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STATE IMPLEMENTATION OF THE CONSUMER PRODUCT SAFETY ACT

Among the important policy considerations behind the passage of the Consumer Product Safety Act\(^1\) was the recognized inability of the individual states to provide effective protection to the consumer from injury due to defective and dangerous products. While some product safety legislation existed in virtually every state, these laws had been passed in a haphazard fashion, aimed generally at specific products which had caused an unreasonably large degree of injury.\(^2\) In no state had there been a comprehensive effort to detail the broad spectrum of potential product-related injury, with the result that state legislation was often possessed of glaring inconsistency:\(^3\)

The vast majority of hazards and products which could be regulated are not regulated. Hazards strikingly similar to regulated hazards are left untouched. One hazard in a product is often controlled, while other equally serious hazards in the same product are not.

The handicaps of incomplete legislation were further compounded by insignificant enforcement of existing laws. With jurisdiction over product safety regulation generally spread among a number of state agencies, there was a patent lack of coordinated effort to attain a regularized program of enforcement. Had any state designed such a plan, it would in all likelihood have failed due to an inevitable lack of funds and scarcity of trained personnel.\(^4\)

Citing the inadequacy of existing controls on product hazards, the National Commission on Product Safety (NCPS)\(^5\) in


\(^2\) “At the present time in most states that legislation governing product safety is a hodgepodge of specific legislation dealing with specialized problems that have developed over the years.” Statement of Professor William J. Pierce, 5 Nat’l Comm’n on Product Safety, Hearings 290 (June 20, 1969).

\(^3\) Asher and Schneiderman, Product Safety Law and Administration, Report 4 of 3 Supplemental Studies (1970) at 107 (prepared for Nat’l Comm’n on Product Safety) [hereinafter Staff Report].

\(^4\) “State enforcement programs are generally underfunded, understaffed, and beset by chronic lassitude. With the exception of extensive regulation of installation and installers, it is fair to say that the laws . . . are, for the most part, enforced haphazardly, infrequently, and in some cases, not at all.” Id. at 115.

\(^5\) This Commission was created by Congress in November, 1967, with directions to “conduct a comprehensive study and investigation of the scope and adequacy of measures now employed to protect consumers against unreasonable risk of injuries which may be caused by hazardous household products”. 81 Stat. 466, Pub. Law No. 90-146 (1967).
1970 recommended the creation of a major new federal agency to deal on a national scale with the "development and execution of methods to protect the American consumer." The Consumer Product Safety Act (CPSA), passed by Congress in October 1972 and signed into law by President Nixon on October 28, 1972, embodied in virtually all substantial respects the recommendations of the NCPS. The CPSA created an independent, five-member Commission with authority to develop and set mandatory consumer product safety standards, enforce compliance with those standards through the use of civil and criminal penalties, seek injunctions to prevent the distribution of products which violate Federal standards or are imminently dangerous, maintain an Injury Information Clearinghouse to collect and disseminate injury data, make reasonable inspections of manufacturing facilities, and conduct public hearings and investigations. The basic purposes of the CPSA are thus to protect the consumer from product hazards, to assist him in selecting safe products, to establish uniform product safety standards, and to promote research into the causes and prevention of product-related injuries.

Despite the recognition of insufficient state product safety regulation, both the NCPS and Congress were aware that the states can provide invaluable assistance to the federal government in the establishment of product safety standards. The "local eyes and ears" of the state can aid in the gathering of product injury information, and the proper state agencies can commit manpower to oversee local manufacturers, distributors and retailers and to determine whether the standards established by the Consumer Product Safety Commission (CPSC) are receiving compliance. The embodiment of these ideas is found in Section 29 of the CPSA, which provides for the establishment of a "program to promote Federal-State cooperation for the purposes of carrying out [the] Act."

10. The section states in full:
   § 2078. Cooperation with States and other Federal agencies
   (a) The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this chapter. In implementing such program the Commission may—
   (1) accept from any State or local authorities engaged in activities
       relating to health, safety, or consumer protection assistance in such
To what degree should the CPSC commit itself to the implementation of a Section 29 program? What are the most effective means of carrying out such a plan? To what extent should the individual states coordinate their product safety programs with the CPSC, and to what extent may the states act apart from the federal agency? It shall be the purpose of this article to examine these and other related questions, and to provide alternative solutions to the federalism question. These problems must be viewed with continual regard for the ultimate purpose of the entire product safety program: to protect the consumer from the unreasonable risk of harm associated with defective and dangerous household products.\textsuperscript{11}

I. \textbf{Existing Product Safety Legislation in the States}

\textit{A. Representative Sample of State Law}

Inconsistencies in state regulatory programs appear in varying degrees at three levels: legislation, establishment of stan-

functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this chapter which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

(2) commission any qualified officer or employee of any State or local agency as an officer of the Commission for the purpose of conducting examinations, investigations, and inspections.

(b) In determining whether such proposed State and local programs are appropriate in implementing the purposes of this chapter, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this chapter. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Bureau of Standards, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

dards, and enforcement.\textsuperscript{12} Examination of the first of these levels, legislation, reveals that while the selection of regulated products and hazards within each state lacks a coherent pattern, the states are collectively "haphazard in much the same way," that is, "[m]ore or less the same products and hazards are regulated in all of the States."\textsuperscript{13} A representative sampling of the laws of nine states will serve to show the general manner of state regulation.\textsuperscript{14}

Certain products have presented an obvious hazard and are, as a result, universally regulated, the most obvious members of this class being refrigerators\textsuperscript{15} and fireworks.\textsuperscript{16} Plastic bags, however, have proven to be a similarly dangerous product due to the hazard of suffocation, and yet only random protection against the hazard of this product has been afforded the American consumer by state legislation. Of the nine sample states, only California, New York, Texas, Virginia, and Wisconsin.

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\item From the standpoint of the manufacturer, variations in state law and enforcement could place an intolerable burden on the design and development of mass-produced products. In some cases the manufacturer might find it impossible to comply with conflicting standards, and would therefore be forced to travel the expensive route of manufacturing, in effect, two different products. Generally speaking, however, this problem has remained a hypothetical one because state laws in this area are seldom enforced, and the manufacturer has been able to produce his product and risk non-compliance with state laws, the majority of which he has, in all likelihood, not even bothered to learn. Even if a particular law is enforced against the manufacturer in one or two states, the penalty (usually a fine) will be far less expensive than the development costs of a product which meets every state's regulations.
\item Staff Report, supra note 3 at 107.
\item The nine states are: California, Illinois, Kentucky, Massachusetts, New Jersey, New York, Texas, Virginia, and Wisconsin. The reason for choosing these particular states was to provide a geographical cross-section of the country while at the same time including many of the major states in the product safety field.
\item In order to organize the categories of products into an intelligible pattern, some reliance has been placed on the outline in the Staff Report, supra note 3 at 107.
\item These laws prohibit the abandonment of refrigerators, generally in a place where children are liable to find them and become locked inside. The laws are a direct response to the rash of suffocations which occurred in the early 1950's. It is interesting to note that of these states, only California, New York, Texas, and Virginia take the next logical step and prohibit abandonment of virtually all airtight containers.
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Massachusetts, and Virginia regulate this product hazard.\textsuperscript{17} Another potentially dangerous product which receives only minimal regulation is the air rifle, covered by law only in California, Illinois, Massachusetts, and New York.\textsuperscript{18} Further examples of such products would be repetitive. The point is that there emerges, in the selection of regulated products, a pattern in which a less-than-adequate number of products are regulated almost universally, and the numerous gaps are then partially filled by one state or the other on an ad hoc basis. In no case does any state fill all the gaps.

