

Memorandum

THE COMMISSION

TO : THRU: Office of the Secretary *BS*
THRU: Andrew S. Krulwich, General Counsel *AK* July 16, 1980
THRU: Margaret A. Freeston, Deputy General Counsel *MAF*
THRU: Stephen Lemberg, Assistant General Counsel *PSL*
FROM : Alan Shakin, OGC *AS*

SUBJECT: Partial revocation of glazed panels -- VOTE SHEET

Attached are briefing materials, including a restricted memo from OGC, on the partial revocation of the glazed panel provisions in the Commission's architectural glazing standard. Please indicate your vote below:

1. Revoke the glazed panel provisions and approve the Federal Register document at Tab H, as drafted.

(Signature)

(Date)

2. Revoke the glazed panel provisions and approve the Federal Register document at Tab H, with changes (please specify).

(Signature)

(Date)

3. Do not revoke the glazed panel provisions and direct the staff to prepare a Federal Register document to withdraw proposal.

(Signature)

(Date)

4. Other (specify).

(Signature)

(Date)

Attachments

cc: Nick Marchica, OPM
Harry Cohen, OPM
Bert Simson, OPM
Richard Gross, OEX

RECEIVED
OFFICE OF THE SECRETARY
CONSUMER PRODUCT
SAFETY COMMISSION

JUL 16 12 22 PM '80

Memorandum

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TO : THRU: Office of the Secretary *SG*
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Susan B. King 8.13.80.

 (Signature) (Date)
R. David Pittle

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(Signature)_____
(Date)

4. Other (specify). - *response to Kim Mann.*

Susan B. King 8.13.80

 (Signature) (Date)
R. David Pittle

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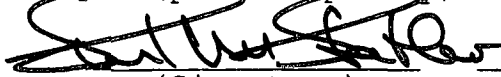
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(Signature)

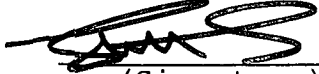
Aug 13, '80
(Date)

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(Signature)

(Date)

4. Other (specify). *(Approve draft letter)*



(Signature)

Aug 13, '80
(Date)

Attachments

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Harry Cohen, OPM
Bert Simson, OPM
Richard Gross, OEX

RECEIVED
OFFICE OF THE SECRETARY
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CONSUMER PRODUCT
SAFETY COMMISSION

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THRU: Stephen Lemberg, Assistant General Counsel *PSL*
FROM : Alan Shakin, OGC *AC*

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(Date)

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Sam Zayona

(Signature)

8/13/80

(Date)

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(Signature)

(Date)

4. Other (specify). *Approve draft letter*

Sam Zayona

(Signature)

8/13/80

(Date)

Attachments

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Harry Cohen, OPM
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Richard Gross, OEX

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Ed B. Shakin *Aug 13, 1980*
(Signature) (Date)

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(Signature)

(Date)

4. Other (specify). *Approve Memo letter.*
Ed B. Shakin *8/13/80*
(Signature) (Date)

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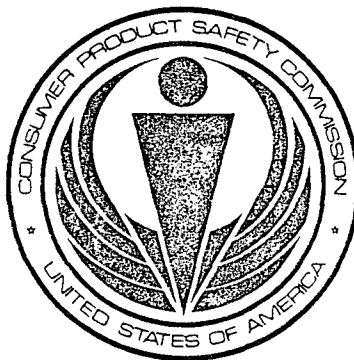
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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

JUN 9 1980

TO: The Commission

THROUGH: Andrew S. Krulwich, General Counsel

THROUGH: Richard A. Gross, Executive Director

THROUGH: Bert G. Simson, Director, Office of Program Management

THROUGH: Harry I Cohen, Program Manager, Household Structural
Products Program, Office of Program Management

FROM: Nick Marchica, Project Manager, Household Structural Products
Program, Office of Program Management

SUBJECT: Architectural Glazing Materials Safety Standard

Attached for Commission consideration is a briefing package in which the staff recommends that the Commission finalize the revocation of the "glazed panels" definition from the subject standard.

This package has been reviewed and approved by the Directorate for Compliance and Enforcement, Communications, Hazard Identification and Analysis, Engineering and Sciences, and Field Operations.

Attachment

Briefing Paper on Finalizing
the Revocation of the "Glazed Panels"
Definitions from the Architectural Glazing
Materials Safety Standard

For information call:

Nick Marchica
Office of Program Management
(301) 492-6453

SUMMARY

The Commission proposed to revoke the "glazed panels" definitions from the Architectural Glazing Materials Standard in the May 31, 1979 Federal Register. The Commission also requested public comment on alternatives to revocation: revisions to the existing "glazed panels" definitions developed by the Commission staff and the National Glass Dealers Association. The staff has analyzed the comments received on the proposal and recommends that the Commission finalize the revocation of the "glazed panels" definitions. The recommendation is based upon the determination that enforcement of uniform safety requirements for "glazed panels" by state and local building code officials will provide increased protection to the public.

Issue: Should the Commission finalize the revocation of the "glazed panels" definitions from the Safety Standard for Architectural Glazing Materials?

Background: On May 31, 1979 the Commission published in the Federal Register a proposal to revoke the Safety Standard for Architectural Glazing Materials as it applies to "glazed panels", which are items of glazing material located next to doors or between two walking surfaces (Tab A). The Commission also requested public comment on other actions concerning "glazed panels" which are being considered as alternatives to the proposed partial revocation of the standard. These alternatives would revise the "glazed panels" definitions by narrowing the scope of the standard's coverage of "glazed panels". Suggested revisions to the existing "glazed panels" definitions were developed by the Commission staff, and the National Glass Dealers Association (NGDA) as part of petition CP 78-18. Both sets of revisions were included in the Federal Register notice of May 31, 1979. A discussion of the petitions involved with this issue is at Tab A (pages 31223-31224 of the Federal Register notice).

In making the decision to propose the partial revocation of the standard, the Commission considered the relative effectiveness, in terms of protecting consumers, of continued application of the standard to "glazed panels" compared with the potential effectiveness of active state, county, and city building code enforcement of uniform safety requirements for "glazed panels". The Commission preliminarily concluded that the continued application of the standard to "glazed panels" is not "reasonably necessary" to protect consumers from the unreasonable risk of injury associated with the product. The Commission's view was that the continued application of the standard to "glazed panels" and the resultant exclusion of active state, county, and city enforcement of safety requirements for "glazed panels" adversely affects the Commission's ability to provide a reasonable assurance that injuries will be reduced.

The Commission specifically solicited written comments on the following issues:

1. To what extent are architectural products subject to the standard, other than "glazed panels", assembled or fabricated at fixed factories and plants or at the site of installation in a building?
2. What is the relative effectiveness of enforcement of safety requirements for glazing materials, particularly "glazed panels", by the Commission; by state and local agencies through enforcement of building codes; and by industry through self enforcement and educational activities as a supplement to Federal enforcement?
3. Would revocation of the Commission standard as it applies to "glazed panels" result in adoption by model building code organizations, and hence state and local building authorities, of uniform safety requirements for "glazed panels"? Would these requirements consist of test methods and performance requirements similar to those presently contained in the Commission standard? Of particular interest in connection with this question is information on the process of adoption by code organizations of safety provisions concerning glazing materials and information on the process and likelihood of adoption by state and local jurisdictions of model code provisions.

4. Is either of the suggested revisions of the "glazed panel" definition, more desirable than revocation of the standard's coverage of "glazed panels"? If so, which suggested version is preferable, and why?

Comments on Proposal:

The Commission received ninety-three (93) written comments on the proposal. A summary of comments is provided at Tab B. In addition, an oral hearing was held on July 16, 1979 in which six witnesses testified.

The major issues discussed in the comments are summarized at Tab C. Basically, the comments delineate two groups: the glazing industry and the building code enforcement officials. The glazing industry supports amendment of the standard by adopting the suggested revision developed by NGDA, prefers CPSC enforcement, and opposes local enforcement of the model codes. A majority of these comments supported the NGDA alternative definitions for "glazed panels". The building code enforcement officials, on the other hand, support revocation of the "glazed panels" definitions from the standard and indicated their desire to enforce at the local level the "glazed panels" definitions which will be part of the model building codes.

Staff Analysis of the Comments

Discussed below are the comments of the glazing industry, the comments of the building code enforcement officials and the staff's analysis of these comments.

Issue 1: Fabrication of glazing products at the job site:

Economic Analysis (Tab D)

The Commission solicited public response on the extent to which glazing products, other than "glazed panels", are assembled or fabricated at factories rather than at the site of installation in a building. Knowing where glazing products are made is significant in determining the extent to which the standard lends itself to CPSC enforcement.

A response to this issue was received from the Consumer Safety Glazing Committee (CSGC) in both oral presentation before the Commission and in written comments. CSGC is a glass and glazing industry group whose members represent all facets of the industry. The CSGC in its presentation opposing the proposed Commission revocation presented data which ostensibly demonstrated that "glazed panels" are not unique in being glazed on site because a large percentage of the other five products covered by the standard are also glazed on site or in a shop near the site of installation. According to CSGC, 95 percent of doors, 21 percent of storm doors, 45 percent of patio doors, 29 percent of shower enclosures and 27 percent of tub enclosures are glazed on site or in dealer's shops near the site. In addition, CSGC stated that 44 percent of all glazing installations are for replacement and, therefore, outside the enforcement capabilities of CPSC personnel altogether, because by necessity they are glazed on or near the site of installation.

The statistical data presented by CSGC are the results of a survey conducted among its membership. The CSGC sent questionnaires to the 1100 members of the National Glass Dealer's Association (NGDA) and the 350 members of the Flat Glass Marketing Association (FGMA). Although there is no clear distinction between the kinds of firms represented in each association, NGDA members tend to be dealers and installers while FGMA members tend to be distributors and contractors. These two associations represent a small minority of the 6,000-10,000 glazing shops nationwide. However, they probably are a significant part of the industry in terms of volume of glazing installations because a large portion of the total number of glazing shops are hardware stores and home repair stores which carry relatively small inventories for the do-it-yourself market.

Economic Analysis reviewed the CSGC survey data and followed up with interviews of several participants to clarify the data. Economic Analysis believes that the survey results are questionable. The estimates are based on responses from only 340 member firms whose representativeness is unknown in terms of the various kinds and sizes of firms in the two associations. The phrasing of the questionnaire also raises doubts about the data presented by CSGC. The participant is requested to estimate the percentage of new "jobs" that have the glazing material installed in the shop or at the job-site as opposed to being received pre-glazed. Aggregating number of "jobs" is misleading because the survey involves both glass dealers and glazing contractors. One "job" for a dealer may be the installation of glazing in a storefront, while to a contractor, one "job" may mean installation of all doors in a shopping center complex. Most significantly, equal weight was given to each response regardless of the volume of the firm's business.

Although the results of the CSGC survey are not statistically valid, they do indicate that "glazed panels" are not a unique product in terms of site of fabrication. Interviews with the glass dealers and with an independent source knowledgeable about the glass industry, revealed that the industry quickly becomes fragmented beyond the major manufacturers and processors of glazing materials and products incorporating glazing. Glass dealers, even at the local level, may also be distributors and contractors. They may also be fabricators of finished products covered by the standard. Many dealers order standard-size glass in bulk from glass manufacturers, processors or large regional distributors and order the metal components from manufacturers of these products. The dealer then fabricates the doors or enclosures in his shop. In this manner, dealers reduce transportation costs by purchasing material in knocked down condition and benefit from higher markups by fabricating the finished product.

It is difficult to estimate the proportion of the over-6000 glass dealers that can also be classified as fabricators, and the volume of glazing performed by these firms. Knowledgeable sources have confirmed that the volume is high in some of the glazing categories covered by the standard. CPSC resources allow only a limited inspection of these firms. It is likely, however, that fabricators would install safety glazing even without regular CPSC inspection in order to avoid economic loss due to product liability suits and the consequent loss in reputation.

Comment by model building code organizations

The three model code groups: Building Officials and Code Administrators, International (BOCA); the International Conference of Building Officials (ICBO); and the Southern Building Code Congress International (SBCCI); recognize that many tub and shower enclosures, patio doors, etc. are received by dealers in a knocked-down condition. Therefore, the model codes propose to retain the requirement for safety glazing in these locations to ensure compliance with the standard. The local building code inspector will be able to look for the label certifying compliance with the standard and thus assure that safety glazing materials are actually used in the required locations. This will provide protection to the consumer without penalizing the manufacturer who ships in a knocked-down condition.

Conclusion: Issue 1: Fabrication of glazing products at the job site

"Glazed panels" are not unique in being glazed on site because many of the five products covered by the standard are also glazed on site or in a shop near the site of installation. However, all "glazed panels" are manufactured at the site of installation in a building. The model code organizations recognize that many of the products covered by the standard are received in a knocked-down condition and therefore propose to have safety glazing requirements in their model codes for these locations to ensure compliance with the standard.

Issue 2: Effectiveness of enforcement of safety requirements

Commission Enforcement

In the preamble to the May 31, 1979 Federal Register Notice, the Commission preliminarily concluded that the continued application of the standard to "glazed panels" and the resultant exclusion of active state, county, and city enforcement of safety requirements for "glazed panels" adversely affects the Commission's ability to provide a reasonable assurance that injuries will be reduced.

The Consumer Safety Glazing Committee (CSGC) notes that the Commission enforcement of the standard has been extremely limited; but compliance with the standard has nevertheless been widespread because of the threat of enforcement of this federal law; because of concern for product liability exposure; because of the inclination of the glass and glazing industry to provide safe products for consumers; and because of the extensive educational efforts of the glass industry to inform others about the existence of the standard and its requirements.

The model code organizations support the Commission's efforts to enforce the standard in factories and plants. The labeling and identification mechanism would be a signal to the local inspector that pertinent products comply with the standard.

Enforcement of state and local building codes

The model code organizations note that local government with their in-place inspection mechanism can provide the on-site inspections needed to determine compliance with the standard. It is clear to the model code organizations that the most effective enforcement of safety glazing regulations is through a cooperative effort between CPSC (inspecting factories and plants) and the state and local enforcement agencies (providing on-site inspections).

The CSGC believes that the relative effectiveness of enforcement of building codes for state and local agencies varies and is speculative. CSGC also notes that for replacement glass and glazing installations, comprising nearly half of those covered by the Commission's standard, enforcement of building codes by state and local agencies is negligible because building permits are not generally required.

Industry self-enforcement and educational activities

The model code organizations state that the broad experience of the communities throughout the country has well established that self-certification by manufacturers, distributors, suppliers, builders and do-it-yourselfers does not provide an adequate degree of assurance that the composite results will be in compliance with the law. The model code organizations believe that relying on self certification as an alternative to local inspection is to take calculated risks with life and property.

CSGC states that industry activities to supplement federal enforcement have been very extensive. As previously stated, CSGC believes compliance with the standard has been widespread because of the threat of federal enforcement of the standard; because of concern for product liability exposure; because of the inclination of the glass and glazing industry to provide safe products for consumers; and because of the extensive educational efforts of the glass industry to inform others about the existence of the standard and its requirements.

Conclusion: Issue 2: Effectiveness of enforcement of safety requirements

Experience in the enforcement of the standard to date indicates that most violations result from the intentional use of noncomplying annealed glass by product fabricators, rather than from the unknowing use of materials which were manufactured to comply with the standard but which do not in fact meet all applicable performance requirements of the standard.

With regard to replacement glass and glazing installations, local enforcement would be less effective if building permits are not required. However, CPSC enforcement efforts would be similarly less effective for replacements if the partial revocation was not finalized. The significant difference is that local building inspectors would be able to respond to trade complaints more effectively than the CPSC because local government has the in-place inspection mechanism to provide on-site inspections.

Compared with the existing CPSC Compliance program, a cooperative effort involving the Commission's enforcement of the standard by inspecting factories and plants manufacturing glazing products and the state and

local agencies providing on-site inspections will ensure a higher level of compliance with the standard and consumer protection.

Issue 3: Adoption by model code organizations of uniform safety glazing requirements for "glazed panels"

Field Operations (Tab F)

In January 1979, the Board for Coordination of Model Codes (BCMC) met in Chicago to work out a uniform definition for "glazed panels" (see page 3 of exhibit C, Tab F) which could be adopted by the three model codes. The Commission staff had input into the uniform definition. As part of this process the model codes will adopt the remainder of the Safety Standard for Architectural Glazing Materials.

In October 1979, the three technical directors of the model codes were queried as to the current status of "glazed panels" in their respective model codes, whether they were still committed to taking over enforcement on "glazed panels" and a possible time frame for a uniform definition. The technical directors are firmly committed to taking over the enforcement of glazed panels as soon as CPSC revokes those provisions from the federal standard.

