

July 26, 2017

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway, Room 820
Bethesda, MD 20814

RE: Notice of Proposed Rulemaking: Safety Standard Addressing Blade-Contact Injuries on Table Saws (CPSC Docket No. CPSC-2011-0074)

The undersigned organizations provide these comments in response to the U.S. Consumer Product Safety Commission's (CPSC or Commission) notice of proposed rulemaking to promulgate a mandatory standard for table saws.¹ We represent manufacturers of consumer products, their suppliers, retailers and other key stakeholders that would be greatly impacted by this rulemaking. Our collective members are committed to providing safe products and assert that the most effective product safety regime must be based on a cooperative relationship between the Commission and stakeholders in the private sector.

We support effective regulation and oversight by the CPSC as it complements our shared commitment to safety and excellence in the products used by U.S. consumers. Regulating agencies should choose to explore imposing mandated standards only when necessary and appropriate; safety in consumer products must be maintained without imposing an undue burden on manufacturers, retailers and consumers. A productive and open dialogue between regulated entities and the agency is important in ensuring that the full potential impact of new regulations is considered.

I. Introduction

On April 27, 2017, the CPSC voted 3-2 in favor of a motion to issue proposed mandatory safety standards for table saws. The proposed rule is the latest in a series of Commission actions, beginning with a 2006 CPSC vote granting a petition to impose a standard that could be achieved only through the use of one claimed patented technology. This technology was owned by the person who submitted the original petition in 2003. The CPSC then initiated an advance notice of proposed rulemaking on October 5, 2011.² The briefing package³ was made publicly available on January 18, 2017.

Adopting a mandatory standard for table saws is unnecessary and exceeds the Commission's statutory authority under the Consumer Product Safety Act, as amended (CPSA). We urge the Commission to withdraw the proposed rule in its entirety. If the Commission were to proceed with a final rule, it would require a design requirement in violation of the law⁴ and in conflict with the important principle that consumer product safety is best achieved through a cooperative relationship between the CPSC and the public. In order to issue a mandatory rule, the CPSC must find that compliance with the voluntary standard is not adequate in reducing the risk of injury⁵. Moreover, the Commission must show that the benefits of the rule bear a reasonable

¹ 82 Fed. Reg. 22190.

² 76 Fed. Reg. 62678.

³ CPSC Briefing Package. "Proposed Rule: Safety Standard Addressing Blade-Contact Injuries on Table Saws." January 17, 2017.

⁴ 15 U.S.C. 2056(a)(1) stipulates that any consumer product safety standard promulgated by the CPSC must be expressed in terms of performance requirements.

⁵ 15 U.S.C. 2056(b)(1).

relationship to its costs⁶ and that the rule is the least burdensome requirement that prevents or adequately reduces the risk of injury.⁷

II. A Mandatory Standard Constitutes an Impermissible Design Requirement

The rule, if finalized, would create a government-mandated monopoly run by the owner of more than 100 granted patents related to the technology in question. Despite a claim by the Commission that the standard is a performance requirement, the agency has expressed its conclusion that the use of patented technology is the only way a product could meet the proposed mandatory standard.⁸ As such, the proposed rule would establish a design standard if finalized. This action would exceed the authority granted to the Commission by Congress through the CPSA. Remarkably, the Commission readily admits that the patent holders “may effectively have a monopoly on the technology needed to comply with a mandatory rule.”⁹ The Commission also acknowledges that it does not know which patents would be impacted if a company even attempted to develop alternative technologies that could meet the standard.¹⁰

Regulation should not be used to advantage one technology or one company over another, and the regulatory process surely should not be used to create a government-mandated monopoly that will enrich a pre-determined stakeholder. There is no indication that the patent owners would license their technology at any price. The government will be handing them a monopoly that could drive any and all competition from the marketplace. Furthermore, a mandatory standard that can be met only through patented technology would undermine the industry’s incentive to develop new alternative table saw safety technology.