In attempting to establish safety standards for those products which are regulated, states have faced the problem of limited jurisdictional boundaries which has caused, in some cases, conflicting standards which place an unreasonable burden on the manufacturer.\textsuperscript{19} Many states have sought to avoid harmful and unnecessary confrontations with manufacturers by adopting nationwide standards. The most important and predominant source for these standards has been the Federal law.\textsuperscript{20}

A number of Federal statutes dealing with particular aspects of product safety existed prior to the passage of the CPSA. Among these laws are several whose functions were specifically transferred to the CPSC. Section 30 of the CPSA\textsuperscript{21} directs the Commission to assume the administration of the Federal Hazardous Substances Act,\textsuperscript{22} the Poison Prevention Packaging Act,\textsuperscript{23} the Flammable Fabrics Act,\textsuperscript{24} and the Household Refrigerators Act.\textsuperscript{25} A number of states have enacted legislation substantially effectuating the policies of these laws and have generally employed the federally established standards in so doing. A survey of the nine sample states shows that all nine have basic laws dealing with haz-

\textsuperscript{17} CALIF. BUS. & PROF. CODE § 22200 (West 1964); MASS. GEN. LAWS ANN. ch. 111, § 5D (1971); VA. CODE ANN. § 18.1-415. 1 (Supp. 1973).

These laws are designed to prevent plastic bags from reaching the hands of children.

\textsuperscript{18} CALIF. PENAL CODE § 12.551 (West Supp. 1974); ILL. ANN. STAT. ch. 38, § 82-1 (Smith-Hurd 1970); MASS. GEN. LAWS ANN. ch. 269, § 12A (1970); N.Y. PENAL LAW § 265.05 (McKinney 1967).

\textsuperscript{19} See note 12 supra.

\textsuperscript{20} Another potential source for national standards is the published standards of large private organizations. A survey of the nine sample states reveals that the only product which appears to be regulated in this manner is liquid petroleum. See, e.g., N.J. STAT. ANN. § 21: 1B-1 (1969).


ardous substances\textsuperscript{26} and refrigerators\textsuperscript{27}, five states regulate flammable fabrics\textsuperscript{28}, and one state covers the special labeling of poisons which are unusually dangerous to children.\textsuperscript{29}

The maintenance by individual states of federally enacted standards serves the dual purpose of avoiding a multiplicity of regulations while enabling the states to employ the superior resources of the federal government. The states are thus able to complement federal action through information-gathering and enforcement of standards, and do not engage in needless duplication of research and analysis of information.\textsuperscript{30}

\textbf{B. Enforcement of State Law}

Lacking federal assistance, the state enforcement mechanism is generally inadequate to provide the consumer with the protection mandated by state legislation. There are a number of factors which handicap the states in this regard. Because of jurisdictional boundaries, a state can affect only local distribution of products and cannot regulate the manufacture of out-of-state products. As a result, the great majority of state product safety laws regulate the seller, distributor, or installer, and not the manufacturer. By this process, of course, it is hoped that manufacturers will be unwilling to produce a product which cannot be marketed in a state due to a violation of standards:

The system can work well. The manufacturer feels pressures from potential lost sales. The State insinuates an advocate for compliance, the seller, inside the distribution chain. Through

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\item \textsuperscript{26} CALIF. HEALTH \& SAFETY CODE § 28740 (West Supp. 1974), amending CALIF. HEALTH \& SAFETY CODE 28740 (West 1967); ILL. ANN. STAT. ch. 111\&frac{1}{2}, § 251 (Supp. 1973), amending ILL. ANN. STAT. ch. 111\&frac{1}{2}, § 251 (1966); KY. REV. STAT. ANN. § 217.650 (1972); MASS. GEN. LAWS ANN. ch. 94B, § 1 (Supp. 1972); N. J. STAT. ANN. § 24:5A-1 (Supp. 1973); N. Y. GEN. BUS. § 396-j (McKinney Supp. 1973) (hazardous toys only); TEX. REV. CIV. STAT. ANN. art. 4476-13 (Pamphlet Supp. 1973); VA. CODE ANN. § 3. 1-250 (1973); WIS. STAT. ANN. § 100.37 (1973).
\item \textsuperscript{27} See note 15 supra.
\item \textsuperscript{29} ILL. ANN. STAT. ch. 111\&frac{1}{2}, § 291 (Supp. 1973).
\item \textsuperscript{30} "If a state would expend the great amounts of money and personnel time duplicating research already done by the federal government, this could be characterized as irresponsible; limited funds available to state agencies are far better spent on enforcement." CALIFORNIA ATTORNEY GENERAL'S SPECIAL STUDY ON PRODUCT SAFETY, prepared by Deputy Attorney General Diana Cohan, (May 1, 1973) at 9. [hereinafter CALIFORNIA REPORT].
\end{enumerate}
the seller, the manufacturer is more likely to learn what the
State standards are than by reading 50 statute books.31

Ideally, then, it is unnecessary for a state to regulate the
manufacturer because the same end can be achieved through
regulation of the seller, and the handicap of jurisdictional bound-
aries may thus be overcome. This ideal, however, presupposes
specific attitudes on the part of both the manufacturer and the
seller which are simply not realistic. Whether or not the manufac-
turer is aware of the different standards of each state, he almost
certainly will not be willing to comply with all of the conflicting
standards which will make his product "safe." The economic
costs of such a procedure are likely to be far greater than the
amount of "potential lost sales." Any lost profits will result only
from the seller's unwillingness to handle those products which
violate his state's standards. The seller, aware of a boycott's ef-
fect on his own sales profit, and aware also that state enforce-
ment procedures make it unlikely that he will be caught selling
these contraband goods, will likely take his chances and market
the product despite the ban.

The foregoing analysis supports the position that the major
flaw in the operation of the state product safety program is the
failure to enforce those laws which do exist. One explanation for
the gaps in state legislation32 might be the realization that a law
which is not enforced is often worse than no law at all:

In recommending legislation or other State action, the over-
riding consideration is that the plan of attack be effective. It is
far better to make only modest, but effective, inroads on a prob-
lem than to conceive grandiose schemes that are doomed to
failure. Similarly, it is also better to do nothing than to promote
ineffective legislation, because bad laws give the false impres-
sion that the problem is somehow 'taken care of' when in reality
it is not.33

If a manufacturer is aware that state regulation of his product is
in fact minimal or nonexistent despite an existing law, he is not
likely to go any major expense to improve the safety of the prod-
uct. In-state sellers and distributors are unlikely to curb their
profit by boycotting these products, despite their defective or
dangerous condition.