The technical director of BOCA has indicated that the BCMC uniform definition should be a part of BOCA code to be adopted in June 1980 by the BOCA membership. The other two model codes don't intend to adopt the BCMC uniform definition until CPSC revokes "glazed panels" from the federal standard. However, ICBO and SBCCI have provisions in their codes pertaining to glazing. As soon as the Commission revokes the "glazed panels" definition, the state and local building code officials using the ICBO and SBCCI codes could immediately begin enforcement (see exhibits A-2 and A-3 of Tab F). The reason for ICBO and SBCCI not initiating a proceeding to adopt the BCMC uniform definition until CPSC revokes the "glazed panels" definitions is so there would be no break in enforcement if the Commission were to revoke the provision before the model codes could get the uniform definition into their codes. However, both ICBO and SBCCI now plan to begin code change procedures at their next annual meetings to be held this fall. This is based on the presumption that the Commission will finalize the revocation of the "glazed panels" definition. The time frame for local adoption of the uniform definition will be discussed in the effective date section of the briefing paper.

Consumer Safety Glazing Committee Comment

The CSGC believes that deletion of the "glazed panel" requirements from the standard may result in adoption of similar requirements by model building code organizations. But, the CSGC states that this will not lead to adoption of uniform safety requirements by state and local authorities. CSGC believes as many as 27 states have existing state laws for safety glazing, all of them differing from the Commission's standard, and many of them (17) preempt the adoption or enforcement of varying local building codes. CSGC also believes that even in states where this is not the case, many localities, particularly large cities, do not follow the voluntary recommendations of the model building code organizations.

Preemption:

Compliance and Enforcement (Tab E)

Part of the comment from CSGC asserts that existing laws of 27 states require the use of glazing materials which comply with ANSI Standard Z97.1 in specified locations. CSGC states that 17 of these state laws will prohibit local building officials from enforcing any building code provision that requires the use of glazing materials which comply with the Commission's standard in locations next to doors and between two walking surfaces.

After analysis of the 27 laws cited by CSGC (and from other state laws not mentioned in CSGC's comment), Compliance and Enforcement concludes that in all but five states, the statutory provisions cited by CSGC will not pose a major obstacle to the implementation of the proposal advanced by the three model code organizations to adopt a uniform definition of the term "glazed panel" and to specify the use of materials that meet the Commission's standard.

However, the laws of the states of Connecticut, Delaware, and Massachusetts will have the effect claimed by CSGC. Additionally, laws of the states of Illinois and South Dakota have limited preemptive provisions. Amendment of those laws will be necessary before state or local officials in those five states can enforce the uniform "glazed panels" requirements proposed by the three associations of building officials.

A detailed analysis of the state laws is at pages 4-16 of Tab E.

Field Operations (Tab G)

Field Operations has contacted each of the five states which are believed to have the preemptive effect claimed by CSGC. Basically, the enforcement of the state safety glazing laws in these states is either non-existent or so confusing as to who has the enforcement authority that there is no enforcement of the law.

In the state of Delaware, no state agency has been given the responsibility for enforcement.

South Dakota's law is "handled" out of the fire marshall's office. There is no indication that any residential or commercial buildings have any type of review or approval by the fire marshall's office. In fact, an engineer whose department has jurisdiction over building inspections, was not aware that South Dakota even had a state safety glazing law. He also stated that he doubted if any other building officials in South Dakota are aware of it either.

The Illinois Department of Labor has never invoked any provision of the Safety Glazing Material Act to prohibit any county, city, or local jurisdiction from enforcing any building code provisions regarding safety glazing. However, the Department cannot state, that if the revocation is finalized, they will not enforce the act. However, counties and municipalities with home rule powers are free to impose their own standards.

The situation in Massachusetts and Connecticut is confusing. One hundred percent of the populations of both states are covered by the BOCA code. In Massachusetts, the Department of Public Health is responsible for all product safety matters. Two inspectors charged with this task stated they had never been given assignments having to do with glazing. Two employees of the State Building Code Commission commented that the local building inspectors would utilize whatever requirements are in place and enforceable. The current Massachusetts Building Code, printed in June, 1979 has the same provision as the 1980 Supplement to the BOCA code to be adopted in June, 1980. Apparently, Massachusetts assumed that the uniform definition for "glazed panels" worked out among the model code groups, would be finalized by BOCA.

In Connecticut, a state building inspector of the State Building Code Board was under the "impression" that local officials are utilizing the state code since the federal standard is too difficult to interpret. BOCA has estimated that in Connecticut the adoption of the code as law will be 18 months.

Officials in both states would welcome revocation of the "glazed panels" provisions from the federal standard. They believe local enforcement would be better.

Conclusion: Issue 3: Adoption by model code organizations of uniform safety glazing requirements for "glazed panels"

There is no question that the model codes are committed to the adoption of a uniform code on "glazed panels" if the Commission revokes those provisions from the federal standard. It is expected that in most jurisdictions there will be no break in enforcement of provisions for "glazed panels" if the federal revocation does not take place before June 1980. (Possible exceptions are discussed under Issue 6.) However, the "glazed panels" definitions will not be uniform immediately. Conversations with many individual building code officials show they are also committed to this course and are firmly convinced that local enforcement will provide the best protection for the consumer.

Issue 4: Alternative to revocation-revision of the "glazed panels" definitions

The Commission also solicited public comments concerning the desirability of either the Commission staff's or NGDA's suggested revisions of the "glazed panels" definitions as an alternative to a revocation of the provision.

Consumer Safety Glazing Committee Comment

CSGC favors amendment of the "glazed panels" requirements over deletion of them. CSGC favors revisions closer to those offered by the National Glass Dealers Association. CSGC favors, wherever possible, locally adopted and enforced federal uniform safety requirements for "glazed panels" and for all glass and glazing products.

Building Code Officials Comments

The building code officials oppose amending the "glazed panels" definitions as an alternative to revocation. Model code officials have stated that the standard's "glazed panels" definitions, both the current and the suggested revisions, do not lend themselves to enforcement at the state or local level. Accordingly, the model code organizations cannot recommend the standard's use to their members as long as the standard contains provisions for "glazed panels".

Revocation of the "glazed panels" definitions allows the enforcement of the requirements by state and local governments, and for judgement to be exercised on a case by case basis.

Economic Analysis (Tab D)

None of the public responses addressed the economic implications of the alternatives. One commentor did compare cost differences between the current standard and a completely new proposal. However, this commentor went beyond the scope of the current issues. Any economic assessment of a new proposed revision of the standard would first require engineering and epidemiological study.

Economic Analysis provided information to the Commissioners on potential consumer savings from revision of the "glazed panels" definition. An estimate of the aggregate consumer savings is 10 to 20 million dollars annually. Refining the calculations of aggregate consumer savings is impractical due to the data gathering considerations and limited Commission resources.

Conclusion: Issue 4: Alternative to revocation - revision of the "glazed panels" definitions

Revision of the "glazed panels" definitions will result in the continued exclusion of active state, county, and city enforcement of safety requirements for "glazed panels" as well as the other architectural glazing materials covered by the standard. This will adversely affect the Commission's ability to provide a reasonable assurance that injuries will be reduced.

Other Issues

Issue 5: Polished Wire Glass

In the May 31, 1979, Federal Register Notice, the Commission stated that the proposed partial revocation, if issued as a final rule, would remove any restriction imposed by the standard on the use of polished wire glass in "glazed panels."

Economic Analysis (Tab D)

Model building codes officials have previously testified before the Commission that the proposed uniform code would apply the ANSI Z97.1 performance requirements to polished wire glass used in "glazed panels." On April 17, 1980, the Building Officials and Code Administrators International, Inc. (BOCA), informed the Commission staff that it is now their understanding that the proposed uniform code would only apply the ANSI Z97.1 performance requirements to polished wire glass used in "assemblies which are subject to human impact and are required to have fire resistance rating." The tougher performance requirements present in the CPSC standard, which will be adopted by the model codes, would continue to be applied to polished wire glass in "glazed panels" not mandated by fire codes. Therefore, Economic Analysis' earlier conclusion that the revocation of the "glazed panels" provision would provide "considerable relief" to the polished wire glass industry no longer holds.

Issue 6: Effective Date

The Commission proposed that the partial revocation of the standard become effective on the date of publication of the final rule.

Economic Analysis (Tab D)

The timing of an effective date for a revocation and subsequent local adoption of uniform safety requirements may affect the extent of protection provided to consumers and may create some market disruption, especially as a change in requirements affects inventories and current orders. According to the model code groups, it may take up to 18 months to incorporate uniform requirements for glazed panels into building codes. An immediate effective date, favored by these groups, would allow them to adopt the uniform requirements and initiate the adoption mechanism on the local level. An immediate effective date, these groups claim, would not create a break in consumer protection, but rather would create an interim period during which the existing provisions of the building codes, currently preempted by the CPSC standard, would again be applied. However, there may not be any safety requirements for "glazed panels" in some jurisdictions during the interim period. The BOCA does not currently have a reference to "glazed panels" in its code. Although the BOCA may approve the uniform requirements at its June 1980 meeting, it may take as much as 18 months for some local jurisdictions to incorporate the changes in their local building codes and begin enforcement. BOCA officials did indicate that they would press their membership to follow in the interim the safety requirements in existence before the preemption.

The preempted requirements meet the criteria set forth in ANSI Z-97.1 which are less stringent in their impact requirements for category II laminated glass and polished wire glass, and in the scope of applications covered by the requirements. As a result, the demand for safety glazing is expected to decline with the revocation and then rise again when local jurisdictions begin to enforce the uniform requirements. Calculating the potential effect on demand as a result of these changes would involve investigating thousands of local jurisdictions. This would be impractical.

However, model code officials believe that the initial drop in demand for safety glazing would be minimal because the interim period would be short and because local building inspectors are concerned with public safety and would continue to require the use of safety glazing in potentially hazardous locations.

Notwithstanding arguments to the contrary, an immediate effective date may create a gap in coverage of safety requirements for "glazed panels". In order to assure maximum safety for consumers, an effective date 12 months subsequent to the adoption of uniform requirements by all three model code groups should be considered. Although earlier it is stated the local jurisdictions may take up to 18 months to adopt the requirements, the 18 months is considered as maximum. A 12 month effective date could probably be attained if the matter is given priority. Although the model code groups favor an immediate effective date, they have indicated that a 12 month effective date will not hinder adoption of uniform requirements and initiation of the adoption mechanism at the local level.

Recommendation

The Household Structural Products team recommends that the Commission finalize the revocation of the "glazed panels" definitions from the Safety Standard for Architectural Glazing Materials by approving the draft Federal Register Notice at Tab H. The recommendation is based upon the determination that enforcement of uniform safety requirements for "glazed panels" by state and local building code officials will provide increased protection to the public. An effective date 12 months after publication in the Federal Register is also recommended. In addition, the model building code officials have informed the staff that they will adopt the remainder of the Safety Standard for Architectural Glazing Materials, thus assisting the Commission in enforcement of the standard.

CHRONOLOGY
"Glazed Panels" Definitions

January 6, 1977	Safety Standard for Architectural Glazing Materials published with an effective date of July 6, 1977
February 22, 1978	Elwood W. Buck petition, CP 78-10, requesting amendment of the "glazed panels" definitions with respect to glazing located adjacent to sliding glass doors
July 11, 1978	Briefing package on Petition CP 78-10 transmitted to the Commission
August 17, 1978	Commission briefing on Petition CP 78-10
August 24, 1978	Commission Meeting -- staff directed to prepare briefing materials on "glazed panels"
September 20, 1978	Briefing Package on "glazed panels" transmitted to the Commission
September 21, 1978	National Glass Dealers Association petition, CP 78-18, requesting amendment of the standard by modification of the "glazed panels" definitions
September 28, 1978	Commission briefing on "glazed panels" definitions
November 2, 1978	Briefing package on deletion of the "glazed panels" definitions from the standard
November 15, 1978	Commission briefing
November 30, 1978	Commission decision to propose revocation of the "glazed panels" definitions
January 15, 1979	Petition CP 79-6 filed by a number of manufacturers of jalousie assemblies requesting exemption of jalousie windows from requirements of the standard
May 9, 1979	OGC transmittal to the Commission of a draft <u>Federal Register</u> notice proposing revocation of the "glazed panels" definitions
May 31, 1979	Publication of <u>Federal Register</u> Notice on proposed revocation
July 16, 1979	Oral Hearing on proposed revocation
July 30, 1979	Close of comment period for <u>Federal Register</u> Notice on proposed revocation

List of Attachments

Tab A	May 31, 1979 <u>Federal Register</u> Notice Proposing Partial revocation of the Safety Standard for Architectural Glazing Materials
Tab B	Summary of comments received on the proposal
Tab C	Summary of major issues discussed in the comments
Tab D	HICP memorandum of October 26, 1979 HICP memorandum of April 14, 1980 HICP memorandum of May 9, 1980
Tab E	CEEE memorandum of March 20, 1980
Tab F	FO memorandum of March 19, 1980
Tab G	FO memorandum of May 2, 1980 Telephone log -- May 12, 1980 Ron Younger, FO to Paul Heilstedt, BOCA
Tab H	Draft <u>Federal Register</u> Notice

[16 CFR Part 1201]

**Safety Standard for Architectural
Glazing Materials; Proposed Partial
Revocation of Standard**

AGENCY: Consumer Product Safety
Commission.

ACTION: Proposed partial revocation of
standard.

SUMMARY: In this document, the Commission proposes to revoke the Safety Standard for Architectural Glazing Materials as it applies to "glazed panels," which are items of glazing material located next to doors or between two walking surfaces. The standard would continue to apply to glazing materials used or intended for use in doors, storm doors, sliding glass doors (patio type), bathtub doors and enclosures, and shower doors and enclosures. The Commission also requests public comment on other actions concerning glazed panels which are being considered as alternatives to the proposed partial revocation. The Commission is proposing this partial revocation and is considering other alternative actions because inclusion of glazed panels in the standard and enforcement of the requirements by the Commission may not be "reasonably necessary" to eliminate or reduce an unreasonable risk of injury to consumers.

DATES: (1) Written comments concerning the proposed partial revocation should be submitted by July 30, 1979.

(2) There will be an opportunity for interested persons to orally present data, views, or arguments on July 16, 1979 at 9:30 a.m. in the Commission's hearing room. Those wishing to make oral presentations should notify the Office of the Secretary in writing by July 2, 1979. A summary or copy of testimony is to be submitted to the Office of the Secretary by July 9, 1979.

EFFECTIVE DATE: The Commission proposes that the partial revocation become effective on the date of publication of a final rule.

ADDRESS: Comments, notices of appearance for the oral presentation, and summaries or copies of testimony should be sent to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received material may be seen in, or

copies obtained from, the Office of the Secretary, 1111 18th Street, N.W., Third Floor, Washington, D.C.

HEARING LOCATION: CPSC hearing room, 1111 18th Street, N.W., Third floor (9:30 a.m.), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harry I. Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6453; for information on the oral presentation contact Richard Danca, Office of the Secretary, (202) 634-7700.

SUPPLEMENTARY INFORMATION: On January 6, 1977, the Consumer Product Safety Commission issued the Safety Standard for Architectural Glazing Materials to eliminate or reduce unreasonable risks of injury associated with architectural glazing materials and certain products incorporating those materials (42 FR 1428). The standard prescribes tests to ensure that glazing materials used in certain architectural products either do not break when impacted with a specified energy or break with such characteristics that they are less likely than other glazing materials to present an unreasonable risk of injury. The standard became effective on July 6, 1977.

The standard is applicable to glazing materials used in six specific products. Those products are: storm doors, doors, bathtub doors and enclosures, shower doors and enclosures, sliding glass doors (patio-type), and glazed panels. Each of these products is defined by the standard.

Definition of Glazed Panel

Section 1201.2(a)(10) of the standard defines the term "glazed panel" to mean:

1. Any piece of glazing material in a residential building that has a vertical edge within 12 inches of a door and a bottom edge below the top of the door.

2. Any piece of glazing material in a nonresidential building that has a vertical edge within 48 inches of a door and a bottom edge below the top of the door.

3. Any piece of glazing material in a nonresidential building which has walking surfaces on both sides of the glazing material, a bottom edge less than 18 inches above any walking surface, and an area greater than 9 square feet. Both walking surfaces must be within 36 inches of the panel and the planes of each walking surface must be within 12 inches of each other.

Not included in definition 2 above are panels with an intervening interior permanent wall between the door and the panel. Not included in definition 3

above are panels with a horizontal framing member or permanent chair rail of specified dimensions.

As required by law, before issuing the standard presently in effect, the Commission solicited written comments from interested persons and held public hearings in order to receive oral presentation of data, views, and arguments. After considering the substantive issues raised by the written and oral comments, the Commission concluded that an unreasonable risk of injury was associated with certain items of glazing material located next to doors or between two walking surfaces ("glazed panels"). Injury information available to the Commission at that time indicated that consumers had sustained lacerations and other serious injuries after falling against or through such items of glazing material and after walking or running into such items of glazing material mistaken for open space. Accordingly, the Commission determined that the requirements of the standard were "reasonably necessary" to prevent the unreasonable risk of injury and should therefore be applicable to "glazed panels," as that term is defined in the standard.

The standard became effective on July 6, 1977, and generally applies to any item of glazing material used after that date in the manufacture or fabrication of any of the products subject to the requirements of the standard, including glazed panels. Since the standard has been in effect, the Commission has become aware of several practical problems that have arisen from those provisions in the standard which define the term "glazed panel" and that make the standard applicable to glazed panels.

Building Code Provisions

An issue of major concern to the Commission is the effect of the glazed panel provisions of the standard on the enforcement of city, county, and state building codes applicable to glazing materials.