III. The Voluntary Standard Is Adequate to Reduce the Risk of Table Saw Injuries

A recently updated voluntary standard¹¹ is in place and is sufficient to reasonably protect consumers from table saw injuries. A new international safety standard for table saws¹² was published in June 2014. This standard was developed by experts in 22 countries, including the United States, and will result in improved safety requirements for table saws worldwide. This new standard was adopted in the United States and Canada as an ANSI standard and published on August 29, 2016.

The CPSA makes clear that the Commission cannot issue a mandatory standard unless the agency finds that an existing voluntary standard would not prevent or adequately reduce the risk of injury or there will not be substantial compliance with a voluntary standard.¹³ The CPSC has failed both of these tests.

The agency admits that it does not have adequate data to determine that the current voluntary standard will not reduce the risk of injury. For the advance notice, the Commission relied upon a special study on injuries using data from 2007-2008. That study does not include any data with respect to table saws meeting the voluntary standard that is currently in effect or was in effect at

⁶ 15 U.S.C. 2058(f)(3)(E).

⁷ 15 U.S.C. 2058(f)(3)(F).

⁸ See 82 Fed. Reg. 22210.

⁹ *Ibid.*, 22211.

¹⁰ *Ibid.*, 22210.

¹¹ UL 987, 8th Edition, *Standard for Stationary and Fixed Electric Tools*.

¹² IEC 62841-3-1.

¹³ 15 U.S.C. 2058(f)(3)(D).

the time the advanced notice of proposed rulemaking was issued. Cognizant of the “inconsistencies . . . in the 2007-2008 special study,”¹⁴ the CPSC decided it could NOT rely on that data in support of this proposed rule.¹⁵ Despite this acknowledgement, the CPSC is proceeding with the rulemaking, even though it now insists that the data used as the foundation for the rulemaking is completely inconsistent and unreliable.

Since the CPSC utilized unreliable data when it issued the advance notice, the entire rulemaking should never have proceeded in the first place. As such, the agency cannot make a finding that the existing voluntary standard would not adequately reduce the risk of injury as the CPSA requires. The new data on which the CPSC bases the proposed rule is unreliable as well. For example, the agency cannot even determine the type of table saw on which an injury occurred,¹⁶ let alone the age of the saw in question and whether that saw was in compliance with the existing voluntary standard.

Furthermore, the Commission makes clear in its notice that the industry is complying with the voluntary standards.¹⁷ The commission has provided no reliable evidence showing that it meets the requirements of the CPSA. The agency cannot support a finding that the current voluntary standard is not adequate to reduce the risk of table saw injuries nor can it show there is not compliance with the standard.

IV. A Mandatory Standard’s Benefit Would Not Bear a Reasonable Relationship to its Cost and Safety

The CPSA requires the CPSC to conduct regulatory analysis, including potential costs and benefits when issuing a proposed rule.¹⁸ This rulemaking illustrates a trend at the agency; one in which the CPSC fails to conduct adequate cost-benefit analyses with its rulemakings and imposes prohibitive costs on manufacturers and consumers without accounting for the risks associated with the products, as required by the CPSA.

The CPSC’s cost estimates throughout the notice are riddled with inconsistencies. For example, the least expensive table saw models can be purchased currently for \$129.¹⁹ The agency claims that the least expensive table saws under a mandatory standard would increase in price by as little as \$200,²⁰ presumably to about \$350-400. Surprisingly, the Commission later asserts that “CPSC staff expects that some bench and contractor saws will retail for under \$1,000.”²¹ These are clear contradictions in analysis.

Saws incorporating the technology that would be mandated by the CPSC are currently available to consumers, meaning there is in fact reliable data on the retail cost of a saw incorporating the proposed mandated technology. There is no disputing the fact that the least expensive table saw using the mandated technology currently retails “for about \$1,300 to \$1,400 per unit.”²² The

¹⁴ See 82 Fed. Reg. 22202.

¹⁵ *Ibid.*, 22203.