31. STAFF REPORT, supra note 3 at 113.
32. See Section IA of text supra.
33. CALIFORNIA REPORT, supra note 30 at 7.
Information solicited by the Hofstra Law Review reveals particular inconsistencies in the enforcement policies of certain states.\textsuperscript{34} The State of New Jersey, a leader in the product safety area, characterized its safety laws as “very well drafted.” Yet, in the practical sphere, the degree of commitment of the community, prior to October, 1972, to the enforcement of these laws was characterized as “inertia”. Illinois’ laws were also “very well drafted” while the pre-1972 community was “poorly committed” to enforcement.\textsuperscript{35} California, perhaps the leading state in product safety, presented this picture of the State’s inability to carry on its own enforcement program absent federal assistance:\textsuperscript{36}

A good example of comprehensive product safety legislation that goes unenforced is the California Hazardous Substances Act. Section 28791 of the Act authorizes the enforcing agency, the State Department of Public Health, to bring injunction actions to restrain any person from violating the Act’s provisions. Although this injunctive power has been available to the Department since 1967, no action, to the best of anyone’s knowledge, has ever been brought against a violator.

Some states presented a more favorable picture of enforcement procedures prior to the passage of the CPSA. The State of Massachusetts appears to have had a good deal of success in enforcing its Hazardous Substances Labeling Law,\textsuperscript{37} the community being characterized as “highly committed” to enforcement.\textsuperscript{38} The Wisconsin Hazardous Substances Act,\textsuperscript{39} containing a somewhat unique ‘holding order’ procedure,

\textsuperscript{40} has been relatively

\textsuperscript{34} The Hofstra L. Rev. circulated a questionnaire to the fifty state Attorneys General, seeking information on the product safety program of each state. The questionnaire asked for existing product safety laws, the quality of draftsmanship of these laws, the degree of commitment of the community (both prior to and subsequent to the passage of the CPSA) to the enforcement of these laws, and opinions regarding the most effective means of implementing in the state the policies of the CPSA.

While only thirteen states answered the questionnaire, another eighteen states offered some information regarding the status of their product safety program. The total information gathered presented a fairly detailed picture of the state experience.

[Information obtained from the questionnaire hereinafter cited as Hofstra Questionnaire].

\textsuperscript{35} Hofstra Questionnaire.
\textsuperscript{36} CALIFORNIA REPORT, supra note 30 at 7.
\textsuperscript{37} MASS. GEN. LAWS ANN. ch. 94B, § 1 (Supp. 1972).
\textsuperscript{38} Hofstra Questionnaire.
\textsuperscript{40} By this procedure, the Department of Agriculture is empowered to withhold from sale or movement, for up to 14 days, any substance which the Department has “reasonable cause to believe” is in violation of the Act. Wis. Stat. Ann. § 100.37 (5) (1973).
well-enforced by a "fairly committed" community.41

This comparatively brighter situation in a few states, however, cannot change the bleakness of the pre-1972 state enforcement picture. Several states returning the questionnaire commented that their programs were so non-existent that they could not even be analyzed. In light of the many injuries and deaths resulting from defective products, why have the states done so little to enforce their laws? The answer is not complex: lack of money, lack of personnel, lack of a defined pattern of jurisdiction, and lack of power.

States are generally either unwilling to provide or incapable of providing the appropriate agencies with funds sufficient to carry out their product safety mandate. Available funds will most likely be used to eliminate only the most obvious or most publicized product hazards, leaving the majority of products unchecked. It is likely that this insufficiency of funds prevents qualified persons from joining the product safety effort, and causes those already in it to lose initiative.42 In addition, jurisdiction over state laws is often spread over a number of agencies, and in this regard there is "little evidence of . . . planning for maximum effectiveness or efficient administration",43 with the result that what energy is expended is liable to be overlapping and therefore wasteful. Finally, the sanctions available to enforcement agencies are sadly ineffective. Most state product safety laws are enforced with criminal penalties, but in virtually all cases these are only minimal fines, which most manufacturers would be more than willing to risk rather than expend the greater amount of capital needed to bring the product into conformity with state standards.44 The sanctions of seizure, destruction or ban, while often included in the laws, are very rarely employed by state enforcement bodies, although the threat of seizure is sometimes used to force a seller to return or destroy nonconforming goods.45

Faced with the assumption that state laws were not being enforced, there were two possible means by which the consumer

41. Hofstra Questionnaire.
42. "We talked to a surprising number of people charged with supervision of enforcement, who confessed that their men in the field went at their jobs with little enthusiasm or vigor, with the result that little enforcing gets done." STAFF REPORT, supra note 3 at 211, n.80.
43. Id. at 116.
44. The sanction of imprisonment, while found in most laws, is basically irrelevant because it is, as far as can be determined, never used.
45. STAFF REPORT, supra note 3 at 112.
might be given more effective protection: voluntary compliance with safety standards by manufacturers, or federal legislation and intervention. (It should, of course, be noted that these two methods are not mutually exclusive). While it is not meant to be said that manufacturers are ogres with no sense of responsibility for the injuries which their defective products are liable to cause, it should nevertheless be obvious that voluntary compliance simply cannot be relied upon to protect the consumer from unreasonable risk of harm. The manufacturer by necessity must be concerned with the maximizing of profits, and the temptation to sacrifice safety for style is too great to expect manufacturers to be the guardian angels of the consumer.

Federal legislation therefore provides seemingly the only answer to the problem, and the passage by Congress of the CPSA is an excellent response. The law is very well drafted and, while it is possible to question the exemption of certain products from the jurisdiction of the CPSC, the wide range of authority and sanctions given that federal body makes it an extremely powerful agency. The existence of the CPSC can more effectively induce voluntary compliance by manufacturers because of a greater range of remedies available for violation of regulatory standards than those possessed by the states. More importantly, the burden of maintaining a complete program of product safety is lifted from the states, and emphasis may now be placed on those aspects of consumer protection which can most effectively be handled at the state level. Information on product hazards and injuries can be gathered by the states to be stored and analyzed by the federal government. State personnel can aid in patrolling local establishments to be certain that banned or regulated products are not being distributed in violation of federal standards. State legislatures can model legislation after the CPSA and thereby bring the entire state network to the uniform aid of the consumer.

C. The Immediate Effect of the Consumer Product Safety Act on the Enforcement of Existing State Legislation

In studying the preceding section of this article, the reader may perhaps have been struck by the occasional mixture of tenses used by the author in describing the state enforcement mecha-

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46. Among a number of products exempted by Section 3 (a) (1) are tobacco products, motor vehicles, economic poisons, aircraft, boats, drugs, and food. 15 U. S. C. A. § 2052 (a) (1) (Supp. 1973).
nism. At times emphasis was placed on the "pre-1972" situation, while the major part of the section suggested the presently existing status of the product safety program in the states. The explanation for this choice of format lies in the newness of the CPSA. While significant action has taken place in some states in the year and a half since the CPSA was passed, it cannot be suggested in absolute terms that there has already been a radical change in the state product safety picture. It should not be thought that the CPSA has immediately terminated the need for the enforcement of presently existing state laws.