At the time the Commission issued the standard, approximately 4,500 cities and counties were enforcing building codes which contained provisions addressed to risks of injury which could result from breakage of glazing materials by accidental human impact. The provisions of these building codes applied to glazing materials used in specific products or locations. The products and locations covered by most of these building codes were generally the same products and locations covered by the Commission's standard.

However, differences existed among the various building codes as to the precise description of the products and locations covered, and none of the building codes used language identical to the description of "glazed panel" in § 1201.2(a)(10) of the Commission's standard in describing items of glazing material near doors and walking surfaces.

Unlike the Commission's standard, building codes in effect at the time the standard was issued did not contain test procedures or criteria for use in determining whether glazing materials comply with the requirements of the codes. Instead, the building codes provided that glazing materials used in any product or location subject to their provisions must be acceptable when tested in accordance with the "American Standard National Safety Performance Specifications and Methods of Test for Safety Glazing Material Used in Buildings," published by the American National Standards Institute (ANSI), designated ANSI standard Z97.1. The test procedures and criteria of ANSI standard Z97.1 differ somewhat from the procedures and criteria contained in the Commission's standard and will pass some materials which would fail the Commission's standard.

Preemption of Nonidentical Requirements

Section 26(a) of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2075(a)) provides that whenever a consumer product safety standard is in effect and applicable to a product, no state or political subdivision of a state may impose any requirements applicable to the same product and intended to address the same risk of injury as the consumer product safety standard unless the state or local requirements are "identical" to those of the applicable consumer product safety standard. Thus, to the extent that the provisions of any city, county, or state building code were applicable to any of the products covered by the standard and were intended to address the same risks of injury, those provisions were made unenforceable by § 26(a) of the CPSA after July 6, 1977, the effective date of the standard.

Discussions With Building Officials

The Commission and its staff have met with representatives of the three major associations of buildings officials (Building Officials and Code Administrators International, International Conference of Building Officials, and Southern Building

Congress International) to explore the possibility that state and local building codes might be amended to make their performance requirements identical to those of the Commission's standard and applicable to the same items of glazing materials, thereby removing any obstacle to their enforcement arising from the preemption effect of section 26(a) of the CPSA.

From these discussions, the Commission has learned that the principal building officials of most cities, counties, and states would not recommend that their jurisdictions amend their building codes in this manner because those building officials believe that the provisions of the standard concerning glazed panels are not suitable for enforcement at the state or local level. Representatives of the three associations of building officials have expressed particular objection to the absence of any language in any part of the glazed panel definition which allows a building official to exercise some judgment concerning whether a particular item of glazing material in a given location should be required to comply with the standard on the basis that it may actually be subject to accidental human impact. Instead, the language of § 1201.2(a)(10) of the standard defines a "glazed panel" as "any piece" of glazing material which has a vertical edge within a specified distance of a door and as "all panes" of glazing material with walking surface on both sides when all specified dimensions are present. No part of the definition of glazed panel is modified by the phrase "when such product presents a risk of injury to consumers by accidental breakage of the glazing material from human impact" or similar language. Thus, state or local procedures for granting variances or exemptions from safety glazing requirements would not apply to state or local enforcement of the Commission standard's requirements. Further, such modification would likely be inappropriate for a federal standard since it could result in an impermissibly vague standard.

Industry Structure

Because of the preemption of state and local safety glazing requirements by the Commission's standard, protection of consumers from the risk of injury associated with glazing materials depends on the effectiveness of Commission enforcement. The Commission's enforcement capability and the structure of the glazing materials industry, specifically the process by which products are

"manufactured" so as to come under the coverage of the standard, have a direct bearing on the effectiveness of the Commission's enforcement program in ensuring that consumers are adequately protected from the risks of injury associated with glazing materials.

Architectural products subject to the standard are assembled or fabricated either at a fixed factory or plant or at the building site during new construction or replacement of glazing materials. Information available to the Commission at this time indicates that five of the six products subject to the standard: doors, storm doors, sliding glass doors (patio-type), bathtub doors and enclosures, and shower doors and enclosures, generally are assembled or fabricated at a fixed factory or plant. Glazed panels, on the other hand, become products subject to the standard when the glazing material is placed in an opening of a building next to a door or between two walking surfaces such that it meets the definition of "glazed panel."

The National Glass Dealers Association (NGDA), a trade association representing installers of architectural glazing materials, in written and oral presentations to individual Commissioners and the staff, has disputed the accuracy of the above information concerning the extent to which products subject to the standard are assembled or fabricated in fixed plants. NGDA asserts that all architectural products subject to the standard, with the possible exception of storm doors, are, in varying degrees, assembled or fabricated at the site of their eventual use and that glazed panels do not present a different enforcement situation than other products subject to the standard. Therefore, NGDA maintains that the process of "manufacture" of glazed panels should not be considered a material factor in the Commission's decision concerning glazed panels. As discussed further below, the Commission believes that this factual issue is material and relates directly to determining the effectiveness of the Commission's standard in protecting consumers.

Effectiveness of Enforcement

Since the standard became effective, Commission investigators have inspected factories and plants of several hundred manufacturers of architectural products other than glazed panels (doors, sliding glass doors (patio-type), storm doors, and bathtub and shower doors and enclosures) and have found a high rate of compliance with the

standard. Because of this degree of compliance, the preemption under § 26(a) of the CPSA of building code provisions covering products other than glazed panels does not have an adverse impact on the Commission's ability to ensure that consumers are adequately protected. The high rate of compliance should, in the Commission's view, provide little opportunity for persons engaged in construction to obtain noncomplying products. Thus, the fact that non-identical building code requirements covering these products are presently not enforceable by state or local authorities does not in the Commission's view, create a situation where consumers are exposed to an unreasonable risk of injury. As indicated above, NGDA has disputed the accuracy of the Commission's information concerning the extent to which these products are assembled or fabricated at a fixed plant. The Commission is therefore interested in receiving information on this issue in order to determine the extent to which enforcement of the standard at factories and plants is sufficient to ensure protection of consumers from the unreasonable risks of injury associated with glazing materials used in doors, sliding glass doors (patio-type), storm doors, and bathtub and shower doors and enclosures.

The standard is also applicable to glazed panels. Aside from the glazing material itself, glazed panels are generally not constructed or fabricated at a plant or factory. Instead, an item of glazing material becomes a "glazed panel" under the definition of § 1201.2(a)(10) when it is placed in an opening of a building next to a door or between two walking surfaces if all the relevant provisions of the glazed panel definition are met. The last stage of the "manufacture" of a glazed panel subject to the standard therefore generally results either from the installation of an item of glazing material by a glazing contractor during the construction of a new building or from the replacement of an item of glazing material in an existing building.

The number of glazing contractors engaged in activities that could result in the manufacture of glazed panels is estimated to be greater than 6,000 firms. Since the effective date of the standard, the provisions on glazed panels have generated a significantly large number of inquiries and complaints about alleged violations of the standard from many of these firms, all of which are potential manufacturers for purposes of the standard. The total number of investigators assigned to all of the

Commission's area offices is less than 150 and is not expected to increase significantly in the foreseeable future. Because of both the large number of firms engaged in the installation of glazing materials which may or may not be glazed panels, depending upon their location in any given building, and the large quantities of glazing materials installed by these firms each day, the Commission believes that its ability to ensure a high level of compliance with the standard's glazed panel requirements, given the size of its enforcement staff, would be significantly strengthened through the active cooperation and assistance of state, county, and city agencies responsible for enforcing state and local building codes. Such cooperation would be consistent with section 29 of the CPSA (15 U.S.C. 2078), which calls for a program of Federal-State cooperation, including the acceptance of assistance in the administration and enforcement of the act from states and localities in such areas as investigation and education.

However, as discussed above, since the effective date of the standard, the Commission has learned that most state and local building officials have discontinued enforcement of pre-existing building code requirements applicable to glazing materials because of the preemption provisions of section 26(a) of the CPSA. Thus, the assistance of state, county and city agencies is not now generally available to the Commission in the enforcement of safety requirements for architectural glazing materials.

Unless state and local building codes incorporate requirements for glazed panels identical in all respects to the Commission's standard, the enforcement of state and local requirements will continue to be preempted, thus resulting in little or no state and local involvement in enforcement of safety requirements for architectural glazing materials. As indicated above, state and local jurisdictions have generally declined to enact building code provisions identical to the standard because of the limitation the standard imposes on the ability of state and local authorities to grant variances or exemptions where deemed appropriate.

NGDA, in its presentations to Commissioners and staff, has asserted that the small size of the Commission's field enforcement staff does not significantly impair enforcement of the standard's requirements and that it is not necessary to supplement the Commission's enforcement capability with state, county, and local personnel

in order to ensure protection of consumers. NGDA believes that "the mere threat of Federal regulatory enforcement—coupled with awareness and understanding of Federal requirements—has traditionally been more than sufficient" to enforce Federal requirements. In this regard, NGDA claims to have engaged in significant educational efforts to aid its members and others in complying with the Commission's standard.

As discussed further under the section titled "Scope of Glazed Panel Definition" below, NGDA maintains that the enforcement problems associated with the glazed panel provisions are caused chiefly by the lack of clarity in the definition of glazed panels and the resultant difficulty in understanding the scope of coverage of the standard.

In view of the importance of this issue to the Commission's ultimate decision on whether continued coverage of glazed panels is reasonably necessary to protect consumers from unreasonable risk of injury, the Commission solicits public comment on the issue of the effectiveness of enforcement of safety requirements for glazing materials in general, and glazed panels in particular, (1) by the Commission; (2) by state and local agencies through enforcement of building codes; and (3) by industry through self-enforcement and educational activities as a supplement to Federal enforcement.

Scope of Glazed Panel Definition

Experience gained by the Commission in the administration and enforcement of the standard indicates that many of the problems encountered by affected parties in interpreting and understanding the glazed panel provisions of the standard are a result of the complexity of the glazed panel definition. The Commission believes that some of the objections expressed by NGDA and by state and local building officials about the language in the "glazed panel" definition are valid. The Commission has become aware of many instances in which items of glazing material fall within the definition of glazed panel in § 1201.2(a)(10) but do not appear to present the unreasonable risks of injury which the standard was intended to reduce or eliminate. Examples of such items of glazing material that fall within the standard's definition of "glazed panel" include the following:

1. Items of glazing material located within 12 inches of a door in a residential building or within 48 inches of a door in a nonresidential building which are not likely to be broken by

consumers falling against or through them because of their small size or their distance above the ground or floor level.

2. Items of glazing material located within 12 inches of a door in a residential building which are not likely to be mistaken as openings for human passage because of their small size or their height above the ground or floor level.

3. Items of glazing material located within 48 inches of a door in nonresidential buildings which are not likely to be mistaken as openings for human passage because of their small size, their distance from the edge of the door, or their height above the ground or floor level.

4. Items of glazing material located near doors in both residential and nonresidential buildings which are less likely to be subject to accidental human impact because they are not in the same plane as the door.

5. Items of glazing material located near doors in both residential and nonresidential building which are not likely to be mistaken as openings for human passage because of a horizontal framing member or chair rail which gives a visual signal that solid material is present.

Consideration of alternatives

The Commission has considered several alternative solutions to the problems presented by the scope and complexity of the glazed panel definition. One alternative is to revoke the standard as it applies to glazed panels and defer to state and local building code authorities for enforcement of safety requirements for glazed panels. A second alternative is to revise the glazed panel definition to narrow the scope of the standard's coverage of glazed panels. Both the Commission's staff and NCDA have suggested revisions of the glazed panel definition. In considering solutions to the problems discussed above, the Commission has evaluated the extent to which the various alternatives would provide a high level of compliance with safety requirements for glazed panels.

A. Revocation of Glazed Panel Provisions

The Commission believes that while revisions of the glazed panel definition of the standard, as discussed further below, could be expected to improve the degree of compliance with the glazed panel provisions by eliminating some of the more technical violations that may not present any serious danger to the safety of consumers, it does not anticipate that such revisions would

lead to the rapid adoption of the revised glazed panel provisions of the standard in identical form by model building code organizations or by cities, counties, and states. Rather, information received from representatives of the three associations of building officials leads the Commission to believe that incorporation of any revision of the glazed panel provisions of the standard into substantial numbers of city, county or state building codes might not occur for several years, if ever. Therefore, based on present information, the Commission does not believe that state and local assistance would be available to the Commission in enforcement of safety glazing requirements for glazed panels even if those provisions were revised.

On the other hand, representatives of the International Conference of Building Officials and the Southern Building Code Congress International have advised the Commission that if the glazed panel provision of the standard were revoked in such a way as to remove the preemptive effect of the Commission's standard on those provisions of state and local building codes covering items of glazing material next to doors and next to walking surfaces, all of those cities and counties which have adopted the model building codes published by those organizations would resume enforcement of existing building code provisions applicable to glazing material next to doors and next to walking surfaces. Representatives of Building Officials and Code Administrators International have informed the Commission that if the Commission takes final action to revoke the glazed panel provisions of the standard, that association would reestablish the provisions in its model building code applicable to glazing materials near doors and near walking surfaces that were in effect before July 6, 1977, and that all of these cities and counties that have adopted that code would resume enforcement of those provisions. Representatives of all three groups of building officials have told the Commission that their members desire to enforce those provisions in their building codes which were applicable to glazing materials near doors and near walking surfaces before the Commission's standard became effective because their members believe enforcement of those provisions is necessary for the protection of their citizens.

Additionally, representatives of all three associations of building officials, acting as the Council of American Building Officials and the Board for

Coordinating Model Codes (CABO/BCMC), agreed on January 31, 1979, to recommend the adoption by the model building code organizations of a uniform definition of glazed panel and adoptions of the performance test requirements contained in the Commission's standard. The BCMC has taken this action with the understanding that the Commission is considering a proposal to revoke the standard as it applies to glazed panels, thus removing the preemptive effect of the Commission's standard as to glazed panels.

The Commission believes that the adoption by the model building code organizations, and hence city, county, and state building authorities, of uniform safety glazing requirements for glazed panels, is possible only if the preemptive effect of the standard as to glazed panels is removed. If the standard's present requirements for glazed panels continue in effect, it appears that the active involvement of the state and local authorities in the enforcement of safety glazing requirements will continue to be unavailable.

The Commission has considered the relative effectiveness, in terms of protecting consumers, of continued application of the standard to glazed panels under the circumstances described above compared with the potential effectiveness of active state, county, and city building code enforcement of uniform safety requirements for glazed panels. It preliminarily concludes that the continued application of the standard to glazed panels is not "reasonably necessary" to protect consumers from the unreasonable risk of injury associated with the product. In determining whether application of the standard to glazed panels is "reasonably necessary," the Commission has considered whether the standard provides a "reasonable assurance that the frequency or severity of injuries will be reduced." H.R. Rep. No. 1153, 92d Cong., 2d Sess. 33 (1972); See also, *Aqua Slide 'N' Dive Corp. v. Consumer Product Safety Commission*, 569 F. 2d 831, 839 (5th Cir. 1978); *Forrester v. Consumer Product Safety Commission*, 559 F. 2d 774, 789 (D.C. Cir. 1977). In the Commission's view, the continued application of the standard to glazed panels and the resultant exclusion of active state, county, and city enforcement of safety requirements for glazed panels adversely affects the Commission's ability to provide a reasonable assurance that injuries will be reduced.

By proposing to revoke those provisions of the standard applicable to glazed panels, the Commission wishes to emphasize that it is not in any way reconsidering or rejecting its previous finding that certain items of glazing material located near doors and between two walking surfaces (i.e., glazed panels) present unreasonable risks of lacerations and other serious injuries if the material breaks into sharp, dagger-like shards as a result of accidental human impact. Rather, the Commission has preliminarily concluded, in accordance with § 9(e) of the CPSA (15 U.S.C. 2058(e)), that the requirements covering glazed panels in the standard are no longer reasonably necessary to eliminate or reduce an unreasonable risk of injury because state and local authorities, if not preempted by § 26(a) of the CPSA, may provide better protection of the public through enforcement of building code requirements covering glazed panels than can the Commission alone without involvement of state and local authorities.

NGDA contends that Federal preemption of state and local requirements for glazed panels combined with the large number of potential glazed panel manufacturers and the limited size of the Commission's enforcement staff, does not warrant the conclusion that the glazed panel provisions of the standard are not reasonably necessary to protect consumers from the unreasonable risks of injury associated with glazed panels.

NGDA, in its presentations to the Commission, opposes such a revocation and argues that revocation of the Federal standard in favor of local coverage "risks the adoption and enforcement of either varying city, county and State requirements for those consumer products or possibly, the adoption and enforcement of no requirements at all." Such a result, in NGDA's view would be "contrary to the basic Congressional findings and purposes of the Consumer Product Safety Act," specifically the findings in section 2(a)(4) of that act that "control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers."

