

Mr. Gregory J. Ahart
Director
Human Resources Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

Enclosed you will find our response to the draft GAO report entitled, "The Consumer Product Safety Commission Has No Assurance That Product Defects Are Being Reported And Corrected."

Thank you for giving us the opportunity to comment on this draft report.

Sincerely,

S. John Byington
Chairman

Enclosure

APPENDIX I

CONSUMER PRODUCT SAFETY COMMISSION

RESPONSE TO DRAFT GAO REPORT

ENTITLED

"CONSUMER PRODUCT SAFETY COMMISSION HAS NO ASSURANCE THAT PRODUCT DEFECTS ARE BEING REPORTED AND CORRECTED"

DECEMBER 16, 1977

I. General Comments

The draft report by the Comptroller General on section 15 activities is in the main, with the exception of the title, an accurate analysis of the problems, deficiencies, and accomplishments of the Commission in implementing section 15 of the Consumer Product Safety Act prior to June, 1977. However, the draft report fails to take into consideration the changes and improvements the Commission has made since that time. As a matter of fact, prior to receipt of this draft report, the Commission had already begun to implement most of the GAO recommendations. In addition, the report indicates some misconceptions on the part of GAO with respect to Section 15 procedures. And finally, the report contains several inaccuracies.

As a result of a reorganization in May, 1977, the Office of Product Defect Identification became the Product Defect Correction Division in the Directorate of Compliance and Enforcement and has been strengthened in many ways in order to react much more quickly to products which could present substantial and imminent hazards.

The number of permanent positions, for example, has been almost doubled. Legal action is now assured since five trial attorneys are assigned to the division. Firms now know that the division can quickly move from voluntary to compulsory corrective

2.

action. Greater continuity now is also assured because the section 15 investigation, corrective action plan, negotiation, and enforcement can be handled, sometimes simultaneously, within the division.

During the transition quarter of FY'76 and during FY'77, more than 12,000 incidents suggesting a risk of injury to consumers from consumer products were reviewed, screened, and analyzed. During this same period, a total of 111 section 15 cases were managed by the Division. An additional 29 section 15 cases were begun in the first two months of FY'78.

A breakdown of the cases follows:

Transition Quarter

FY'76	22 cases were begun
FY'77	during the first eight (8) months of FY'77, 51 cases were begun. From June through September 38 were begun.
FY'78	29 cases were begun in the first 2 months of FY'78

On two occasions during FY'77, the division filed on, behalf of the Commission, actions in Federal District Court under section 12 of the Consumer Product Safety Act.

The Act also provides that civil penalties may be assessed against manufacturers, distributors, and retailers who fail to report on time ("timeliness violations").

On three occasions, the Commission assessed and collected

3.

civil penalties for failure to report.

Our comments here are outlined and divided into two parts: first, our responses to GAO's specific recommendations; and second, our corrections and clarifications of what we conceive to be GAO's factual and legal errors, misconceptions, and omissions.

II. GAO's Recommendations

A. GAO recommends that the Commission develop a plan to inform manufacturers, distributors, and retailers of their responsibilities to report substantial product hazards.

Response: The Commission had already developed and partially implemented a plan, prior to the GAO report, which has resulted in heightened awareness by firms of their reporting obligation. For example, the publication of the proposed revision to the section 15 regulations on September 16, 1977, has brought forth more than a hundred written comments from industry and consumer groups. These comments came not only from individual firms but also from trade associations. In addition, the trade press has featured the proposed rules on numerous occasions in the past few months.

In addition, the Commission plans to continue to increase firms' awareness of their reporting obligations: It is considering holding a public hearing on those aspects of the proposed rules which have occasioned the greatest controversy or which have been

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most frequently misunderstood. Copies of the final regulations will be mailed to thousands of firms and associations. Individual Commissioners and members of the staff will continue to explain firms' obligations in speeches, seminars, and compliance workshops. And finally, the Commission will survey regulated firms to determine where further efforts should be directed.

The primary responsibility for knowing the law will remain, however, on the firms themselves. The Commission cannot devote sufficient resources to ensure that all firms which manufacture, import, distribute, or sell consumer products at retail are aware of the law.

B. GAO recommends that the Commission better define the criteria for identifying substantial product hazards.

Response: The Commission agrees. The Commission could allow the definition of substantial product hazard to evolve through the case law (similar to the way the National Highway Traffic Safety Administration has, quite properly, deferred to the adjudicative process to define "defect" and "unreasonable risk"). However, the Commission prefers to give firms advance notice and has instructed the staff to propose guidelines. The Commission, however, must remain flexible and able to use section 15 to deal with unanticipated as well as anticipated hazards. Guidelines, also must, therefore, be flexible.

5.

In addition, industry does not need to determine (and indeed should not wait to determine) that a product presents a substantial product hazard in order to report. Firms need to know merely that their product could create a substantial product hazard. Guidance for firms to report the information is given in the proposed rules.

C. GAO recommends that the Commission revise its procedures to provide a reasonable period of time to review and forward substantial hazard cases to the Commissioners.

Response: The Commission already has decided to revise these procedures. The staff, was instructed to prepare draft guidelines during several briefings in the proposed regulations. Work has been underway for a few months with plans to have a proposal to the Commission in early calendar year 1978.

D. GAO recommends that the Commission more actively monitor firms' corrective actions to remove substantial hazards from the market. The Office of Strategic Planning is completing its analysis of the recall process, and its report will be to the Commission in early calendar year 1978.