The CPSA by its terms does not regulate or ban any product, but rather provides authority to the CPSC to promulgate product safety rules, either in the form of product safety standards or product bans. According to this procedure, then, a product or hazard does not fall under federal control until the CPSC acts upon it. The CPSC has been in operation for about one year, and while tremendous strides have been made in this short period toward greater consumer protection, it cannot be argued that all potentially hazardous products are now covered by federal regulation. Furthermore, a federal enforcement scheme has not yet been firmly established. The CPSC has correctly been more concerned with the establishment of standards than with the enforcement of those standards, and effective enforcement is in any case dependent upon a federal-state cooperative effort which has not yet been implemented.

Assuming then, that at least for the present the states must seek to emphasize the importance of their own laws, it becomes clear that many of the problems mentioned in regard to state enforcement continue despite the passage of the CPSA. However, in one respect the CPSA has had an immediate effect upon policy in a number of states: the publicity attendant to the passage of the CPSA and the formation of the CPSC has proven a significant impetus to state action.

New Jersey, whose enforcement policies prior to October, 1972, were admittedly inferior, characterized the community as "very highly committed" to the enforcement of state product safety laws since the passage of the CPSA. According to the

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48. See Newsday, Jan. 11, 1974, at 52, col. 2.
49. This is not to say that no federal-state cooperative action has yet occurred. See Appendices I and II.
50. See text accompanying note 35 supra.
51. Hofstra Questionnaire.
State Division of Consumer Affairs, there has been a conscious campaign within the state to publicize the existence and need for enforcement of state laws.\textsuperscript{52} Wisconsin and Illinois also cite a greater public awareness of state legislation.\textsuperscript{53} The value of this increased publicity lies not only in the greater potential for state funds and more highly committed enforcement personnel, but also in the greater likelihood that manufacturers will abide by reasonable standards. Manufacturers might well fear that previously unused sanctions such as seizure and ban will begin to be utilized in the wake of public demand for safer products.

There is significant strength behind the argument that the greatest value of the CPSC is the psychological effect which it can have on both the manufacturer and the consumer. No matter how well-written the laws may be, no matter how many committed employees exist on its staff, no federal agency can function effectively without public cooperation. While it is of obvious importance that the CPSC be prepared to enforce regulatory standards, the agency will not be capable of doing this if there is widespread violation of standards by manufacturers and apathy on the part of the public. However, a manufacturer faced with consumer unwillingness to buy an unsafe product will be economically forced to make that product more safe.\textsuperscript{54} The weapon of publicity should be used by the states to the greatest extent possible in the enforcement of state laws, for it is publicity which is most likely to encourage public cooperation. The inadequate facilities of many state agencies make it imperative that funds and manpower be put to their most effective use. The CPSA has provided an excellent vehicle by which the states can bring to public attention both the existence of state product safety laws and the need to encourage manufacturers to abide by those laws. Product safety is presently in the limelight and the greatest advantage should be taken of this fact.\textsuperscript{55} The public must be given an aware-

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\item \textsuperscript{52} Id.
\item \textsuperscript{53} Id.
\item \textsuperscript{54} The tremendous publicity given in recent years to unsafe motor vehicles has had a major impact on automobile styling and advertising. Six or seven years ago the auto manufacturer could concentrate principally on style, knowing that most buyers purchased on that basis. However, the media coverage given to the efforts of Ralph Nader and other consumer groups have brought a great public awareness to the issue of automobile safety. As a result, a large number of car buyers now look for various safety gadgets and devices when they are buying an automobile, and mass advertising often emphasizes the latest technological advance in this area. Publicity has thus helped make safety an important selling point of which the manufacturer must be aware.
\item \textsuperscript{55} A number of states have, in the wake of CPSA publicity, passed new product
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ness that most products can be made relatively safe if sufficient pressure is exerted upon the manufacturer.

II. **Recommendations for Future State Action**

A. **Introduction**

The opening sentence of Section 29 of the CPSA is a direct recognition by Congress of what had been a constant theme throughout the hearings conducted by the NCPS: while the states have been unable to formulate an effective product safety program, state assistance in the administration and enforcement of a federal product safety law can be of invaluable benefit to the federal agency and therefore to the consumer. The statement of this perhaps obvious proposition is, however, far removed from the accomplishment of its ideal. The relations between federal and state agencies are often comprised of a delicate balance, and the encouragement of state cooperation is sometimes dependent on a federal concern not to "step on the toes" of the states.

Attempting to gauge the reactions of state officials to the passage of the CPSA, the Hofstra Law Review solicited opinions on the following question:

In light of the passage of the federal Consumer Product Safety Act, what, in your opinion, would be the most effective means of implementing the policies of the Act in your state?

- a) adopt and enforce new state legislation very similar to the federal statute
- b) adopt and enforce new state legislation different from the federal statute
- c) adopt no new state legislation, but rather enforce the state legislation already existing
- d) adopt no new state legislation, but rather enforce the federal statute
- e) the federal statute can be enforced without state assistance; the federal government is capable of implementing the Act on its own
- f) other (please specify)


56. See note 10 supra.

57. "Despite the inherent limitations on attempts of State and local governments to specify safety requirements for consumer products, national regulation can surely be strengthened by active State and local participation . . . A few State laws have become models for Federal action. Moreover, the State as a laboratory for political experiment is a priceless feature of the Federal system." Final Report, supra note 6 at 87.

58. The question was the final one in the Hofstra Questionnaire.
The ten responses received by the Review permit the recognition of a pattern. Six states chose (a), three states chose (d), and one state, Massachusetts, felt that (c) was the best method. The failure of any state to choose either (b) or (e) should not be surprising. Choice (e) takes the position that Congress was wrong in enacting Section 29, arguing that a program of Federal-State cooperation will not aid in the administration of the CPSA. In the first place, if any state official actually believed this he would be unlikely to admit it. More importantly, every state has some agency or body which is mandated to attend to consumer affairs. To argue that the federal government alone should implement the CPSA is to characterize the state agencies as superfluous. The natural result of this would be either the repeal of the state agencies' mandate, or the blatant establishment of sinecures for their employees.