As discussed above, the Commission is encouraged by the discussions between the Commission's staff and representatives of model building code organizations and the decision of BCMC. The Commission believes that revocation of the glazed panel provisions of the standard would be

likely to lead to adoption by the model building code organizations, and hence State and local building authorities, of uniform requirements for glazed panels consisting of test methods and performance requirements similar to those presently contained in the Commission's standard. This result would appear to address the objections of NGDA that revocation risks adoption of varying and burdensome local requirements. The Commission specifically seeks public comment on this question of the likely result of revocation of the standard's coverage of glazed panels. Of particular interest to the Commission is detailed information on the process of adoption by model code organizations of provisions such as those concerning glazed panels and information on the process and likelihood of adoption by State and local jurisdictions of model code provisions. The Commission believes such information is important to a determination of the likely impact of revocation of the glazed panel provisions on the glazing industry.

While the Commission has preliminarily determined that the glazed panel provisions of the standard are not reasonably necessary to eliminate or reduce an unreasonable risk of injury and has therefore decided to propose for public comment a revocation, the Commission remains open to the alternative of revision of the definition of "glazed panels," discussed below.

B. Revision of Glazed Panel Provisions

The Commission's staff and NGDA in Petition CP78-18 (Sept. 21, 1978) have presented to the Commission suggestions for revision of the glazed panel provisions of the standard to be considered as alternatives to revocation of the glazed panel provisions. The staff's suggestion, originally set forth in its September 20, 1978 briefing package to the Commission and revised in its November 2, 1978 briefing package, is intended to address the problem areas, discussed above under "Scope of Glazed Panel Definition," where an item of glazing material falls within the definition of glazed panel but does not appear to present the unreasonable risks of injury that the standard was intended to reduce or eliminate.

The suggested staff revision of the glazed panel provisions was the result of a general staff re-evaluation of the standard's coverage of glazed panels, including an analysis of injury data. The analysis showed that for 1977, injuries associated with glazed panels, including certain windows falling within the scope of the definition of glazed panels,

constituted less than 3 percent of the injuries associated with products within the scope of the standard and, in addition, had the lowest mean severity, and the smallest proportion of child victims when compared to other products within the scope of the standard. Most of the injuries which were the subject of in-depth investigations, reports from consumers and newspaper accounts for the period 1976 through March 1978, involved glazed panels which have one dimension greater than five feet. The most frequently reported injury pattern for this two and one-quarter year period involved accidental human impact by individuals who lost their balance and fell against the glazing material. The second most frequently reported injury pattern involved accidental impact by individuals who walked or ran into the glazing material as a result of mistaking the glazing material for open space or a door. The staff's suggestion for revision of the glazed panel provisions would restrict the applicability of the standard to those glazed panels that could be mistaken for open space for human passage or that because of their size and location present a risk of injury of consumers falling against the glazing material.

The staff's suggested revision introduces the term "sidelite" into the standard and defines the term to include those items of glazing material that are within 12 inches of a door in either a residential or non-residential building and in the same plane as the door. Under the definition, a sidelite is covered by the standard if it has an area greater than nine square feet and a bottom edge less than 18 inches above the floor or ground level. As revised, the term "glazed panel" would be defined to include only items of glazing material (other than sidelites) in non-residential buildings that are between two walking surfaces. Moreover, a "glazed panel" would be covered by the standard if it has an area greater than nine square feet and a bottom edge less than 18 inches above the floor or walking surface. In addition both walking surfaces must be within 36 inches of the panel, and the horizontal planes of each walking surface must be within 12 inches of each other. The suggested revised "glazed panel" definition is thus identical to the portion of the definition at § 1201.2(a)(10)(iii) in the present standard. The revised provisions, like the present definition, would not cover panels where there is a horizontal member such as a piece of the framing or a permanent chair rail of specified dimensions and location. The staff's

suggestion thus distinguishes glazing material near doors (sidelites) from glazing material between walking surfaces (glazed panels). The precise language of the staff's suggested revision and an illustration showing the coverage of the revised sidelite definition are set forth in Appendix A.

NGDA, in its presentations to Commissioners and staff as well as in Petition CP78-18, has also recognized that problems exist with respect to the glazed panel provisions of the standard and has urged the Commission to revise the definition of "glazed panel" to limit the coverage of the standard to architectural glazing materials used in a number of "particularly hazardous" products or installation situations and to eliminate the present broad coverage of the standard. NGDA's specific proposals for revision of the glazed panel provisions, upon which the Commission staff's proposals are based, would, like the staff's suggestion, distinguish between glazing near doors and glazing not located near doors and would make other changes designed to limit the coverage of the standard with respect to glazed panels to situations where, in NGDA's view, a genuine risk of injury to consumers is present. In NGDA's view, at least two important hazards need to be addressed: (1) consumers walking, falling or otherwise accidentally impacting glazed panels and (2) consumers pushing their hands against glazed panels when reaching for a door. NGDA's interpretation of CPSC injury data and observations by NGDA member firms indicate that the first hazard pattern is more acute near doors and that the second hazard pattern exists only near doors. This analysis of hazard patterns differs from that of the CPSC staff and explains the major differences between the revised sidelite definitions suggested by the staff and by NGDA. Unlike the CPSC staff, NGDA does not specify a minimum area (i.e., nine square feet) and includes within the definition of "sidelite" any glazing material with a bottom edge less than 48 inches above the floor or ground level (as opposed to the Commission staff's bottom limit of 18 inches). Thus, NGDA's suggested sidelite definition would create a "zone of protection" within 12 inches of a door and within 48 inches of a floor or ground level where safety glazing would be required. This zone, in NGDA's view, would offer protection against potential hand impact injuries which the staff's sidelite definition would not address. Under the NGDA proposal, items of glazing material in non-residential buildings (other than sidelites) that are between

two walking surfaces would continue to be designated as "glazed panels" and would remain substantially as now defined in the standard, with certain wording changes. The precise language of NGDA's suggested revision and an illustration showing the coverage of the revised sidelite definitions are set forth in Appendix B.

The Commission solicits comment on the two alternative suggested revisions discussed above, both as to desirability of adopting a revision of the glazed panel definition rather than revoking the standard as it applies to glazed panels and as to the merits of the respective suggested revisions. [All of the material referred to above, including the Commission staff's September 20, 1978 and November 2, 1978 briefing packages, NGDA's September 21, 1978 petition (SP 78-18), and NGDA's November 9, 1978 submission, is available for inspection in the Commission's Office of the Secretary at the above address.]

Effect of Revocation of Glazed Panel Provisions on Preemption

States and their political subdivisions are presently prevented, by section 26(a) of the CPSA, from imposing safety requirements applicable to glazed panels intended to address the risk of injury from breakage by accidental human impact that are not identical to the requirements in the Commission's standard. By revoking the glazed panel provisions of the Commission's standard, the Commission believes that the preemptive effect of the standard as to products meeting the definition of a glazed panel would be removed. Since the standard would no longer apply to the product, states and their political subdivisions would be free to adopt safety requirements applicable to the product and intended to address the risk of injury from breakage by accidental human impact.

Requirements of the Commission's standard applicable to any item of glazing material used in a door, storm door, sliding glass door (patio type), bathtub door and enclosure, or shower door and enclosure, as those terms are defined in the standard, are not affected by this proposed partial revocation of the standard and will continue to be subject to the standard. Accordingly, section 26(a) of the CPSA would continue to preempt non-identical state and local requirements applicable to glazing materials used in these five categories of products where state or local requirements are intended to address the risk of injury from breakage by accidental human impact.

Petitions

On February 22, 1978, Elwood W. Buck filed a petition with the Commission (CP 78-10) requesting amendment of the glazed panel provisions of the standard to state specifically that the term "glazed panel" is applicable only to those items of glazing material within twelve inches of the movable panel of a sliding glass door in a residential building. In this petition, Mr. Buck stated that, according to his reading of the standard, an item of glazing material in a residential building located within twelve inches of the nonmovable panel of a sliding glass door and below the top of the sliding glass door would be a "glazed panel" and therefore covered by the standard, because the Commission staff interpreted the term "door," as used in the glazed panel definition of the standard, to include all panels of any sliding glass door.

The petitioner stated that after an examination of all information compiled by the Commission at the time the standard was proposed, he was unable to find any injury associated with an item of glazing material located within twelve inches of the fixed panel of a sliding glass door.

After consideration of the information set forth in this petition, the Commission has concluded that the relief requested by the petition should be granted. The partial revocation proposed below would have the effect of removing from the standard's coverage any item of glazing material within 12 inches of either the movable or nonmovable panel of a sliding glass door in a residential building.

Until final action is taken on the proposed revocation or an alternative action concerning glazed panels is taken, the Commission will stay enforcement of the standard in any instance involving an item of glazing material within 12 inches of the nonmovable panel of a sliding glass door in a residential building or within 48 inches of the nonmovable panel of a sliding glass door in a nonresidential building.

On January 15, 1979, a number of manufacturers of jalousie assemblies filed a petition with the Commission (CP 79-6) requesting amendment of the standard to exempt the louvers of jalousie windows from the requirements of the standard. The petitioners believe that the exemption is warranted for the same reasons for which the Commission previously exempted the louvers of jalousie doors from the standard. (See, § 1201.1(c)(2).) The Commission

exempted the louvers of jalousie doors on the basis of its finding that annealed glass appears to be uniquely suited for use in the louvers of jalousie doors. The Commission found that there may be practical problems associated with the use of plastic or laminated, tempered and organic-coated glass in jalousie doors and that to require jalousie doors to comply with the requirements of the standard would increase the cost of the product by 25 to 30 percent. In view of these facts and after reviewing the data on injuries associated with jalousie glass doors, the Commission determined that an exemption was appropriate. (See 42 FR 1431, January 6, 1977 (preamble to the standard).) The Commission did not exempt jalousie louvers used in any products or assemblies other than doors.

While windows, as a separate category of architectural products, are not generally subject to the standard, the louvers of jalousie windows or other jalousie assemblies located within 12 inches of a door in a residential building or within 48 inches of a door in a non-residential building would fall within the scope of the present definition of glazed panel.

After preliminary consideration of Petition CP 79-6, the Commission has concluded that the reasons cited above for exempting the louvers of jalousie doors from the requirements of the standard would appear to be equally applicable to the louvers of jalousie windows. The partial revocation proposed below, if issued as a final rule, would have the effect of removing from the standard's coverage any glazed panel as defined in 16 CFR 1201.2(a)(10), including jalousie windows which are the subject of Petition CP 79-6. In addition, the CPSC staff's suggested revisions of the glazed panel provisions, specifically the suggestion that the provisions apply only to individual items of glazing material with an area greater than nine square feet, would have the effect of exempting the louvers of jalousie windows because none of the individual louvers would have an area greater than nine square feet.

Until final action is taken on the proposed partial revocation or an alternative action concerning glazed panels is taken, the Commission will stay enforcement of the standard as it applies to the louvers of jalousie windows or other assemblies within 12 inches of a door in a residential building or within 48 inches of a door in a non-residential building.

On March 27, 1979, the National Glass Dealers Association (NGDA) filed a petition with the Commission (CP 79-8) requesting the amendment of the

standard to postpone, until January 6, 1980, enforcement of the standard as it applies to the use of polished wired glass in doors and glazed panels. On April 25, 1979, NGDA amended the petition to request a two-year postponement of enforcement of the standard. On April 13, 1979, the Flat Glass Marketing Association (FGMA) filed a petition (CP 79-9) requesting a similar two year postponement of enforcement of standard as it applies to polished wired glass in doors and glazed panels.

As discussed further below, the Commission has considered a request from the Flat Glass Association of Japan (FGAJ) for a stay of enforcement of the standard for polished wired glass used in glazed panels adjacent to doors. Since Petitions CP 79-8 and CP 79-9 address similar issues with regard to glazed panels, the Commission has decided to address, on an interim basis, the portions of Petitions CP 79-8 and CP 79-9 involving glazed panels as part of this proceeding to partially revoke the standard. (See the discussion below under "Continuation of Stay of Standard for Polished Wire Glass".)

As indicated above, on September 21, 1978, NGDA filed a petition with the Commission (CP 78-18) requesting, among other things, amendment of the standard by modification of the glazed panel definition. Revocation of the glazed panel provisions of the standard would have the effect of denying the portion of Petition CP 78-18 which proposes revision of the glazed panel provisions of the standard. In this document, the Commission solicits public comment on the various alternatives currently before it, including the proposals of NGDA concerning glazed panels contained in Petition CP 78-18. The other portions of petition CP 78-18 not concerning glazed panels will be addressed in a separate proceeding.

Enforcement

Until the partial revocation proposed below is issued as a final revocation or an alternative action is taken concerning glazed panels, the requirements of the standard will continue to apply to items of glazing material which meet the definition of "glazed panel" in § 1201.2(a)(10). However, in the enforcement of the glazed panel provisions, the Commission will give priority to alleged violations involving glazed panels that present obvious risks of injury from accidental human impact breakage because of the panel's size and shape; their proximity to either a door or a floor or walking surface; their

presence in the same plane as the door; or the absence of any visual signal that solid material is present.

In addition, as stated above, until final action on the proposed revocation or an alternative action concerning glazed panels is taken, the Commission will temporarily stay enforcement of the standard as follows:

(1) In response to Petition CP 78-10, enforcement of the standard is temporarily stayed against any item of glazing material located within 12 inches of the nonmovable panel of a sliding glass door in a residential building or within 48 inches of the nonmovable panel of a sliding glass door in a nonresidential building; and (2) in response to petition CP 79-6, enforcement of the standard is temporarily stayed against louvers of jalousie windows or other jalousie assemblies located within 12 inches of a door in a residential building or within 48 inches of a door in a non-residential Building.

Continuation of Stay for Polished Wire Glass in Glazed Panels

As the result of an order issued by the United States Court of Appeals for the District of Columbia Circuit on April 14, 1977, the architectural glazing standard is presently stayed as it applies to wired glass. The stay order was issued by the court pending its consideration of a petition for review of the standard filed by the Flat Glass Association of Japan (FGAJ) and several individual manufacturers of polished wired glass and manufacturers of obscure wired glass. On January 31, 1979, the court issued its decision upholding application of the standard to polished wired glass used in glazed panels adjacent to doors, i.e., glazed panels meeting the definition at § 1201.2(a)(10) (i) and (ii). (*ASG Industries, Inc., et al. v. CPSC*, Nos. 77-1216, 77-1238 (D.C. Cir. January 31, 1979).) However, the court remanded for further Commission consideration the portion of the standard applicable to wired glass used where required by fire codes and to wired glass used in glazed panels not adjacent to doors and between two walking surfaces. (16 CFR § 1201.2(a)(10)(iii).) On April 12, 1979, the court denied a petition for rehearing filed by FGAJ. FGAJ, however, has filed a motion with the court requesting a stay of the court's decision pending application to the U.S. Supreme Court for a writ of certiorari. At this time, the court imposed stay issued on April 14, 1977 is still in effect, and the situation remains as it was before the court's decision of January 31. It is likely that this stay will remain in effect until the

Supreme Court acts on the petition for certiorari.*

By letter from its counsel dated February 26, 1979, FGAJ has requested that the Commission continue the stay of enforcement of the standard as it applies to polished wired glass used in glazed panels adjacent to doors after the court proceedings described above are completed. In addition, NGDA and the Flat Glass Marketing Association (FGMA) have filed petitions requesting a two year postponement of enforcement of the standard as it applies to polished wired glass used in glazed panels and doors other than fire doors. The stay is requested to take effect on the date the standard is reinstated (i.e., the date the present court imposed stay is lifted) as to those uses of polished wired glass not covered by the court ordered remand. These requests are prompted by a desire to minimize the expected disruptive effect on industry of an immediate reinstatement of the standard as it applies to polished wired glass. FGAJ believes that a restriction on the use of polished wired glass in glazed panels will significantly diminish the marketability of the product and could affect the ability of customers to obtain polished wired glass for use in fire doors or other assemblies where it is required to retard the passage of fire. According to FGAJ, approximately 50 percent of the total market for polished wired glass is for use in glazed panels other than those intended to retard the passage of fire. FGAJ maintains that if this substantial portion of the market is eliminated, only a small number of the largest distributors of polished wired glass will be in a position to continue to purchase and stock polished wired glass for fire retardant uses, thus restricting its availability throughout the country. In addition, FGAJ, NGDA, and FGMA all maintain that many glass installers and distributors presently have up to a two year supply of polished wired glass in inventory and that an immediate reinstatement of the standard as to polished wired glass would impose a hardship on these firms.

The Commission has carefully considered the requests for a delay in enforcement of the standard as to polished wired glass in glazed panels and the effect of granting such a delay on the safety of consumers. The

Commission has reviewed injury data associated with glazed panels containing polished wired glass and has concluded that continuing to permit the use of polished wired glass in glazed panels would not expose consumers to a significant risk of injury.

Moreover, the partial revocation proposed below, if issued as a final rule, would have the effect of removing from the standard's coverage any glazed panel presently meeting the definition at § 1201.2(a)(10), thus removing any restriction imposed by the standard on the use of polished wired glass in glazed panels.

Accordingly, balancing the effect on the industry of an immediate reinstatement of the standard as it applies to polished wired glass against the potential for injuries as a result of continuing the present court imposed stay, the Commission has concluded that the stay of the standard as it applies to polished wired glass used in glazed panels adjacent to doors should continue in effect once the present court imposed stay is lifted.