¹⁶ *Ibid.*, 22236. The Commission states, “Because we had no information on the distribution of injuries across saw types (*i.e.*, bench, contractor, and cabinet saws), CPSC staff was unable to compare directly the benefits and costs for each saw type.”

¹⁷ *Ibid.*, 22192.

¹⁸ 15 U.S.C. 2058(c)(1).

¹⁹ See 82 Fed. Reg. 22192, 22217, 22222.

²⁰ *Ibid.*, 22217, 22236, 22242.

²¹ *Ibid.*, 22217.

²² *Ibid.*, 22194.

CPSC provides no information supporting a position that a saw incorporating the technology would be any less expensive. Therefore, if the rule were finalized to mandate the technology, a saw that costs \$300 would increase in price by approximately \$1,000. This is four times the average price of a table saw and would have an \$875 million impact for the benchtop category of table saws alone. Additionally, it would essentially eliminate or ban cost-effective models from the market, significantly harming businesses that use the machines. Such a burden is not justifiable for do-it-yourself or small contractor customers.

V. A Mandatory Standard Is Not the Least Burdensome Alternative

The CPSC has not considered the burdens that its proposal would impose on the general public if this rule were finalized. In the initial regulatory flexibility analysis, the agency fails to consider the impact of its rule on contractors and other small businesses that purchase table saws. The only mention in the entire notice by the CPSC of the cost impact on “small businesses, such as construction contractors, small woodworking shops, cabinet makers, and wood furniture shops” is within an agency response to public comments to the advance notice. In that response, the Commission disregards any concern over the rule’s impact on these firms²³ even though it admits that the rule would lead these small firms to lay off employees.

VI. Conclusion

We are committed to consumer product safety and working in cooperation with the CPSC in furtherance of shared goals of risk reduction and hazard avoidance. The CPSC should withdraw this rule in its entirety and select the best, least burdensome and statutorily required approach: relying upon the current voluntary standard as required by the CPSA. The Commission has not provided reliable support for a finding that the current voluntary standard would not adequately reduce the risk of injury. The agency has dismissed the significant and unreasonable burdens that its proposed mandatory standard would impose on the consumers of table saws, including small businesses. The CPSA clearly establishes that a mandatory standard must be “reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product.”²⁴ The proposed rule for table saws is an unprecedented, misguided and extra-statutory attempt to impose a government-mandated monopoly on an entire industry. We ask the Commission to withdraw the rule and comply with its statutory requirements as Congress intended.

Sincerely,

American Composites Manufacturers
Association

American Fiber Manufacturers Association

American Home Furnishings Alliance

American Pyrotechnics Association

American Sportfishing Association

American Supply Association

Architectural Woodwork Institute

Associated Industries of Florida

Bicycle Product Suppliers Association

Builders Hardware Manufacturers
Association

Business & Institutional Furniture
Manufacturers Association

Colorado Association of Commerce &
Industry

²³ See 82 Fed. Reg. 22218.

²⁴ 15 U.S.C. 2058(f)(3)(A).

Office of the Secretary
U.S. Consumer Product Safety Commission
July 26, 2017

Colorado Association of Mechanical and
Plumbing Contractors
Fashion Jewelry & Accessories Trade
Association
Information Technology Industry Council
International Housewares Association
International Sleep Products Association
Iowa Association of Business and Industry
National Association of Home Builders
National Association of Manufacturers
National Association of Printing Ink
Manufacturers
National Fireworks Association
National Lumber and Building Material
Dealers Association
National Wooden Pallet and Container
Association

North Carolina Chamber
Outdoor Power Equipment Institute
Pennsylvania Manufacturers' Association
Plastics Industry Association
Power Tool Institute
Printing Industries of America
Recreational Off-Highway Vehicle
Association
Retail Industry Leaders Association
Specialty Vehicle Institute of America
Sports & Fitness Industry Association
State Chamber of Oklahoma
Upholstered Furniture Action Council
Window Covering Manufacturers Association
Wisconsin Manufacturers & Commerce
Wood Machinery Manufacturers of America