Choice (b) is likewise a poor selection of alternatives. One of the stated purposes of the CPSA is "to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations . . . ." The passage by individual states of new, conflicting legislation is a direct contradiction of this stated purpose, and in effect argues that the CPSA is bad law the enforcement of which will not be beneficial to the consumer. This argument in its absolute form clearly violates the federal Supremacy Clause and is therefore unconstitutional. No state would, of course, embark on such a perilous course. However, even a state in basic agreement with the policies and procedures of the CPSA might in certain instances desire specific safety standards not in conformity with standards set by the CPSC for the same product. Such a policy is generally to be avoided for two reasons. First, the CPSC will in most cases be possessed of greater expertise in the selection of product standards, since it will have greater access to injury information and a more general awareness of manufacturing capabilities. Manufacturers are more likely to be cooperative in the face of reasonable, uniform standards. Second, state legislation enacting non-conforming standards is likely to be voided by the preemption provisions found in Section 26 of the CPSA. (The effect of this section, however, is not completely prohibitive, and a more extended comment on the preemption question appears later in this article.) It is believed that the most

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60. U. S. Const. art. VI.
effective protection of consumers will result from a state program of cooperation rather than innovation.  

A Federal-State regulatory system should have every government do what it does best. Such a pattern would rest on the principle of applying regulatory power at the earliest point in the chain of distribution as possible. Such a plan will increase uniformity and breadth of regulation, will reduce invasions of consumer privacy, and will save duplication and costs of regulation. While some advantages of local experimentation and unusually high standards in a few places will be lost, the advantages on balance outweigh these debits.

B. Continuation of Enforcement of Existing Legislation

The acceptance of choice (c), which involves the passage of no new state legislation but a continued use of existing state law, presents an interesting area for debate. This article has already pointed out the importance of continued enforcement of existing state product safety standards until the CPSC acts upon the particular product. In addition, it has been noted that a large number of state product safety laws are patterned after federal legislation, often incorporating federal standards, and the CPSA should not affect state policy with respect to these laws, except perhaps to enhance enforcement.

To maintain that states should continue to exercise a degree of independent judgment with respect to existing state laws is not, however, to adopt the policies of choice (c). It is important to recognize the precise issue, the precise situation which is presented by this choice of alternatives.

As noted earlier, Massachusetts has indicated an unusually high degree of commitment and success in the enforcement of its product safety laws, the major one of which is the Hazardous Substances Labeling Law. The consumers of Massachusetts have therefore benefited from what is arguably adequate protection against hazardous substances. In the face of the passage of the CPSA, and the Federal-State cooperative effort mandated by

62. STAFF REPORT, supra note 3 at 120.
63. See Section I. C of text supra.
64. See text accompanying notes 26-29 supra.
65. The Commonwealth of Massachusetts will be used to set a firm base for the hypothetical situation envisioned by the selection of choice (c), since Massachusetts was the only state to select choice (c) on the Questionnaire. The author does not mean to suggest that Massachusetts would adopt the policies reflected by this hypothetical.
66. See text accompanying note 38 supra.
Section 29, a state in the somewhat unique position of having directed a successful product safety program might be inclined to adopt an attitude of: “We’ve given our consumers effective protection and continue to do so; the policies inherent in the CPSA already exist in our state; a successful operation should not be disrupted by a division of responsibility between Federal and State officials”. In the context of this argument, the most effective method by which to implement the policies of the CPSA might therefore be a continued enforcement of existing state legislation, rather than the enactment of new CPSA-oriented legislation. A Section 29 program, designed to coordinate a cooperative enforcement of uniform standards, would be received with little enthusiasm by this state.

This position, while perhaps appearing to have merit, is not persuasive. In the first place, it has been demonstrated that no state displays a completely comprehensive legislative program. However well the laws are being enforced, there remain products outside the law. The CPSC, with its broad umbrella of jurisdiction over consumer products and access to a wide range of information, is far less likely than a state to engage in a haphazard selection of regulated products. Furthermore, it is difficult to accept the argument that federal action in a previously state-controlled area will not bring a more effective accomplishment of ideals, however successful the state program may have been:

Both Federal and State Agencies have their areas of expertise which may complement and/or overlap the other. The Consumer Product Safety Commission has the laboratory facilities and necessary technical staff for standard making and product testing. The states may be used most effectively in the surveillance of the manufacturer and retailer for banned or potentially banned products, initiate enforcement action, collect injury data and provide input on proposed standards, if the proposal is within an area of their interests and expertise. The states have an advantage in conducting field programs because of their daily contact with the manufacturers, retailers and consumers that deal with consumer products. The CPSC on the other hand has the resources both fiscal and technical to conduct research on test procedures and product analysis.

68. The Massachusetts Hazardous Substances Labeling Law, for example, covers potentially only a portion of the products and hazards now under the jurisdiction of the CPSC.

In summary, then, the problems with the state product safety mechanism do not begin and end with a lack of enthusiasm and initiative. Problems with jurisdictional boundaries, inadequate resources, and conflicting local regulations have also hampered effective consumer protection, and these latter characteristics cannot be fully remedied by even the most successful state program. The CPSC has nation-wide jurisdiction, commands superior resources, and can eliminate the burden of manufacturer compliance with a "myriad of local regulations." 70

A further issue of which the states must be aware, if a continued emphasis upon existing state law is intended, is the potential application of the doctrine of federal preemption. 71 Preemption, while not reducible to clearly defined standards, generally precludes a State from enacting legislation not in conformity with a federal law on the same subject. 72 The doctrine finds its source in the federal Supremacy Clause, 73 which elevates federal law above that of the states. That clause is counterbalanced by the tenth amendment, which directs that "(t)he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." 74

70. CALIFORNIA REPORT, supra note 30 at 3-4.
71. Section 26 of the CPSA, 15 U.S.C.A. § 2075 (Supp. 1973), regulates preemption and provides:
   (a) Whenever a consumer product safety standard under this chapter is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.
   (b) Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to a consumer product for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.
   (c) Upon application of a State or political subdivision thereof, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) of this section (under such conditions as it may impose) a proposed safety standard or regulation (1) imposes a higher level of performance than the Federal standard, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce.
73. U. S. CONST. art. VI.
74. U. S. CONST. amendment X.
Preemption therefore applies where Congress has enacted legislation pursuant to one of the powers delegated to the United States by the Constitution. It is clear that the CPSA is a valid Congressional exercise of power under the Commerce Clause.\textsuperscript{75} The next determination to be made is "whether Congress has exercised its power of legislation in such a manner as to exclude the states from asserting concurrent jurisdiction over the same subject matter."\textsuperscript{76} The language and legislative history of the CPSA would appear to direct an affirmative response to this question\textsuperscript{77}, although certain exceptions exist and must be noted. In the first place, the language of Section 26 makes it clear that preemption will only take effect when the CPSC has enacted a standard for a product hazard, and it would therefore appear that the states can continue to regulate any product hazard upon which no CPSC regulation exists. Once a federal standard is established, however, any state standard which is not identical to the CPSC requirement becomes void.\textsuperscript{78}

Secondly, under certain conditions states may be permitted by the CPSC to require a higher level of performance for a product than that established by the federal agency.\textsuperscript{79} However, such permission must be applied for by the state, and it must be shown that the higher standard is both required by compelling local conditions and is not unduly burdensome on interstate commerce.\textsuperscript{80} It is not as yet clear how the CPSC will interpret this part of the Act, although it is possible that CPSC permission will be reserved for situations in which a state seeks to enact experimental standards which might thereafter become a model for federal action.