Until final action is taken on the proposed partial revocation or an alternative action concerning glazed panels is taken, the Commission will stay enforcement of the standard as it applies to polished wired glass used in glazed panels within 12 inches of a door in a residential building or within 48 inches of a door in a nonresidential building.

Environmental Considerations

The Commission's environmental review procedures, 16 CFR 1021.5(b)(1), provide that an environmental review is generally not required for amendments to an existing standard that do not alter the principal purpose or effect of the standard. The proposed revocation set forth below would not alter the principal purpose or effect of the standard, which is to reduce or eliminate unreasonable risks of injury associated with breakage by accidental human impact of glazing materials used or intended for use in specified architectural products. The proposed revocation would remove from the coverage of the standard one category of products, glazed panels. If issued as a final revocation, the proposal would remove any preemptive effect of the Commission's standard under section 26(a) of the CPSA on enforcement by cities, counties, and states of existing building code requirements covering certain items of glazing material that are incorporated into buildings and structures. The Commission does not foresee any environmental effects from

the issuance of the proposed revocation which would necessitate an environmental review. Consequently, preparation of a draft environmental impact statement is not necessary.

Effective Date

The Commission proposes that the partial revocation proposed below become effective on the date of publication of a final rule.

Proposal

In accordance with section 9(e) of the Consumer Product Safety Act section 9(e), Pub. L. 92-573, 86 Stat. 1215, 15 U.S.C. 2058(e) and 5 U.S.C. 553, the Commission proposes to revoke the Safety Standard for Architectural Glazing Material as it applies to "glazed panels" by making the following changes in Part 1201 of Title 16, Code of Federal Regulations:

§ 1201.1 [Amended]

1. In 16 CFR 1201.1(a), paragraph (5), consisting of the term "Glazed panels" is revoked and reserved;

2. In 16 CFR 1201.1(b), the fifth sentence is revised to read as follows: "For purposes of this standard, fabricators are considered to be manufacturers of the architectural products listed in paragraph (a) of this section."

§ 1201.2 [Amended]

3. In 16 CFR 1201.2(a), paragraphs (3)(iii), (4)(vi), and (10) are revoked and reserved.

4. In 16 CFR 1201.2(a)(11)(ii), the term "glazed panels" is deleted.

Issues Highlighted for Comment

The Commission specifically solicits written comments and oral presentations of data, views or arguments on the following issues (discussed in more detail above):

1. To what extent are architectural products subject to the standard, other than glazed panels, assembled or fabricated at fixed factories and plants or at the site of installation in a building?

2. What is the relative effectiveness of enforcement of safety requirements for glazing materials, particularly glazed panels, by the Commission; by state and local agencies through enforcement of building codes; and by industry through self enforcement and educational activities as a supplement to Federal enforcement?

3. Would revocation of the Commission standard as it applies to glazed panels result in adoption by model building code organizations, and

* The standard presently contains a temporary exemption for wired glass used in fire doors or other assemblies to retard the passage of fire. This exemption would have expired on January 8, 1980. (See § 1201.1(c)). The question of whether the temporary exemption should be extended or made permanent is one of the issues remanded to the Commission for further consideration.

hence state and local building authorities, of uniform safety requirements for glazed panels? Would these requirements consist of test methods and performance requirements similar to those presently contained in the Commission standard? Of particular interest in connection with this question is information on the process of adoption by code organizations of safety provisions concerning glazing materials and information on the process and likelihood of adoption by state and local jurisdictions of model code provisions.

4. Is either of the suggested revisions of the glazed panel definition, discussed in more detail above, more desirable than revocation of the standard's coverage of glazed panels? If so, which suggested version is preferable, and why?

Interested persons are invited to submit, on or before July 30, 1979, written comments on the issues highlighted above, as well as any other relevant issue. Comments received after this date will be considered to the extent practicable. Written comments should refer to "Glazed Panels" and should be submitted, preferably in five copies, to Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

There will be an opportunity for interested persons to orally present data, views, or arguments on July 16, 1979 at 9:30 a.m., in the Commission hearing room, third floor, 1111 18th Street, N.W. Washington, D.C. Those persons wishing to make oral presentations should notify the Office of the Secretary in writing by July 2, 1979. In addition, a summary or copy of the testimony, preferably in five copies, is to be submitted to the Office of the Secretary by July 9, 1979.

The official transcript of the oral presentation of data, views, or arguments, any written comments, and all other material relevant to this proceeding may be seen in, or copies obtained from, the Office of the Secretary, third floor, 1111 18th Street, N.W. Washington D.C. 20207

Dated: May 24, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix A

Set forth below is the text of the CPSC staff's suggested revision to the glazed panel definition and suggested sidelite definition, and an illustration showing the coverage of the suggested sidelite definition.

§ 1201.2 Definitions.

(a) As used in this Part 1201:

* * * * *

(10) "Glazed panel" means an item of glazing material used in a nonresidential building, other than a sidelite, where:

(i) The lowest edge of the glazing material is less than 18 inches (46 centimeters) above any floor or walking surface; and

(ii) The exposed glazing material in such panel exceeds 9 square feet (0.83 square meters); and

(iii) There are walking surface on both sides, each of which is within 36 inches (92 centimeters) of such panel, and the horizontal planes of such walking surfaces are within 12 inches (31 centimeters) of each other. For purposes of this § 1201.2(a)(10), the term "walking surface" shall include any floor, sidewalk or pathway, or similar surface which has been paved or prepared to accommodate pedestrian traffic.

(iv) Panels described in this paragraph 10 that have a horizontal member such as a piece of the framing or permanent chair rail which is no less than 1½

inches (4 centimeters) in width and located between 24 and 36 inches (61 and 91 centimeters) above either walking surface, are not subject to the requirements of § 1201.3 of this part.

* * * * *

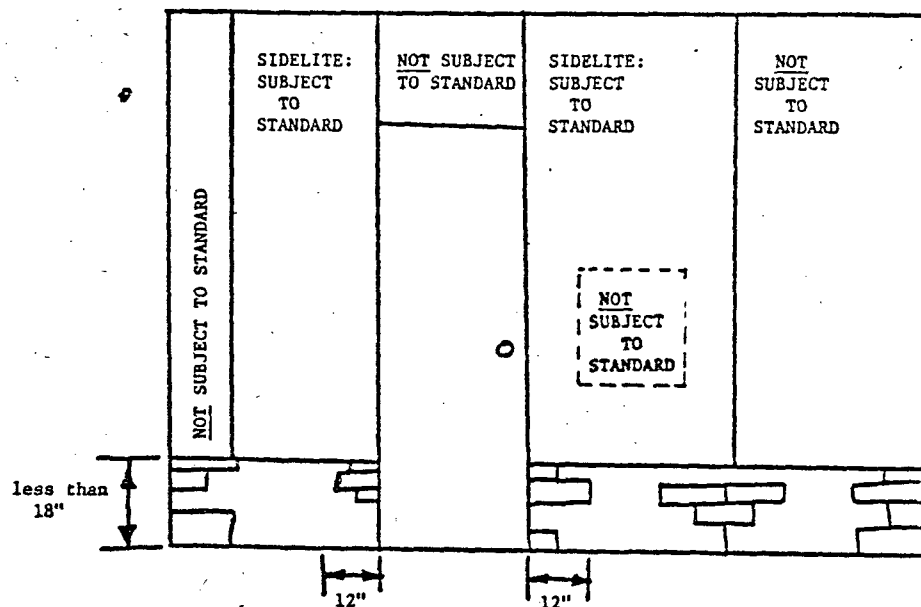
(38) "Sidelite" means an item of glazing material used in any building listed in § 1201.1(b) where:

(i) The glazing material is adjacent to a door and has a vertical edge within 12 inches (31 centimeters) of the door in a closed position and a bottom edge less than 18 inches (46 centimeters) above the level of the bottom of the door; and

(ii) The exposed area of the glazing material exceeds 9 square feet (0.83 square meters); and

(iii) The glazing material is within the same vertical plane as the door in a closed position to which it is adjacent. For purposes of this § 1201.2(a)(38), the term "door" shall include any "door" as defined in § 1201.1(a)(7) and the movable portion of any "sliding glass door (patio-type)" as defined in section § 1201.2(a)(31).

CPSC STAFF'S SUGGESTED "SIDELITE" DEFINITION, ILLUSTRATED:



Glazing material has:

- Vertical edge within 12 inches of a door in a closed position and,
- bottom edge less than 18 inches above the level of the bottom of the door and,
- in the same plane as the door and,
- an area greater than 9 square feet.

Appendix B

Set forth below is the text of NGDA's suggested revision to the glazed panel definition and suggested sidelite definition and an illustration showing the coverage of the suggested sidelite definition.

§ 1201.2 Definitions.

(a) As used in this Part 1201:

(10) "Glazed panel" means any piece of operable or non-operable glazing material used in all buildings other than residential building where:

(i) The lowest edge of the glazing material is less than 18 inches (46 centimeters) above either floor or either walking surface; and

(ii) The exposed glazing material in such panel exceeds 9 square feet (0.83 square meters); and

(iii) There is a walking surface on both sides, each of which is within 36 inches (92 centimeters) of such panel and the horizontal planes of such walking surfaces are within 12 inches (31 centimeters) of each other; and

(iv) Included in the definition of glazed panels and subject to the standard, but exempt from the requirements of § 1201.3, are panels described in this section that have a horizontal member, such as a piece of the framing or permanent chair rail no less than 1½ inches (4 centimeters) in width, which is located between 24 and 36 inches (61 and 91 centimeters) above either walking surface which framing or rail is to serve as a visual signal to consumers. Panels described in this section that also meet the definition of "sidelites" in paragraph (a)(31) of this section do not qualify for the exemption.

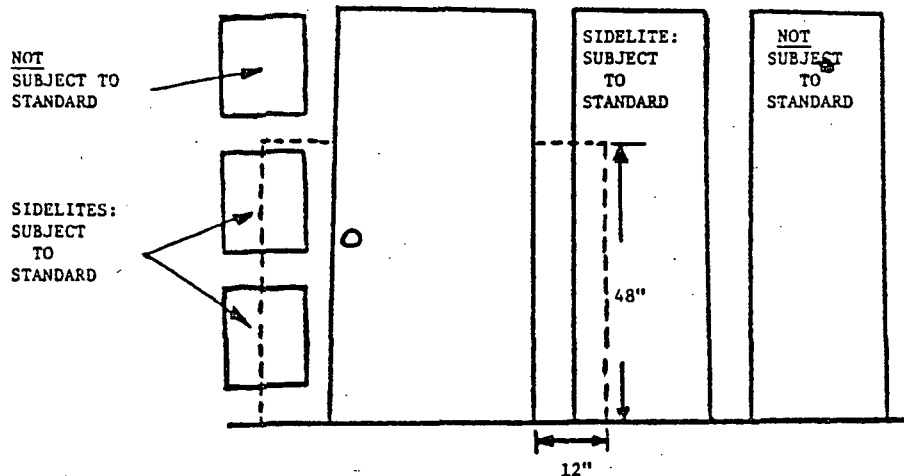
(31) "Sidelite" means any piece of operable or non-operable glazing material used in any building listed in § 1201.1(b) where:

(i) The glazing material is adjacent to a door and within the same wall plane as the door;

(ii) Its nearest vertical edge is within 12 inches (31 centimeters) from the door in a closed position; and

(iii) Its bottom edge is less than 48 inches (1.24 meters) above the floor or walking surface.

NGDA'S SUGGESTED "SIDELITE" DEFINITION, ILLUSTRATED:



Glazing Material is:

- adjacent to a door and,
- within the same wall plane as the door and,
- vertical edge within 12 inches of a door in a closed position and,
- bottom edge less than 48 inches above the floor or walking surface

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 200]

[Release Nos. 33-6069; 34-15861; 35-21059; 39-526; IC-10706 IA-676; File No. S7-549]

Withdrawal of Rule Proposal Concerning Commission Records and Information

AGENCY: Securities and Exchange Commission

ACTION: Withdrawal of proposal.

SUMMARY: The Commission is withdrawing a proposed rule concerning the public availability of staff letters of comment and correspondence with the Commission. It has now concluded that a rule applicable to a broader range of materials may be more appropriate.

DATE: May 23, 1979.

FOR FURTHER INFORMATION CONTACT:

James H. Schropp, Assistant General Counsel, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549; (202) 376-3561.

SUPPLEMENTARY INFORMATION:

In January 1975, the Commission published for comment a proposed rule concerning the public availability of staff letters of comment and correspondence with the Commission [Securities Act Release No. 5561, 1/24/75; 40 FR 4944, 2/3/75]. While that proposal, and the comments received in response thereto have been periodically reviewed by the staff, the Commission has now concluded that a rule applicable to a broader range of materials may be more appropriate. In addition, the recent Supreme Court decision in *Chrysler Corp. v. Bawn*, — U.S. — (No. 77-922, April 18, 1979), has provided some guidance with respect to requests for confidential treatment for records submitted to or obtained by the Commission. The Commission believes that a new rule proposal could be developed which better reflects these procedural concerns.

Accordingly, the Commission has determined to withdraw the rule proposed in Securities Act Release 5561.

Dated: May 23, 1979.

By the Commission.

George A. Fitzsimmons,
Secretary.

Architectural Glazing

"Glazed Panel" Revocation Comments

- CC9-79-1 Reliable Glass Company
 - A. Amend the standard don't eliminate the "glazed panels" requirement
- CC9-79-2 Eugene Oregon, Department of Public Works
 - A. Supports revocation of "glazed panels" definitions
 - B. Supports model code standards
- CC9-79-3 Architectural Glass Corporation
 - A. Supports revocation
- CC9-79-4, 4a Building Officials and Code Administrators International, Inc.
 - A. Summary of comments presented at 7/16/79 Oral Hearing
 - B. Status of and progress of safety glazing provisions in the model codes and what they intend to accomplish.
 - C. Comments represent BOCA, ICBO and SBCCI
 - D. Supports CPSC enforcement of glazing standard in factories and plants.
 - E. Local government can provide effective enforcement to determine compliance for those operations beyond the capability of CPSC.
 - F. Explanation of code adoption process
 - G. Revocation of "glazed panels" will insure participation of local governments
 - H. Responses to questions of Consumer Safety Glazing Committee and the Commission on 7/16/79
 - states that have adopted BOCA
 - can model codes fulfill their pledge?
 - how long to amend model codes?
 - uniformity of model codes?
 - other model code groups?
 - length of time for local adoption?

- local jurisdictions changes to model codes?
 - local jurisdictions with no safety glazing law?
 - state safety glazing laws preemption of model codes?
 - local enforcement better than CPSC?
 - will consumers not protected be protected if "glazed panels" are revoked?
 - describe variance procedure in code enforcement?
- CC9-79-5 Lewis County, Washington Public Works Department
 - A. Supports revocation
 - B. State of Washington has adopted the Uniform Building Code
- CC9-79-6 Interstate Glass Company
 - A. Supports revocation
 - B. If CPSC maintains authority, supports NGDA proposal
- CC9-79-7 Southern California Glass Shops
 - A. Supports NGDA proposal
- CC9-79-8 National Auto Glass Company
 - A. Supports NGDA proposal
- CC9-79-9 Southern California Glass Dealers
 - A. "Glazed panels" revocation will be a disaster
 - B. Return to local control would reduce safety and profits
 - C. Supports NGDA proposal
- CC9-79-10 Okolona Glass Company
 - A. Supports NGDA proposal
- CC9-79-11 M.L. Burke, Division of American Tempering, Inc.
 - A. Oppose revocation
 - B. Return to confusing local and regional safety glazing standards if revoke
 - C. Building officials objection not relevant
 - D. CPSC should work for inclusion of the entire standard in state and local codes

- CC9-79-12 View Park Glass Company
 - A. Supports NGDA proposal
- CC9-79-13 Tyler and Hippach Glass Company
 - A. Supports NGDA proposal
 - B. Cites confusion due to code differences in Illinois, Wisconsin and Indiana as well as some counties and cities
- CC9-79-14 Kenny Glass company
 - A. Does not support revocation
 - B. Supports NGDA proposal
- CC9-79-15 Lee Snodgrass
 - A. Supports NGDA proposal
- CC9-79-16 Swartz Glass Company
 - A. Supports NGDA proposal
- CC9-79-17 C.R. Laurence Co., Inc.
 - A. Supports NGDA proposal
- CC9-79-18 Margaret Snodgrass
 - A. Supports NGDA proposal
- CC9-79-19 California Glass Distributors
 - A. Supports NGDA proposal
- CC9-79-20 U.S. Auto Glass
 - A. Supports NGDA Proposal
- CC9-79-21 The Payne Co.
 - A. Supports NGDA proposal
- CC9-79-22 Sunrise Glass Corp.
 - A. Supports NGDA proposal
 - B. Prior to the Federal Standard there was inconsistency in enforcing the Uniform Building Code

- CC9-79-23 Taylor Glass Company
 - A. Memphis chapter of NGDA supports Commission staff proposal. They see very little difference between it and the NGDA proposal
 - B. State or local regulation would bring chaos.
- CC9-79-24 Seminole Glass and Mirror Co., Inc.
 - A. Does not support NGDA or staff proposals
 - B. Supplies alternative proposal for consideration with rationale
 - C. Economic information on residential and commercial "glazed panels" given
- CC9-79-25 D and D Glass Co. of Georgia
 - A. Recommends requirements for "glazed panels" next to doors
 - B. Recommends requirements for "glazed panels" due to walking surfaces
- CC9-79-26 National Lumber and Building Material Dealers Association
 - A. Discussed 6/9/77 NLBMDA petition to exempt openings in doors through which an 8 inch sphere is unable to pass.
 - B. Supports revocation of glazed panels definitions and the part of the standard for small size openings
- CC9-79-27 California Glass Distributors
 - A. Supports NGDA proposal
- CC9-79-28 Aluma-Glass Industries, Inc.
 - A. Against revocation - local enforcement problems
 - B. Favors NGDA proposal
 - C. Supports Elwood Buck petition
 - D. Supports polished wire glass for use in entrance doors, sidelights and glazed panels; but not in bath or shower doors or enclosures.