Response: As the draft report indicates, the Commission is at present more actively monitoring firms' corrective actions than it was before June 1977, when the GAO completed its investigation. The field directives dealing with recall are being reviewed and revised.

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6.

III. Inaccuracies And/Or Misconceptions Contained In The Draft Report

A. List of suggested factual and legal corrections of the draft report.

[See GAO notes 1 and 2 on p. 39.]

[See GAO notes 1 and 2 on p. 39.]

7.

Page 6, footnote 1. The proposed regulations still define "immediately" as within 24 hours. In addition, the regulations inform firms of time periods which the Commission considers reasonable before knowledge will be imputed to a firm. Once known, information must still be reported "immediately." Thus, the Commission is providing more guidance on the meaning of "immediately".

Page 7. The Commission's program to inform firms of their reporting obligations is far more extensive than the report indicates. Area offices, for example, conduct information programs. The regulations published in the Code of Federal Regulations and the statute itself constitute constructive notice to impute knowledge to a firm (15 U.S.C. 2069(c), Section 20(c) of CPSA). Reporting obligations have been regularly discussed in the trade press.

Page 8. The statute requires that the Commission give a firm notice of noncompliance. Criminal penalties can only be levied if a firm knowingly and willfully violates the law after receiving notice of noncompliance from the Commission.

8.

The draft report erroneously suggests that criminal penalties might be assessed if the Commission could show that the firm merely knew of the reporting requirements.

Page 9. Individuals in the Product Defect Correction Division may not have adequately described the Commission's program to inform industry of its reporting obligations. The fact of the matter is that the division staff participates in programs to inform industry, as outlined above. In addition, the Commission does not give priority to processing notifications from firms. Instead, the Commission gives priority to removing hazardous products from the marketplace and from consumers regardless of whether the information about the dangerous product comes from a firm's report or from some other source.

Page 11-13. The Commission has given the Product Defect Correction Division considerable guidance. Each corrective action plan is evaluated by the Commission and discussed with the staff.

[See GAO notes 1 and 2 on p. 39.]

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9.

[See GAO notes 1 and 2 on p. 39.]

Page 25. Conclusion. In most cases, a press release is issued, and recall is begun before the Commission reviews the plan. See B, below.

B. Misconceptions and omissions in the draft report.

1. Commission action to warn the public of hazardous products. If firms fail to cooperate voluntarily, the draft report recommends that the Commission on its own notify consumers of hazardous products. The report fails to note that section 6(b) of the CPSA requires that manufacturers or private labelers be given thirty days notice prior to such disclosure--unless the Commission "finds out that the public health and safety requires a lesser period of notice." Nor does the draft report mention that the Commission has on several recent occasions made this public health and safety

APPENDIX I

10.

finding, and has issued press releases without the cooperation of the firm. Some of the actions are currently being challenged in District Court. The negotiating position of the Product Defect Correction Division has been strengthened by these recent Commission actions.

2. Voluntary corrective action process. The draft report fails to note that corrective action consists of three parts: notice to the public, removal of hazardous products, and change in future production. It further assumes that corrective action awaits Commission acceptance of proposed plan. In fact, corrective action involving press releases, letters to individual consumers, recall of products from the distribution chain and consumers, and halt of production of allegedly hazardous products is often begun by a firm simultaneously with its report to the Commission. Engineering analysis of the defect and assessment of the adequacy of any proposed "repair" occur while some recalls progress.

3. Commission guidance to the staff. The draft report fails to note that the staff, especially since the reorganization, does come promptly to the Commission if a firm indicates it will not recall or if a proposed repair seems not in line with previously accepted Commission corrective action plans.

11.

4. Compulsory corrective actions. The draft report does not mention the new legal capability of the Product Defect Correction Division within the Directorate of Compliance and Enforcement. The division has asked the Commission to issue subpoenas to compel what was not given voluntarily; it did so. It has sought and received permission from the Commission to file two actions in federal district court to have products declared imminently hazardous consumer products and has sought their recall. It has asked the Commission to issue an administrative complaint under section 15, and the Commission did so. This new legal capability of the division strengthens its negotiating position in dealing with all firms.

GAO notes: 1. Page references in this appendix refer to our draft report and may not correspond to the page of this final report.

2. Deleted comments refer to material discussed in our draft report but not included in this final report.

APPENDIX II

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
Barbara H. Franklin	May 1973	Present
R. David Pittle	Oct. 1973	Present
Thaddeus A. Garrett, Jr.	Jan. 1977	Oct. 1977
Lawrence M. Kushner	May 1973	Oct. 1977
Richard O. Simpson, Chairman	May 1973	June 1976
Constance B. Newman	May 1973	Feb. 1976
EXECUTIVE DIRECTOR:		
Michael A. Brown	Aug. 1977	Present
Michael A. Brown (acting)	Nov. 1976	Aug. 1977
Vacant	June 1976	Nov. 1976
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
ASSOCIATE EXECUTIVE DIRECTOR FOR COMPLIANCE AND ENFORCEMENT:		
David Schmeltzer	May 1977	Present
DIRECTOR, DIVISION OF PRODUCT DEFECT CORRECTION:		
Catherine C. Cook	May 1977	Present
DIRECTOR, OFFICE OF PRODUCT DEFECT IDENTIFICATION:		
Carl W. Blechschmit	Feb. 1975	May 1977
DIRECTOR, SECTION 15 GROUP:		
Carl W. Blechschmit	Mar. 1974	Feb. 1975