State product safety legislation which does not adopt federal standards is therefore in a precarious position, and even the most efficient enforcement program cannot expect continued success.

\textsuperscript{75} U. S. Const. art. I, § 8.
\textsuperscript{76} Northern States Power Co. v. Minnesota, 447 F. 2d 1143, 1146 (8th Cir. 1971).
\textsuperscript{77} "It is intended that Federal authority — once exercised — occupy the field and broadly preempt State authority to regulate the same product hazards. Accordingly, the Federal preemption is intended to extend not only to State authority to set standards on labeling requirements but also to prevent States from acting to ban products which conform to applicable Federal safety standards where the purpose of the ban is to protect the public from the same product hazard." H. R. Rep. No. 1153, 92d Cong., 2d Sess. 49 (1972).
\textsuperscript{79} As one minor exception, not requiring CPSC permission, the CPSA allows a higher State standard to be applied to products procured for the State's own use. 15 U.S.C.A. § 2075 (b) (Supp. 1973).
unless cooperation is given to the regulatory scheme established by Congress and administered by the CPSC. While the interpretation of the preemption provision of Section 26 must ultimately be left to the courts, the section does not appear to be ambiguous in its intent to provide the CPSC with virtually exclusive authority to regulate the field of product safety. The states should concentrate upon coordinating their resources with the efforts of the CPSC, and should revise existing product safety laws to conform in virtually all respects to federal standards. Consideration should also be given to the passage of enabling legislation which would adopt the regulations of the CPSC (the subject of which is examined in greater detail below).

C. Enforcement of the CPSA Without the Passage of New State Legislation

Section 29 of the CPSA authorizes the CPSC to “commission any qualified officer or employee of any State or local agency as an officer of the Commission for the purpose of conducting examinations, investigations, and inspections.” It is therefore feasible for the CPSC to engage state personnel to assist in the enforce-

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81. In two recent cases involving preemption, one involving the preemption provisions of the Federal Hazardous Substances Act, and the other involving a similar clause under the Federal Flammable Fabrics Act, the courts placed determinative emphasis on the overall intent of Congress in enacting the respective preemption provisions. In Chemical Specialties Mfrs. Ass'n v. Clark, 482 F. 2d 325 (5th Cir. 1973), the court invalidated a Florida county ordinance on detergent labeling by employing a broad interpretation of the preemption section of the Federal Hazardous Substances Act. The court stated that Congress had, by enacting that section, prohibited “any further action of a supplemental nature by the states or their political subdivisions” in the area occupied by Congress through the Act. 482 F. 2d at 327. It is to be noted that this preemption clause is not as broad or powerful as the preemption clause of the CPSA. In Raymond v. Riegel Textile Corp., 484 F. 2d 1025 (1st Cir. 1973), the court refused to use the preemption provisions of the Federal Flammable Fabrics Act to relieve the manufacturer of liability in a personal injury action. A twelve-year-old child was burned when a flannelette nightgown burst into flames within two seconds of contact with a hot grill on an electric range. The district court found the manufacturer liable under the strict liability in tort standards of New Hampshire law, and the manufacturer challenged the ruling on the ground that the material of the garment in question met the standards of flammability established by the federal government under the Flammable Fabrics Act. The Court of Appeals, in holding that the Act did not preclude state development of private civil remedies, noted that the legislative history of the Act’s preemption section, enacted as part of a group of 1967 amendments to the Act, evidenced a Congressional intent to increase the protection of consumers by facilitating the improvement of existing flammability standards. Since the standards had, in fact, not been updated for twenty years “[t]he evident solicitude of Congress for the plight of burn victims . . . must be taken into consideration when interpreting [the preemption provisions of the Act]”. 484 F. 2d at 1027.

ment of federal standards, despite the lack of a state law mandating state officials to perform this function. This system has shown a great potential for effectiveness, as shown by Appendices I and II of this paper, which detail voluntary state participation in the enforcement of a federal ban on spray adhesives linked to multiple birth defects. In commenting on this voluntary state action Charles H. Boehne, Director of the CPSC Office of Field Coordination, stated:

All but seven States and the District of Columbia freely offered their support and participated in actual retail store visits in order to remove the banned spray adhesives from retail sale. Some States which did not commit manpower for store visits did issue press releases and made some telephone contacts with stores.

State officials at all levels were extremely enthusiastic and participated with a great deal of zeal.

The success of this operation indicates that the CPSC can perform its enforcement functions on a far more effective level through state cooperation and assistance. Indeed, with over 1500 man-days expended by the states on this operation in visiting almost 19,000 retail stores, it seems likely that federal enforcement will fail due to lack of manpower unless the states cooperate.

At the same time, however, the achievements of this particular federal-state venture do not show that new state legislation which will adopt federal standards is unnecessary. It must be emphasized that the CPSC received voluntary state cooperation in the spray adhesive banning program, and seven states donated no assistance. While the CPSC can deputize state officials, it cannot force them to do the work of the Commission. Commenting upon the need for a state legislative mandate, one state official indicated:

No state agency, no matter how well intentioned and how earnestly it wants to assist the Commission, will be able to do so for very long without legislative authorization. The best and

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83. The CPSC has since withdrawn this ban. See CCH Consumer Product Safety Guide No. 29, Feb. 1, 1974 at 7.
84. Memorandum from Charles H. Boehne, Director of CPSC Office of Field Coordination, to CPSC Commissioners, Sept. 27, 1973.
85. Letter from Kenneth J. Bostock, Special Assistant to Governor of State of Washington, to Ross L. Koeser, Director of State Programs Division, CPSC Office of Field Coordination, Sept. 12, 1973.
perhaps only method of obtaining that authorization is through the passage of uniform state product safety laws. This is true for a very simple and basic reason. Without that authorization, there will be no additional state funding provided to that agency to carry out these regulatory functions.

For this reason, the Commission’s effectiveness, I would estimate, will be directly proportional to the number of states that have passed uniform laws.

Effective enforcement of CPSC standards cannot happen unless state consumer protection agencies are mandated by law to assist the federal agency. “[T]here must be a uniformity of laws, regulations, and interpretations developed for federal and state agency enforcement if there is to be uniformity of program development, implementation, and operation in the field of product safety.”

D. Adoption of Uniform State Legislation

On August 30 and 31, 1973, a meeting of 14 State officials, together with the CPSC field and headquarters personnel took place to discuss the implementation of a Section 29 program of federal-state cooperation in the administration and enforcement of the CPSA. This Steering Committee reached agreement on three major points: there is a need for federal-state cooperation in product safety control programs; there is a need for uniformity of laws, regulations, standards, and interpretations; and there is a need for a National Conference of Product Safety to identify problems, develop objectives, and arrive at methods and procedures. The reactions to the Steering Committee were generally favorable, and it is believed that a significant step has been taken toward a realization by both the CPSC and the states that a joint effort is vital to the proper effectuation of CPSA policies.