- CC9-79-29 Gandy Glass Company
 - A. Supports NGDA proposal
- CC9-79-30 U.S. Auto Glass
 - A. Supports NGDA proposal
- CC9-79-31 California Glass Distributors
 - A. Supports NGDA proposal
- CC9-79-32 Buchmin Industries
 - A. Supports NGDA proposal
- CC9-79-33, 33a Ruth K and Louis F. Edes
 - A. Supports NGDA proposal
- CC9-79-34 Artesia Glass, Inc.
 - A. Supports NGDA proposal
- CC9-79-35 Southern Glass Co.
 - A. Supports CPSC staff proposal
- CC9-79-36 Atlas Glass Company
 - A. Against revocation
 - B. Supports amending "glazed panels" definitions
- CC9-79-37 Clallum County, Washington, Department of Public Works
 - A. Supports revocation
- CC9-79-38 National Auto Glass
 - A. Supports NGDA proposal
- CC9-79-39 The Southern Carolina Building Code Council
 - A. Agrees with CPSC statement that 5/6 of products regulated are assembled or fabricated at a fixed factory or plant
 - B. Need on-site inspection to ensure compliance/NGDA contention is ridiculous

- C. NGDA contention that would have varying versions of "glazed panels" definitions at state, county and city levels is false.
- D. Supports revocation
- CC9-79-40 Southern California Glass Dealers Association
(see CC9-79-9)
 - A. Supports NGDA proposal and as an alternative the CPSC staff proposal
 - B. Revocation would revert back to chaos
- CC9-79-41 James J. De Guelle
 - A. Supports NGDA proposal
- CC9-79-42 Courtesy Glass and Mirror Co.
 - A. Supports NGDA proposal
- CC9-79-43 Dandoy Glass Co.
 - A. Supports NGDA proposal
- CC9-79-44 Orient Glass Inc.
 - A. Suggest CPSC include doors along with glazed panels as part of revocation because doors are 95% glazed in the shop or job-site.
- CC9-79-45 Humboldt Glass Company
 - A. Revocation would cause confusion and inconsistencies in the laws.
 - B. Supports CPSC staff proposal
- CC9-79-46 Pearl M. De Guelle
 - A. Supports NGDA proposal
- CC9-79-47 City of Dallas, Texas
 - A. Supports revocation
- CC9-79-48 Seattle, Washington, Building Department
 - A. Supports revocation
 - B. State of Washington has adopted the Uniform Building Code

C. Glazed panels are the major products that are assembled on-site. The other products would also be inspected at the job-site, providing a double check.

- CC9-79-49 Nilsen Glass Co. Inc.

A. Against revocation

B. Supports NGDA proposal

- CC9-79-50 City of Monticello, Minnesota

A. Opposes revocation - state and local authorities could choose not to enforce code provisions

B. Minnesota legislature voted to allow elimination of the State Building Code (ICBO) in communities that do not want a code or part of a code.

- CC9-79-51 The Colonial Williamsburg Foundation

A. "Glazed panels" proposal by CPSC staff is silent about horizontal distance from a door

B. Comment about glazing in doors where glass is installed above 4 feet above floor level not being hazardous

- CC9-79-52 Century Shower Door Co., Inc.

A. Establish a minimum width requirement for fixed panels.

- CC9-79-53 Committee on Fire Doors and Windows of the National Fire Protection Association

A. Sometimes obscure wired glass is used in fire-resistive construction. Exemption should be for fire-resistive wired glass as opposed to architectural wired glass.

- CC9-79-54 Karl's Glass Co.

A. Revocation would create chaos in the industry

B. Recommends exempting small tempered lites in French type doors.

- CC9-79-55 City of Medford, Oregon

A. Supports revocation

- CC9-79-56 Nelson-Brantley Glass Co., Inc.

A. Alabama did not have a safety glazing law prior to CPSC standard. Southern Building Code was in place and was not enforced by

local inspectors. Therefore need a Federal standard.

B. Supports NGDA proposal

• CC9-79-57 City of Riverside, California

A. Uses Uniform Building Code

B. Have been enforcing CPSC standard

C. CPSC should direct copies of past, present or future regulations or amendments to each building inspection agency in the country.

D. Virtually all arch. products except glazed panels are fabricated at fixed factories

E. Effective enforcement can only be achieved through cooperative effort between local agencies and industry

F. Local adoption if CPSC revokes "glazed panels"

G. Suggested revisions are an improvement over the present standard

H. Effective enforcement requires interpretations be made as close to the job-site as possible

• CC9-79-58 Long Beach Tempering

A. Supports NGDA proposal

• CC9-79-59 City of Kenai, Alaska

A. Revoke entire standard - Uniform Building Code and Alaska State Statutes were sufficient

B. Presents "glazed panel" problem he is now dealing with

• CC9-79-60 Lee & Cates Glass, Inc.

A. Does not support revocation

B. Proposed "glazed panel" definition

C. Revise "door" definition

• CC9-79-61 Snow's Paint and Glass Company

A. Supports NGDA proposal

B. Would like obscure glass door sidelites exempted

- CC9-79-62 City of Des Moines, Iowa
 - A. Supports CPSC staff proposal incorporated in model codes.
- CC9-79-63 The Callison Partnership
 - A. Supports revocation
- CC9-79-64 County of Ada, Boise Idaho
 - A. Supports revocation
 - B. Enforce 16 CFR 1201 and Uniform Building Code Chapter 53
 - C. Cites Federal/Local cooperation
 - D. Discusses enforcement at the local level
 - E. Occasionally see site assembled products
 - F. Describes model code use in Idaho
 - G. Establishment of a standard without a rigid inspection system will not protect the public
- CC9-79-65 City of Oceanside, California
 - A. In Southern California mostly "glazed panels" are fabricated on-site. Federal standard is appropriate for the other products.
 - B. Does not agree with NGDA contention of threat of Federal enforcement
 - C. Supports revocation
- CC9-79-66 Consumer Safety Glazing Committee

Summary

- A. Summary of Comments provided by CSGC
- B. CSGC opposes revocation/supports amendment
- C. Half of assembly and fabrication are for replacement. For new products percentages are given
- D. Enforcement of the standard by industry is discussed as well as speculation of building code enforcement
- E. Revocation will not lead to adoption of uniform safety requirements

- F. CSGC favors the NGDA proposal
- G. CSGC cites CPSA as reason for not revoking
- H. CSGC supports adoption of variance procedures.
- I. CSGC profile and history
- J. CSGC concerned with uniform requirements to ensure consumer safety and the practicality of inter-jurisdictional commerce.
- K. All products subject to the standard frequently are manufactured at their building sites, some to a major degree.
- L. Discusses products received in "Knocked down" condition
- M. Survey of glazing installers to determine percentage of products glazed at or near site provided
- N. Discussion of new versus replacement glazing
- O. CPSC cannot distinguish "glazed panels" from the other five products covered by its standard on the basis of location of manufacture.
- P. Comments on enforcement effectiveness
- Q. CPSC staff admits definition is overbroad, therefore, amend the definition
- R. NGDA/FGMA educational efforts cited
- S. Product liability acts as an enforcement feature
- T. Local enforcement problems cited
- U. Building code adoption discussed - no guarantee adoption at local level because model codes have no legal enforcement capabilities
 - if adopted no guarantee they won't be modified
 - state safety glazing laws preempt local codes
 - if locality uses model code may take years to update examples cited
 - building code inspectors can supplement CPSC and industry enforcement efforts
 - CPSC should develop variance procedures
 - State laws would preempt model codes

- V. CSGC prefers amending "glazed panels" definition by using NGDA proposal
- W. Legal issues discussed
 - rationale and methodology for revocation
 - record is devoid of answers to a number of questions
- X. CSGC believes a uniform safety glazing law that is locally enforced will best serve the public. CPSC should explore variance procedures.
- Y. Conclusions
- Z. Appendices attached - including corrected copies of testimony of CSGC witnesses before the Commission
- CC9-79-67 Council of American Building Officials
 - A. Responses to questions raised by the Commission and CSGC
- CC9-79-68 Commercial Metal and Glass
 - A. Opposes "glazed panels" revocation
- CC9-79-69 City of Placerville, California
 - A. Supports revocation
 - B. Used glass and glazing chapter of Uniform Building Code prior to the standard.
- CC9-79-70 International Conference of Building Officials
 - A. Addresses questions raised by the CSGC
 - B. Presents data on states using Uniform Building Code
 - C. Refutes Mr. Hart's (consultant to CSGC) statement about code change
 - D. Cites Mr. Furey's statement (CC9-79-57) as extremely important in showing local enforcement providing consumer protection
- CC9-79-71 National Association of Home Builders
 - A. Supports revocation and deferral to state and local building code officials for enforcement.
 - B. Hazardous areas excluded by CPSC standard are cited as well as non-hazardous areas that are included.

- C. Frequently all or portions of several of the products subject to the standard are assembled at the site
- D. Need local inspection
- E. Effective date of revocation should allow the private code organizations to have "glazed panels" definitions in place
- CC9-79-70a City and County of Honolulu, Hawaii
 - A. Supports recommendation of ICBO
- CC9-79-72 Mrs. Jean Cornwell
 - A. Opposes revocation
 - B. Revise definition and enforce the standard
 - C. A horizontal member "chair rail" does not provide adequate safety
- CC9-79-73 M.N. Zeolla
 - A. Opposes revocation
 - B. Supports revision
 - C. Discusses problems with model codes
 - D. Chair rail requirement is not acceptable
 - E. Agrees with NGDA about threat of Federal enforcement
 - F. Supplies "glazed panels" definitions
- CC9-79-74 City of Alexandria, Virginia
 - A. Presents situations where a building official might grant a modification or variance
 - B. Refutes glass industry statement of industry familiarity with standard
 - C. Inspection at the local level is needed to ensure compliance
- CC9-79-75 Lee and Cates Glass
 - A. Opposes revocation
 - B. Provides "glazed panels" definition
- CC9-79-76 City of Eugene Oregon
 - A. Supports revocation

- B. Experience with local city code enforcement and model codes organization is contrary to glass industry allegations.
- C. Have enforced glazing standards over 15 years since inclusion in Uniform Building Code
- CC9-79-77 Milgard Manufacturing, Inc.
 - A. Oppose revocation
 - B. Opposes allowing variances
- CC9-79-78 City of Midland, Michigan
 - A. Supports revocation
 - B. Non-complying storm doors, shower and tub enclosures, and patio doors have been nearly eliminated because standard is applicable to assembly and fabrication in a factory or plant
- CC9-79-79 Building Code Action
 - A. Supports CPSC staff proposal
 - B. Revocation will lead to non-uniform safety glazing standards
- CC9-79-80 Klein - Dichert Oshkosh, Inc.
 - A. Opposes revocation of the glazing standard
 - B. Requests regulations for skylight glazing and other overhead glazing
- CC9-79-81 VOID
- CC9-79-82 Plaskolite, Inc.
 - A. Concerned with Commission's enforcement policy and constraints imposed on Commission procedures by the CPSCA
 - B. Objects to use of stay of enforcement
 - beyond scope of CPSC's authority
 - creates appearance of impropriety and encourages violations of the law.
- CC9-79-83 City of Fremont, California
 - A. supplies commentary of Mr. Hart's testimony (CSGC presentation on 7/16/79)

- CC9-79-84 Russelville, Arkansas Glass Company
 - A. Oppose deletion of "glazed panels" definitions
- CC9-79-85 Red Bluff, California Dept. of Building and Safety
 - A. Supports revocation
 - B. Supports local enforcement
- CC9-79-86 City of Salinas, Kansas
 - A. Supports revocation
 - B. Supports local enforcement
- CC9-79-87 City of Livermore, California
 - A. Supports revocation
 - B. Supports enforcement and regulation of glazing by local authorities
- CC9-79-88 City of Tempe, Arizona
 - A. Supports revocation
 - B. Upon revocation, state law would be in effect resulting in adequate enforcement
- CC9-79-89 Leighton, Conklin & Lemov, Counsel for Consumer Safety Glazing Committee
 - A. Survey of building codes within Metropolitan Kansas City Trade Area
- CC9-79-90 Guaranteed Products
 - A. Objects to another group using the name "Consumer Safety Glazing Committee"
 - B. Supports revocation and local enforcement
- CC9-79-91 J & R Glass & Paint Company
 - A. Supports CPSC staff proposal
- CC9-79-92 A.G.A. Inc.
 - A. Supports CPSC staff proposal
- CC9-79-93 Eastern States Conference of Glaziers & Glassworkers
 - A. Supports NGDA proposal

MAJOR ISSUES - "Glazed Panel" Revocation

I. Amend the standard

A. Supports amendment/other proposals

	<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
	CC9-79-1	A	Reliable Glass Company
	CC9-79-24	A,B	Seminole Glass and Mirror Co., Inc.
	CC9-79-25	A,B	D and D Glass Compnay of Georgia
	CC9-79-36	B	Atlas Glass Compnay
****	CC9-79-60	B	Lee and Cates Glass, Inc.
	CC9-79-72	B	Mrs. Jean Cornwell
	CC9-79-73	B, F	M. N. Zeolla
****	CC9-79-75	B	Lee and Cates Glass

- I. Amend the Standard
 B. Supports NGDA proposal

	<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
	CC9-79-7	A	Southern California Glass Shops
	CC9-79-8	A	National Auto Glass Company
***	CC9-79-9	C	Southern California Glass Dealers
	CC9-79-10	A	Okolona Glass Company
	CC9-79-12	A	View Park Glass Company
	CC9-79-13	A	Tyler Hippach Glass Company
	CC9-79-14	B	Kenny Glass Company
	CC9-79-15	A	Lee Snodgrass
	CC9-79-16	A	Swartz Glass Company
	CC9-79-17	A	C. R. Laurence Co., Inc.
	CC9-79-18	A	Margaret Snodgrass
*	CC9-79-19	A	California Glass Distributors
**	CC9-79-20	A	U. S. Auto Glass
	CC9-79-21	A	The Payne Company
	CC9-79-22	A	Sunrise Glass Corp.
*	CC9-79-27	A	California Glass Distributors
	CC9-79-28	B	Aluma-Glass Industries, Inc.
	CC9-79-29	A	Gandy Glass Company
**	CC9-79-30	A	U. S. Auto Glass
*	CC9-79-31	A	California Glass Distributors
	CC9-79-32	A	Buchmin Industries
	CC9-79-33,33A	A	Ruth and Louis Edes
	CC9-79-34	A	Artesia Glass, Inc.
	CC9-79-38	A	National Auto Glass
***	CC9-79-40	A	Southern California Glass Dealers Assoc.
	CC9-79-41	A	James J. DeGuelle
	CC9-79-42	A	Courtesy Glass and Mirror Company
	CC9-79-43	A	Danday Glass Company
	CC9-79-46	A	Pearl M. DeGuelle
	CC9-79-49	B	Nilsen Glass Co., Inc.
	CC9-79-56	B	Nelson-Brantley Glass Co., Inc.
	CC9-79-58	A	Long Beach Tempering
	CC9-79-61	A	Snow's Paint and Glass Company
	CC9-79-66	B, F, Q, V	Consumer Safety Glazing Committee
	CC9-79-93	A	Eastern States Conference of Glaziers & Glassworkers

I. Amend the Standard

C. Supports CPSC staff proposal

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-23	A	Taylor Glass Company
CC9-79-35	A	Southern Glass Company
CC9-79-45	B	Humboldt Glass Company
CC9-79-79	A	Building Code Action
CC9-79-91	A	J & R Glass & Paint Company
CC9-79-92	A	A.G.A. Inc.