The National Consumer Product Safety Conference was held on May 15, 16, and 17, 1974, and the theme throughout the conference was uniformity. While it is only hoped that this Conference will produce, through exchange of viewpoints, specific recommendations regarding state legislative action, certain preliminary observations can be made.

86. Letter from Shelby Johnson, Director of Kentucky Division of Environmental Services, to Charles H. Boehne, Sept. 7, 1973.
87. A summary of the Steering Committee meeting, along with subsequent comments by state officials on that meeting, was forwarded to the Hofstra L. Rev. by the CPSC Office of Field Coordination.
88. See note 87 supra.
First, the CPSC has drafted a Uniform Consumer Product Act which will be presented at the Conference for consideration by the states. Enactment of this legislation by a state would mean immediate adoption as law of the policies and standards of the CPSC, and thus would appear advisable as the clearest method of obtaining uniform standards and interpretations. While passage of the Uniform Act should therefore be strongly recommended, the CPSC and the Conference must realistically be aware that a number of states will not immediately agree to this plan, and should therefore provide for alternative recommendations:

... I would like to caution you in assuming that [the Uniform Consumer Product Safety Act] is the only bill that should be endorsed by the Conference as legislation to be enacted by the states. There are many states where the political climate would not be conducive to the passage of such comprehensive legislation.

I would recommend that a number of pieces of legislation, including the Poison Prevention Packaging Act, the Uniform Hazardous Substances Act, and the Flammable Fabrics Act be considered by the Conference for possible endorsement. This would give recognition to the fact that some states may be very slow to realize the need for consumer product safety legislation.

While on an ideal level it is unfortunate that some states, despite the enormous number of consumer injuries caused by defective products, cannot conclusively see the need for effective state product safety legislation, it is a fact of life that legislatures often move very slowly in the passage of laws, and the CPSC must be aware of this fact. Compromise is inevitable, although consumer safety is not an area in which it seems appropriate.

Second, it is likely that the Conference will deal with the advisability of establishing State Consumer Product Safety Commissions. While the creation of a new state agency might be advantageous from the point of view of a fresh body generally having greater energy and initiative, it is not believed that this plan should be recommended. To create a new consumer protection agency at the state level would generally be to admit the inability

89. As yet, only one state has independently adopted CPSC standards. 5 N.J. Reg. 354 (a) (1973).
90. Letter from Kenneth J. Bostock, Special Assistant to Governor of State of Washington, to Ross L. Koeser, Director of State Programs Division, CPSC Office of Field Coordination, Sept. 12, 1973.
State Implementation of existing agencies to effectively deal with their supposed area of expertise and would likely destroy their initiative. However little these agencies are presently accomplishing, they would be guaranteed to do less in the future. The creation of a new agency would also involve establishing a new framework and method of operations, which would inevitably expend a great deal of time.

It is therefore believed that the authority of existing State agencies should be strengthened and broadened, and additional funds should be supplied by State legislative bodies. Existing personnel in these agencies should be encouraged to deal with product safety problems in their particular areas of expertise. With a new and powerful federal agency to coordinate operations, it is likely that fresh impetus will be given to previously inactive state agencies and these bodies can become highly effective instruments in the product safety field.

III. CONCLUSION

The helplessness of the consumer, especially the child, in the face of a mass-produced defective product, and the growing realization that the consumer has a right to be protected from unreasonable risk of injury due to defective and dangerous products, has produced in recent years a public demand for government action. The CPSA is an excellent response to that demand, for the broad authority granted to the CPSC to gather product injury information, to establish and maintain regulatory standards, and to ban unsafe products places in one federal body the power to effectuate the production of the safest possible consumer products.

But the realistic abilities of the CPSC must not be exaggerated. The field of product safety is a massive one, and the mandate of the CPSA is too broad to accomplish without a cooperative effort on the part of all those in a position to assist. "[E]ven the states and CPSC members can hardly begin to measure the magnitude and complexity of providing protection to the consuming public against undue risk of injury from violative consumer products".

It is vital that the states recognize their proper role in light

91. Many state agencies, in fact, already possess broad authority which is not utilized. Some state agencies do not themselves realize the potential extent of their powers. CALIFORNIA REPORT, supra note 30.
92. Id. at 6.
of the passage of the CPSA. Whether a particular state's product safety program has been a success or a failure, that state should begin to coordinate its efforts with the machinery of the CPSC. States should commit their agency manpower to the gathering of injury information and the enforcement of federally established regulatory standards:

The Commission feels in any cooperative system every level of government should do what it does best, and in the vast majority of cases, local conditions are best met through local efforts. But, local efforts are made more effective when uniformly coordinated; in fact, this method seems to be the only way to achieve a truly national effect.

It is submitted that a uniform coordination of efforts cannot be achieved without state legislative action. Section 29 of the CPSA directs the CPSC to formulate a program of federal-state cooperation. State consumer protection agencies must be likewise mandated by their respective legislatures to assist in the establishment of this cooperative program. States must adopt by law the uniform regulatory standards of the CPSC, which has the expertise to develop reasonable, enforceable standards. The proposed Uniform State Consumer Product Safety Act should be recognized as the appropriate mechanism by which to achieve uniformity of standards and interpretations.

The National Consumer Product Safety Conference will be an important event for the CPSC, the states, and the American consumer. If the states are willing to embrace the Conference theme of uniformity and work toward the accomplishment of a cooperative program of administration and enforcement the ideals of the CPSA may well be achieved, and the consumer will thereby receive the protection from the unreasonable risk of product injury to which he has a right.

Robert A. Faller

## APPENDIX I

**State's Activity on Spray Adhesives**

<table>
<thead>
<tr>
<th>State</th>
<th>Mandays Expended</th>
<th>No. of Stores Visited</th>
<th>No. of Banned Items on Shelf</th>
<th>No. of Stores Refusing To Remove Items</th>
<th>No. of States Legal Action</th>
<th>Publicity</th>
</tr>
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<tbody>
<tr>
<td>Alabama</td>
<td>6</td>
<td>88</td>
<td>25</td>
<td>0</td>
<td>0</td>
<td>4 Radio</td>
</tr>
<tr>
<td>Alaska</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1 Press release</td>
</tr>
<tr>
<td>Arizona</td>
<td>85</td>
<td>1,341</td>
<td>120</td>
<td>0</td>
<td>0</td>
<td>NONE</td>
</tr>
<tr>
<td>Arkansas</td>
<td>20</td>
<td>240</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>All 14 counties had excellent local press coverage. 5 Spots on TV &amp; Radio and newspaper</td>
</tr>
<tr>
<td>California</td>
<td>400</td>
<td>5,900</td>
<td>2,500</td>
<td>1</td>
<td>1</td>
<td>1 Press release by State. Counties issued their own. 1 Press release</td>
</tr>
<tr>
<td>Colorado</td>
<td>20</td>
<td>300</td>
<td>600</td>
<td>0</td>
<td>0</td>
<td>None</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2 Press Releases</td>
</tr>
<tr>
<td>Delaware</td>
<td>6</td>
<td>35</td>
<td>200</td>
<td>0</td>
<td>0</td>
<td>1 Newspaper</td>
</tr>
<tr>
<td>Florida</td>
<td>90</td>
<td>1,000</td>
<td>800</td>
<td>0</td>
<td>0</td>
<td>1 TV, 1 Press release</td>
</tr>
<tr>
<td>Georgia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1 Press Release</td>
</tr>
<tr>
<td>Hawaii</td>
<td>5</td>
<td>100</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1 Press Release</td>
</tr>
<tr>
<td>Idaho</td>
<td>74</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>Issued Banning order under State law.</td>
</tr>
<tr>
<td>Illinois</td>
<td>21</td>
<td>211</td>
<td>208</td>
<td>0</td>
<td>0</td>
<td>1 Press Release re: State Banning Order</td>
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### APPENDIX I (continued)