II. Support Revocation of "Glazed Panels"

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-2	A	Eugene Oregon, Department of Public Works
CC9-79-3	A	Architectural Glass Corporation
CC9-79-4, 4a	G	Building Officials & Code Administrators International, Inc.
CC9-79-5	A	Lewis County, Washington Public Works Dept.
CC9-79-6		Interstate Glass Company
CC9-79-26	B	National Lumber and Building Dealers Assoc.
CC9-79-37	A	Clallum County, Washington Dept. of Public Works
CC9-79-39	D	The Southern Carolina Building Code Council
CC9-79-47	A	City of Dallas, Texas
CC9-79-48	A	Seattle, Washington, Building Department
CC9-79-55	A	City of Medford, Oregon
CC9-79-57	F	City of Riverside, California
CC9-79-59	A	City of Kenai, Alaska
CC9-79-67		Council of American Building Officials
CC9-79-63	A	The Callison Partnership
CC9-79-64	A	County of Ada, Boise, Idaho
CC9-79-65	C	City of Oceanside, California
CC9-79-69	A	City of Placerville, California
CC9-79-70		International Conference of Building Officials
CC9-79-71	A	National Association of Home Builders
CC9-79-70a	A	City and Country of Honolulu, Hawaii
CC9-79-74		City of Alexandria, Virginia
CC9-79-76	A	City of Eugene, Oregon
CC9-79-78	A	City of Midland, Michigan
CC9-79-83		City of Freemont, California
CC9-79-85	A	Red Bluff, California, Dept. of Bldg. & Safety
CC9-79-86	A	City of Salines, Kansas
CC9-79-87	A	City of Livermore, California
CC9-79-88	A	City of Tempe, Arizona
CC9-79-90	B	Guaranteed Products

III. Opposed revocation of "glazed panels"

	<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
	CC9-79-11	A	M. L. Burke, Division of American Tempering, Inc.
	CC9-79-14	A	Kenny Glass Company
	CC9-79-28	A	Aluma Glass Industries, Inc.
	CC9-79-36	A	Atlas Glass Company
	CC9-79-49	A	Nilsen Glass Co., Inc.
	CC9-79-50	A	City of Monticello, Minnesota
****	CC9-79-60	A	Lee and Cates Glass, Inc.
	CC9-79-68	A	Commercial Metal and Glass
	CC9-79-72	A	Mrs. Jean Cornwell
	CC9-79-73	A	M. N. Zeolla
****	CC9-79-75	A	Lee and Cates Glass
	CC9-79-77	A	Milgard Manufacturing, Inc.
	CC9-79-80	A	Klein-dichert Oshkosh, Inc.
	CC9-79-84	A	Russelville, Arkansas Glass Company

IV. Support Model Codes/Local Enforcement

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-2	A	Eugene Oregon Department of Public Works
CC9-79-4, 4a	B, E	Building Officials and Code Administrators International, Inc.
CC9-79-5	B	Lewis County, Washington Public Works Dept.
CC9-79-39	B, C	The Southern Carolina Building Code Council
CC9-79-48	B	Seattle, Washington, Building Department
CC9-79-57	A,B,E,H	City of Riverside, California
CC9-79-62	A	City of Des Moines, Iowa
CC9-79-64	B,C,D,F,G	County of Ada, Boise, Idaho
CC9-79-65	B	City of Oceanside, California
CC9-79-69	B	City of Placerville, California
CC9-79-70	B,C,D	International Conference of Building Officials
CC9-79-71	A,D,E	National Association of Home Builders
CC9-79-74	A,B,C	City of Alexandria, Virginia
CC9-79-76	B,C	City of Eugene, Oregon
CC9-79-85	B	Red Bluff, California, Dept. of Bldg. & Safety
CC9-79-86	B	City of Salinas, Kansas
CC9-79-87	B	City of Livermore, California
CC9-79-88	B	City of Tempe, Arizona
CC9-79-90	B	Guaranteed Products

V. Opposes Local Enforcement

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-9	A,B	Southern California Glass Dealers
CC9-79-11	B,C	M.L. Burke, Div. of American Tempering, Inc.
CC9-79-13	B	Tyler and Hippach Glass Company
CC9-79-22	B	Sunrise Glass Corporation
CC9-79-23	B	Taylor Glass Company
CC9-79-40	B	Southern California Glass Dealers Assn.
CC9-79-45	A	Humboldt Glass Company
CC9-79-50	B	City of Monticello, Minnesota
CC9-79-54	A	Karls Glass Company
CC9-79-56	A	Nelson-Brantley Glass Co., Inc.
CC9-79-66	D,E,P,S,T,X	Consumer Safety Glazing Committee
CC9-79-73	C,E	M. N. Zeolla
CC9-79-79	B	Building Code Action
CC9-79-89	A	Leighton, Conklin & Lemov

VI. Other Issues

A. Products Fabricated in factories

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-4, 4a	D	Building Officials & Code Admin., Intl.
CC9-79-39	A	The Southern Carolina Building Code Council
CC9-79-48	C	Seattle, Washington, Building Department
CC9-79-57	D	City of Riverside, California
CC9-79-64	E	County of ADA, Boise, Idaho
CC9-79-65	A	City of Oceanside, California
CC9-79-71	C	National Association of Home Builders
CC9-79-78	B	City of Midland, Michigan

B. Products Fabricated on-site

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-44	A	Orient Glass, Inc.
CC9-79-66	C,J,L,M,N,O	Consumer Safety Glazing Comm.

C. Code Adoption Process

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-4, 4a	F,H	BOCA
CC9-79-66	U	Consumer Safety Glazing Comm.
CC9-79-67	A	CABO
CC9-79-70	A	ICBO

D. Variances

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-4, 4a	H	BOCA
CC9-79-66	H,U,X	CSGC
CC9-79-77	B	Milgard Mfr., Inc.

E. Wired Glass

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-28	D	Aluma-Glass Industries, Inc.
CC9-79-53	A	Comm. on Fire Doors & Windows of NFPA
CC9-79-61	B	Snow's Paint and Glass Company

F. Legal Issues

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-66	G,W	CSGC
CC9-79-82	A,B	Plaskolite, Inc.

G. Other Amendments/Exemptions

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-26	A	NLBMDA
CC9-79-28	C	Aluma-Glass Industries, Inc.
CC9-79-51	A,B	The Colonial Williamsburg Foundation
CC9-79-52	A	Centrury Shower Door Co., Inc.
CC9-79-54	B	Karl's Glass Co.
CC9-79-59	B	City of Kenai, Alaska
CC9-79-60	C	Lee & Cates Glass, Inc.
CC9-79-71	B	NAHB
CC9-79-72	C	Mrs. Jean Cornwell
CC9-79-73	D	M. N. Zeolla
CC9-79-80	B	Klein-Dichert Oshkosh, Inc.

H. Economic Information - Glazed Panels

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-24	C	Seminole Glass & Mirror Co., Inc.

I. Commission Oral Hearing

<u>COMMENT</u>	<u>SECTION</u>	<u>CORRESPONDENT</u>
CC9-79-66	Z	CSGC
CC9-79-67	A	CABO
CC9-79-70	A	ICBO
CC9-79-83	A	City of Fremont, California

UNITED STATES GOVERNMENT

U.S. CONSUMER PRODUCT
SAFETY COMMISSION

Memorandum

TO : Harry Cohen, EX-P
Thru: Walter Hobby, DAED, HIC *Walt*
FROM : Jacob Handelsman, HICP *Jacob Handelsman*

DATE: October 26, 1979

SUBJECT: Response to Public Comments to Proposed Glazed Panels Revocation

The Consumer Product Safety Commission has proposed to revoke the "glazed panels" provision of the Safety Standard for Architectural Glazing Materials. The proposal was published in the FEDERAL REGISTER on May 31, 1979. The Commission specifically solicited public response on several issues, including the extent to which glazing products, other than glazed panels, are assembled or fabricated at factories rather than at the site of installation in a building. Knowing where glazing products are made is significant in determining the extent to which the Standard lends itself to CPSC enforcement. Glazed panels were proposed to be excluded from the Standard because they are typically constructed at the building site.

A response to this issue was received from the Consumer Safety Glazing Committee (CSGC) in both oral presentation before the Commission on June 16, 1979, and in written comments. CSGC is a glass and glazing industry group whose members represent all facets of the industry. The CSGC in its presentation opposing the proposed Commission revocation presented data which ostensibly demonstrated that glazed panels are not unique in being glazed on site because a large percentage of the other five products covered by the Standard are also glazed on site or in a shop near the site of installation. According to CSGC, 95 percent of doors, 21 percent of storm doors, 45 percent of patio doors, 29 percent of shower enclosures and 27 percent of tub enclosures are glazed on site or in dealers' shops near the site. In addition, CSGC stated that 44 percent of all glazing installations are for replacement and, therefore, outside the enforcement capabilities of CPSC personnel altogether, because by necessity they are glazed on or near the site of installation.

The statistical data presented by CSGC are the results of a survey conducted among its membership. The CSGC sent questionnaires to the 1100 members of the National Glass Dealer's Association (NGDA) and the 350 members of the Flat Glass Marketing Association (FGMA). Although there is no clear distinction between the kinds of firms represented in each association, NGDA members tend to be dealers and installers while FGMA members tend to be distributors and contractors. These two associations represent a small minority of the 6,000-10,000 glazing

shops nationwide. However, they probably are a significant part of the industry in terms of volume of glazing installations because a large portion of total glazing shops are hardware stores and home repair stores which carry relatively small inventories for the do-it-yourself market.

Economic Analysis reviewed the CSGC survey data and followed up with interviews of several participants to clarify the data. Economic Analysis believes that the survey results are questionable. The estimates are based on responses from only 340 member firms whose representativeness is unknown in terms of the various kinds and sizes of firms in the two associations. The phrasing of the questionnaire also raises doubts about the data presented by CSGC. The participant is requested to estimate the percentage of new "jobs" that have the glazing material installed in the shop or at the job-site as opposed to being received pre-glazed. Aggregating number of "jobs" is misleading because these firms represent both glass dealers and glazing contractors. One "job" for a dealer may be the installation of glazing in a storefront, while to a contractor, one "job" may mean installation of all doors in a shopping center complex. Most significantly, equal weight was given to each response regardless of the volume of the firm's business.

Although the questionnaire requested an estimate based on number of "jobs" performed, only one firm we talked with stated that its response was based on estimated number of units installed. Four firms based their estimates on physical volume of glazing installed, while two firms estimated the dollar value of glazing performed. This was contrary to the instructions in the questionnaire which specifically requested firms not to give estimates of dollar sales.

Although the results of the CSGC survey are not statistically valid, they do indicate that glazed panels are not a unique product in terms of site of fabrication. Interviews with the glass dealers and with an independent source knowledgeable about the glass industry, revealed that the industry quickly becomes fragmented beyond the major manufacturers and processors of glazing materials and products incorporating glazing. Glass dealers, even at the local level, may also be distributors and contractors. They may also be fabricators of finished products covered by the Standard. Many dealers order standard-size glass in bulk from glass manufacturers, processors or large regional distributors and order the metal components from manufacturers of these products. The dealer then fabricates the doors or enclosures in his shop. In this manner, dealers reduce transportation costs by purchasing material in knocked down condition and benefit from higher markups by fabricating the finished product.

It is difficult to estimate the proportion of the over-6000 glass dealers that can also be classified as fabricators, and the volume of

glazing performed by these firms. Knowledgeable sources have confirmed that the volume is high in some of the glazing categories covered by the Standard. CPSC resources allow only a limited inspection of these firms. It is likely, however, that fabricators would install safety glazing even without regular CPSC inspection in order to avoid economic loss due to product liability suits and the consequent loss in reputation.

The Commission also solicited public comments concerning the desirability of either the Commission staff's or NGDA's suggested revisions of the glazed panel definition as an alternative to a revocation of the provision. None of the public responses addressed the economic implications of the alternatives. One commentor did compare cost differences between the current standard and a completely new proposal. However, this commentor went beyond the scope of the current issues. Any economic assessment of a new proposed revision of the standard would first require engineering and epidemiological study.

Economic Analysis provided information to the Commissioners on potential consumer savings from revision of the glazed panel definition in the September 20, 1978, briefing package. An order of magnitude estimate of the aggregate consumer savings is 10 to 20 million dollars annually. Refining the calculations of aggregate consumer savings is impractical due to the data gathering problem and limited Commission resources.

The public comments did not raise new issues with regard to the use of polished wired glass in glazed panels. However, because the Commission's decisions on glazed panels will affect the availability, distribution and demand for polished wired glass, it is useful to repeat some of the previous discussion by Economic Analysis in the Briefing Package on Petitions CP 79-8 and CP 79-9.

Polished wired glass cannot meet the performance requirements of the CPSC standard. Approximately 50 percent of all polished wired glass covered by the standard is used in glazed panels. An additional 30 percent of polished wired glass is used in non-fire doors. In October, the courts dissolved a stay of enforcement of the portion of the CPSC Standard which applies to polished wired glass used in non-fire doors.

If the Commission decided to revoke the Standard as it applies to glazed panels, the industry would receive considerable relief because, as building code groups have testified, state and local jurisdictions would adopt the performance requirements of ANSI Z97.1. High quality polished wired glass can meet the ANSI performance requirements which are less stringent than the requirements in the CPSC Standard.

Annual sales of polished wired glass in the U.S. for architectural purposes are approximately 7 million square feet, 3 percent of all glazing

material within the scope of the Standard. All polished wired glass is imported. Approximately 80 percent is manufactured by three Japanese firms and most of the balance is manufactured by a British producer. According to a spokesman of the Flat Glass Association of Japan, the U.S. market represents 30 - 40 percent of total polished wired glass production for the Japanese firms. These firms, however, manufacture a large range of glass and other products with U.S. sales of polished wired glass representing less than 1/2 of a percent of estimated total worldwide sales.

In general, distributors and glass dealers carry all types of glazing material and polished wired glass tends to be a small and slow moving, although profitable, portion of their inventory. According to an industry representative, the decrease in demand would leave about half a dozen large distributors in the market. Smaller distributors and dealers would be eliminated from the distribution chain because of the high carrying costs associated with low inventory turnover.

Increased transportation distances and costs and higher carrying costs will increase the cost to consumers of polished wired glass in doors required by fire codes. One industry source guessed that the price of the product could triple. The effect on new construction would not be noticable because the increased cost of glazing in a fire door would not constitute a significant portion of total construction cost.

UNITED STATES GOVERNMENT

U.S. CONSUMER PRODUCT
SAFETY COMMISSION

Memorandum

TO : Nick Marchica, EX-P
Through: Joann H. Langston, AED/HIA
FROM : Jacob Handelsman, HICP
SUBJECT: Architectural Glazing Standard

DATE: 14 APR 1980

This memo discusses the effective date of a proposed revocation of the glazed panels provision of the Safety Standard for Architectural Glazing Materials. The CPSC proposed in the May 31, 1979, Federal Register that the proposed revocation become effective on the date of publication of the final rule. A briefing paper was postponed last October when the staff recognized that a discussion of an effective date could not proceed without additional information on the extent to which the model building code groups were committed to adopting a uniform standard for glazed panels and the time frame for its enforcement by local building inspectors. Field Operations undertook to gather this information.

Based on subsequent inquiries, Field Operations was assured that the model code groups are committed to the adoption of a uniform requirement for glazed panels if the Commission revokes those provisions from its Standard. The Building Officials and Code Administrators International (BOCAI) indicated that the uniform standard would be adopted by the group in June, 1980. The International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI), stated that they would adopt the uniform code as soon as CPSC revokes the glazed panels provision from its Standard. The model code groups indicated that about 80 percent of the population lives in jurisdictions covered by one or more of the model codes. In addition, much of the remainder of the population lives in jurisdictions covered by some requirements for safety glazing which are on the whole similar to the model code requirements. The proposed uniform requirements are, in general, similar to the glazed panels provision of the CPSC standard. Also, the uniform requirements would mandate safety glazing in those applications covered by the alternative proposal for revising the language of the CPSC standard. Therefore, with one exception, i.e., polished wire glass, the uniform requirements would create similar changes in demand for safety glazing as would a redefinition of the existing glazed panels definition.

The timing of an effective date for a revocation and subsequent local adoption of uniform safety requirements may affect the extent of protection provided to consumers and may create some market disruption, especially as a change in requirements affects inventories and current orders. According to the model

code groups, it may take up to 18 months to incorporate uniform requirements for glazed panels into building codes. An immediate effective date, favored by these groups, would allow them to adopt the uniform requirements and initiate the adoption mechanism on the local level. An immediate effective date, these groups claim, would not create a break in consumer protection, but rather would create an interim period during which the existing provisions of the building codes, currently preempted by the CPSC standard, would again be applied.

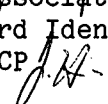
However, there may not be any safety requirements for glazed panels in some jurisdictions during the interim period. The BOCAI does not currently have a reference to glazed panels in its code. Although the BOCAI may approve the uniform requirements at its June 1980 meeting, it may take as much as 18 months for some local jurisdictions to incorporate the changes in their local building codes and begin enforcement. BOCAI officials did indicate that they would press their membership to follow in the interim the safety requirements in existence before the preemption.

The preempted requirements meet the criteria set forth in ANSI Z-97.1 which are less stringent in their impact requirements for category II laminated glass and polished wire glass, and in the scope of applications covered by the requirements. As a result, the demand for safety glazing is expected to decline with the revocation and then rise again when local jurisdictions begin to enforce the uniform requirements. Calculating the potential effect on demand as a result of these changes would involve investigating thousands of local jurisdictions. This would be impractical.

However, model code officials believe that the initial drop in demand for safety glazing would be minimal because the interim period would be short and because local building inspectors are concerned with public safety and would continue to require the use of safety glazing in potentially hazardous locations.