<table>
<thead>
<tr>
<th>State</th>
<th>Code</th>
<th>Articles</th>
<th>Letters</th>
<th>Phone Calls</th>
<th>TV Stations</th>
<th>Radio Stations</th>
<th>Newspapers</th>
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<tr>
<td>Indiana</td>
<td>3</td>
<td>11</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>Widespread</td>
<td>Newspapers</td>
</tr>
<tr>
<td>Iowa</td>
<td>76</td>
<td>1,098</td>
<td>1,024</td>
<td>0</td>
<td>0</td>
<td>Local health</td>
<td>officials</td>
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<tr>
<td>Kansas</td>
<td>4</td>
<td>57</td>
<td>28</td>
<td>0</td>
<td>0</td>
<td>3 TV Stations</td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>58</td>
<td>267</td>
<td>141</td>
<td>0</td>
<td>0</td>
<td>1 Press Release</td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>15</td>
<td>140</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>8 Spots on TV</td>
<td>&amp; Newspaper</td>
</tr>
<tr>
<td>Maine</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>8</td>
<td>150</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3 Press Releases</td>
<td></td>
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<tr>
<td>Massachusetts</td>
<td>5</td>
<td>135</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>None</td>
<td></td>
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<tr>
<td>Michigan</td>
<td>2</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>None</td>
<td></td>
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<tr>
<td>Minnesota</td>
<td>7</td>
<td>142</td>
<td>101</td>
<td>0</td>
<td>0</td>
<td>1 Press Release</td>
<td></td>
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<tr>
<td>Mississippi</td>
<td>52</td>
<td>250</td>
<td>343</td>
<td>0</td>
<td>0</td>
<td>Press release</td>
<td>to counties,</td>
</tr>
<tr>
<td>Missouri</td>
<td>26</td>
<td>475</td>
<td>809</td>
<td>0</td>
<td>0</td>
<td>and TV stations</td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>3</td>
<td>15</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1 Press Release</td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td>7</td>
<td>29</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>None</td>
<td></td>
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<tr>
<td>Nevada</td>
<td>20</td>
<td>600</td>
<td>50</td>
<td>0</td>
<td>0</td>
<td>1 Press release</td>
<td>Appearance on Radio</td>
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<td>New Hampshire</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>None</td>
<td>and TV</td>
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<tr>
<td>New Jersey</td>
<td>63</td>
<td>1,984</td>
<td>1,309</td>
<td>0</td>
<td>0</td>
<td>1 Press Release</td>
<td></td>
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<td>New Mexico</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2 Press Releases</td>
<td></td>
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<tr>
<td>New York</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>None</td>
<td></td>
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<tr>
<td>North Carolina</td>
<td>1</td>
<td>7</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>12 Radio, 4 TV</td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>18</td>
<td>186</td>
<td>345</td>
<td>0</td>
<td>0</td>
<td>2 Wire Services</td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>38-1/2</td>
<td>300</td>
<td>300</td>
<td>0</td>
<td>0</td>
<td>1 Press Release</td>
<td></td>
</tr>
</tbody>
</table>

Note: The table includes data on media coverage and releases from various states. The codes and quantities represent the number of articles, letters, phone calls, TV stations, radio stations, and newspapers mentioned in the appendix.
### APPENDIX I (continued)

<table>
<thead>
<tr>
<th>State</th>
<th>Forecasts</th>
<th>Actuals</th>
<th>Orders</th>
<th>Actions</th>
<th>Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oklahoma</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Oregon</td>
<td>86</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>100</td>
<td>2,500</td>
<td>1,150</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>South Carolina</td>
<td>18</td>
<td>234</td>
<td>191</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>South Dakota</td>
<td>14</td>
<td>127</td>
<td>24</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tennessee</td>
<td>24</td>
<td>48</td>
<td>3,623</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Texas</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Utah</td>
<td>6</td>
<td>150</td>
<td>40</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Vermont</td>
<td>1/2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Virginia</td>
<td>64</td>
<td>375</td>
<td>400</td>
<td>0</td>
<td>20 Stop sale orders, 1 Television, 2 Press Release</td>
</tr>
<tr>
<td>Washington</td>
<td>100</td>
<td>275</td>
<td>250</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>West Virginia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>2</td>
<td>24</td>
<td>15</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wyoming</td>
<td>4</td>
<td>60</td>
<td>30</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>1,558</td>
<td>19,460</td>
<td>15,009</td>
<td>1</td>
<td>21</td>
</tr>
</tbody>
</table>
### APPENDIX II

Spray Adhesives Field Effort by CPSC  
August 23, 1973 - September 6, 1973

<table>
<thead>
<tr>
<th>Total</th>
<th>BOS</th>
<th>NYK</th>
<th>PHI</th>
<th>ATL</th>
<th>CLE</th>
<th>CHI</th>
<th>MIN</th>
<th>KAN</th>
<th>NOL</th>
<th>DAL</th>
<th>DEN</th>
<th>LOS</th>
<th>SAN</th>
<th>SEA</th>
</tr>
</thead>
<tbody>
<tr>
<td>652</td>
<td>48</td>
<td>40</td>
<td>104</td>
<td>48</td>
<td>10</td>
<td>30</td>
<td>46</td>
<td>56</td>
<td>24</td>
<td>51</td>
<td>20</td>
<td>66</td>
<td>24</td>
<td>35</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total number stores visited</th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number stores where violative prod. on sale 1st visit</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hearings resulting from 1st visit (held/to go)</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number stores, 2nd visit</th>
</tr>
</thead>
<tbody>
<tr>
<td>54</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hearings resulting from 2nd visit (stores selling product)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number recom. for pros. fwd to BOC</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number rec. expected in addition</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tenor of hearings</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

**Note:** Additional medical investigations are being conducted per Dr. Esch requests. Follow-ups at addtl mfrs & distrib also being done. See supplementary State Action Report.

<table>
<thead>
<tr>
<th>Complaint of no notice</th>
<th>Written response not rec'd yet</th>
<th>no notice, fear, uncomprehending</th>
<th>saw paper, refused to act w/o &quot;official&quot; notice + salesman pulled stock but missed some</th>
<th>not aware of ban</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

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