Notwithstanding arguments to the contrary, an immediate effective date may create a gap in coverage of safety requirements for glazed panels. In order to assure maximum safety for consumers, an effective date 12 months subsequent to the adoption of uniform requirements by all three model code groups should be considered. Although earlier it is stated that local jurisdictions may take up to 18 months to adopt the requirements, that 18 months is considered as maximum. A 12 month effective date could probably be attained if the matter is given priority. The effective date could be provisional in nature depending on whether or not some significant percentage of the population was covered by the uniform requirements. Such a process should also create fewer market disruptions because firms would have sufficient time to adjust their inventories in anticipation of changing requirements for safety glazing.

Memorandum

TO : Nick Marchica, EX-P 
THRU: Joann H. Langston, Associate Executive Director
Directorate for Hazard Identification and Analysis
FROM : Jacob Handelsman, HICP 

DATE: May 9, 1980

SUBJECT: Glazed Panels Revocation

This memo is intended to update certain information provided in Economic Analysis's July 27, 1979, preliminary comments to petitions CP 78-8 and CP 78-9, and the October 26, 1979, response to the public comments to the proposed glazed panels revocation. We have some new information regarding the impact requirements that may be applied to polished wire glass in the proposed uniform model code.

Model building codes officials have previously testified before the Commission that the proposed uniform code, rather than apply the performance requirements of the CPSC Standard, would apply the performance requirements of ANSI z97.1 to polished wire glass used in glazed panels. Polished wire glass currently cannot meet the performance requirements of the CPSC Standard, but it can meet the ANSI performance requirements if it is of high quality.

On April 17, 1980, the Building Officials and Code Administrators International, Inc. (BOCA), informed the Commission that it is their understanding that the proposed uniform code would only apply the ANSI performance requirements to polished wire glass used in "assemblies which are subject to human impact and are required to have fire resistance rating." The tougher performance requirements present in the CPSC Standard would continue to be applied to polished wire glass in glazed panels not mandated by fire codes. Therefore, our earlier conclusion that the revocation of the glazed panels provision would provide "considerable relief" to the polished wire glass industry no longer holds.

Memorandum

TO : Nick Marchica, Office of Program Management
Through: David Schmeltzer, AED, CE
Through: W. Harry Garber, Director, CEEE

DATE: 20 MAR 1980

FROM : Allen F. Brauning, Attorney, CEEE

SUBJECT: Analysis of state safety glazing laws.

The purpose of this memorandum is to discuss that portion of the comment from Consumer Safety Glazing Committee (CSGC) concerning the effect of preemptive language in various state statutes requiring safety glazing materials in specified locations on the proposed modification of local building codes to achieve a common definition of "glazed panels" and resumption of enforcement of requirements for safety glazing by local building officials.

The comment from CSGC asserts that existing laws of 17 states requiring the use of glazing materials which comply with ANSI Standard Z97.1 in specified locations will prohibit local building officials from enforcing any building code provision to require the use of glazing materials which comply with the Commission's standard in locations next to doors and between two walking surfaces.

After analysis of the laws cited by CSGC, this directorate concludes that in all but five states, the statutory provisions cited by CSGC will not pose a major obstacle to the implementation of the proposal advanced by the three model code organizations to adopt a uniform definition of the term "glazed panel" and to specify the use of materials that meet the Commission's standard.

However, the laws of the states of Connecticut, Delaware, and Massachusetts will have the effect claimed by CSGC. Additionally, laws of the states of Illinois and South Dakota have limited preemptive provisions. Amendment of those laws will be necessary before state or local officials in those five states can enforce the uniform glazed panel requirements proposed by the three associations of building officials.

BACKGROUND

Since the date the Commission issued the Safety Standard for Architectural Glazing Materials, this directorate has perceived cooperation from local and state building officials as an essential element of effective enforcement of that standard, particularly the glazed panel provisions. As stated in the Federal Register notice of May 31, 1979, thus far we have met with little success in our efforts to obtain that cooperation.

At this time, the preemptive provisions of section 26 of the Consumer Product Safety Act present a legal obstacle to enforcement of existing building code provisions applicable to glazing materials, because those provisions all reference the test method in ANSI Z97.1, rather than the test set forth in the Commission's standard. None of the three associations of building officials favors revision of its model code to use language identical to the Commission's standard to describe those items of glazing materials for which safety glazing is required, and to substitute the test in the Commission's standard for the test method in ANSI Z97.1

BUILDING OFFICIALS' PROPOSAL

However, the three model code organizations have all taken the position that if the Commission would revoke those provisions of the architectural glazing standard applicable to glazed panels, thereby eliminating the preemptive effect of the standard on enforcement of state and local building codes with regard to items of glazing next to doors and near walking surfaces, those groups would adopt a common definition of glazed panel in their model codes. The three associations have also expressed their willingness to adopt the performance requirements of the Commission's standard.

This directorate believes that the plan advanced by the three model code organizations, if carried through to full implementation, would substantially improve the degree of protection to consumers against risks of injury from accidental human-impact breakage of glazing materials in locations currently described as "glazed panels" in the architectural glazing standard.

CSGC COMMENT

In its written comments and oral presentation, CSGC has stated that legislation currently in effect in seventeen states, including California, Illinois, and New York, presents a serious legal obstacle to implementation of the plan advanced by the model code groups to adopt and enforce uniform requirements for safety glazing once the Commission revokes the glazed panel provisions of the architectural glazing standard.

According to CSGC, the specific items of legislation in question all contain preemptive language to the effect that their provisions take precedence over any municipal, county, or local ordinance to require the use of safety glazing in locations next to doors or near walking surfaces.

CSGC points out in its comment that these state statutes are all based on a model safety glazing act which was proposed for adoption by state legislatures by the original CSGC during the early 1970's.

In order to assess the merit of CSGC's argument about the preemptive effect of these statutes, this directorate has examined the text of each law cited by CSGC in its comment. During CSGC's oral presentation, Jerald Jacobs, an attorney representing that group, made a statement to the effect that at one time 34 states had enacted legislation based on the CSGC model bill, and that in 1976, nine other states were considering adoption of such a law. (Transcript, pp. 84, and 106.) Mr. Jacobs stated that CSGC had been able to determine that in at least 27 states, these safety glazing laws have not been revoked. Mr. Jacobs also stated that CSGC would advise the Commission if it discovered safety glazing laws extant in any additional states. (Transcript, p. 106.)

By letter dated August 19, 1979, Richard Mann, an attorney with Mr. Jacobs' law firm, provided the Commission's Office of General Counsel with citations to 27 state statutes.

In an effort to resolve the uncertainty about the exact number of states which currently have legislation to require use of safety glazing materials in specified locations in buildings, I have examined the indexes to the codifications of the statutes of each of the 50 states. I found four additional states with laws requiring use of safety glazing materials in buildings, bringing the total number of states with such legislation to 31. Citations to the 31 state safety glazing laws are listed in Appendix A.

ANALYSIS OF STATE LAWS

With a few exceptions which will be discussed below, the statutes cited by CSGC require the use of "safety glazing" in any application which is designated a "hazardous location." All but two of the statutes define the term "safety glazing material" as glazing material which meets the test requirements in ANSI Z97.1. Most of the statutes also define the term "hazardous location" to include fixed panels of glazing material immediately adjacent to entrance and exit doors of residential, commercial, and public buildings. Some of the statutes contain additional language to exclude curved panels, panels have a width greater than 48 inches or less than 18 inches, or panels more than 18 inches above a walking surface from the definition of "hazardous location."

Since July 6, 1977, these statutes (with two possible exceptions) have been rendered unenforceable by the Commission's glazing standard and provisions of section 26(a) of the Consumer Product Safety Act. That section provides that whenever a consumer product safety standard is in effect and applicable to a product, no state may impose any requirements applicable to the same product and intended to address the same risk of injury as the consumer product safety standard unless the state requirements are "identical" to those of the applicable consumer product safety standard. To the extent that these statutes require the use of glazing material which meets the test method prescribed by ANSI Z97.1 rather than the test set forth in the Commission's standard, their requirements are not "identical" to those of the Commission's standard.^{1/} To the extent that they describe as a "hazardous location" any product subject to the Commission's standard, including any "glazed panel" as that term is currently used in the standard, they prescribe nonidentical requirements for a product subject to a consumer product safety standard, and for that reason are unenforceable.

If the Commission revokes those provisions of the architectural glazing standard applicable to glazed panels, the preemptive provisions of section 26 would no longer be applicable to any of the state statutes to the extent that they prescribe requirements for glazing materials immediately adjacent to doors.

^{1/} The laws of the state of Missouri and Oregon cited by CSGC do not define safety glazing material as material which meets the requirements of ANSI standard Z97.1.

CSGC's comment states that seventeen of these state laws contain their own preemptive language which would prohibit any county, municipal, or local government from prescribing requirements for the use of safety glazing materials. CSGC claims that to the extent the preemptive provisions of section 26 of the Consumer Product Safety Act are no longer applicable to the state safety glazing laws, the preemptive language in seventeen of these laws would prohibit any local government from enforcing any model code provision which prescribes requirements for safety glazing next to doors or near walking surfaces.

NO STATE PREEMPTION

Twelve of the 31 existing state laws which prescribe the use of "safety glazing" in "hazardous locations" have no preemptive language. The states which have enacted the model safety glazing act without preemptive provisions are: Arkansas, Georgia, Kansas, Louisiana,^{2/} Missouri,^{2/} Ohio, Oregon,^{3/} Pennsylvania, Rhode Island, South Carolina, West Virginia, and Wisconsin.

Consequently, this directorate does not foresee that any of the twelve statutes listed above would interfere with the ability of a county, city, or local government to adopt and enforce a model code provision requiring the use of glazing materials which meet performance requirements identical to those in the Commission's standard in certain applications next to doors or between two walking surfaces.

^{2/} Statute does not require safety glazing next to doors or between two walking surfaces.

^{3/} Provisions of section 456.755 of the Oregon Revised Statutes authorize the Director of Commerce of that state to promulgate a state building code. The Director has exercised that authority to promulgate the Uniform Building Code issued by the International Conference of Building Officials as the state building code. Additionally, the Director of Commerce has amended section 54 of that code to make its requirements for safety glazing materials identical to the Commission's standard.

This directorate believes that in most cases, no real conflict would exist between the model code provisions applicable to glazing panels, and the corresponding provisions of the twelve state laws without preemptive provisions. Because the test in the Commission's standard is somewhat more stringent than the test in ANSI Standard Z97.1, any item of glazing material which will pass the test set forth in the Commission's standard will also meet the requirements of the ANSI standard. To the extent that the model code provisions would describe items of glazing material near doors, they would be describing in somewhat greater detail "fixed panels immediately adjacent to entrance and exit doors" which are included in the state laws' definitions of "hazardous locations." To the extent that the model code provisions would be applicable to glazed panels between two walking surfaces, they would be requiring the use of safety glazing in areas not defined as "hazardous locations" in the state statutes.

EXEMPTION FOR MORE STRINGENT LOCAL LAWS

Six states have enacted statutes requiring safety glazing in specified locations containing provisions which prohibit county, city, or local governments from enacting legislation to require safety glazing with the exception of local laws which are more stringent than the state law. The states which exempt more stringent local laws from preemption by the state statute are Alaska, Arizona, Colorado, Maryland, New Jersey, and Tennessee.

As stated above, the test contained in the Commission's standard will fail some glazing materials which can meet the requirements of the ANSI standard. Additionally, the "glazed panel" definition which the three model code groups propose to adopt would include certain items of glazing material located between two walking surfaces which are not described as "hazardous locations" by any of the state laws. Consequently, we believe that any local building code which applies the performance requirements of the Commission's standard to items of glazing material which meet the definition of "glazed panel" proposed for adoption by the model code groups would be more stringent than a state law which requires the use of glazing materials meeting the requirements of the ANSI standard in locations immediately adjacent to doors.

OTHER LIMITATIONS ON PREEMPTION

Section 2355 of the Oklahoma statute provides that "Local ordinances that substantially comply to this act shall take precedence over this act." We believe that this language would allow cities and counties in Oklahoma to adopt the glazed panel provisions proposed by the three model code groups because those provisions would require the use of safety glazing materials meeting all performance requirements of the ANSI standard in every application next to a door which is a "hazardous location" subject to the requirements of the ANSI standard in every application next to a door which is a "hazardous location" subject to the requirements of the state law.

Section 321-136 of the Hawaii safety glazing statute states that the state law "shall supersede any local or county ordinance" containing requirements for the use of safety glazing, but provides an exception from state preemption "where the director of the state department of health approves such ordinance as meeting the intent of this part."

As stated above, we believe that the uniform glazed panel provisions proposed by the three model building code groups not only would satisfy the intent of the state safety glazing act, but would actually provide a higher level of protection to consumers against risks of injury resulting from accidental breakage of glazing materials by human impact. For this reason, we believe that the director of health in the state of Hawaii could approve the adoption by any city or county in that state of the uniform glazed panel provisions proposed by the three model code association.

Section 553.26 of the Florida statute provides that its requirements "shall apply statewide in both incorporated and unincorporated areas." However, section 553.27 of the Florida act states that ANSI standard Z97.1-1966 is adopted as the "minimum" standard for glazing materials used in the applications which are subject to that law. Consequently, we believe the Florida statute would allow local jurisdictions to adopt and enforce building code provisions with more stringent performance requirements than ANSI standard Z97.1.

STATE BUILDING CODES

Five states which have safety glazing legislation with language to the effect that the state law preempts any local ordinance to require use of safety glazing materials in buildings also have legislation in force to establish a state building code. Those states are California, Michigan, Minnesota, New York and Washington.

If the three model codes were revised to require the use of glazing materials which meet the requirements of the Commission's standard and to adopt a uniform definition of the term "glazed panel," the question could arise in each of these states as to whether the state safety glazing law requiring the use of materials meeting ANSI standard Z97.1 in prescribed locations or the state building code should be applied.

While it is not possible to predict with certainty how the various state administrative agencies and courts would resolve this question in each of these five states, the following discussion will examine the building code legislation in each of these five states and discuss basic legal principles which have been used in the past to resolve issues of this kind.

Section 389-4 of the New York state General Business Law requiring safety glazing provides that the requirements of the state law "shall supersede any special law, local law, or ordinance inconsistent therewith."

However, New York has also enacted legislation (Article 18 of the Executive Law) which authorizes the State Building Code Council to promulgate a state building code. That legislation allows each county, city, and local jurisdiction to accept, or not to accept, the state building code. If a local jurisdiction accepts the state building code, section 386 of Article 18 empowers the local building department to enforce the state building code.

The State Building Code Council has promulgated a state building code, and that building code contains requirements for safety glazing "in fixed side panels adjoining doors and interior partitions," and in other locations. See sections A-207, B-208-3, and C-209-3, State Building Construction Code. The provisions of the New York state building code relating to the use of safety glazing materials do not require the use of materials which meet the requirements of ANSI Standard Z97.1. Instead, they specify the use of glazing materials which are "so sized, constructed, treated or combined with other materials as to minimize effectively the possibility of injury to persons in the event the glazing is cracked or broken."

Full implementation of the model code groups' proposal to adopt uniform provisions applicable to "glazed panels" would require some revision of the state building code by the State Building Code Council, and subsequent acceptance of the code by local jurisdictions.

If such a change to the New York state building code were adopted, the provisions of the state safety glazing law would conflict with the requirements for safety glazing enforced by those jurisdictions which have accepted the state building code.

One general principle of statutory interpretation is that statutes governing the same subject matter should be construed, so far as is reasonably possible, to be in harmony with each other. See Sutherland Statutory Construction, section 51.02.

If this principle were applied to the New York legislation, building officials in those jurisdictions which have accepted the state building code would be deemed to have the authority to require the use of glazing materials which comply with the Commission's standard in applications next to doors and in other products and locations described in those sections of the building code setting forth requirements for safety glazing, while the provisions of the state safety glazing act would be applicable in those jurisdictions which have not accepted the state building code.

Section 25998 of the California safety glazing law states that it "shall apply in all parts of the state." Section 25998.2 of that act provides that the safety glazing law shall be enforced "pursuant to Chapter 5" of the California Health and Safety Code. Section 17960 of Chapter 5 assigns responsibility for enforcement to the building department of each city and county in that state.

However, the statute cited by CSGC is not the only legislation in force in California prescribing the use of safety glazing materials in buildings within that state.

Sections 17958 and 17922 of the California Health and Safety Code require the governing body each city and county in that state to adopt, among other provisions, the requirements set forth in the most recent edition of the Uniform Building Code published by the International Conference of Building Officials (ICBO). Section 17958 provides that if any city or county does not adopt the requirements of that model code, those requirements shall nevertheless be applicable in such jurisdictions on November 23, 1971. Section 17958 provides further that if any city or county does not adopt any change made to the Uniform Building Code, that change shall be in effect in that jurisdiction one year after the effective date of the change. For the past several years, Chapter 54 of the Uniform Building Code has contained requirements for the use of safety glazing materials in specified locations.

If ICBO amends the Uniform Building Code to require the use of glazing materials that comply with the Commission's standard in locations described as "glazed panels," every city and county in California will be required by section 17958 to adopt that change. If any local jurisdiction fails to adopt the change, it shall be applicable in such a jurisdiction one year after its effective date. The building department of each city and county would then be responsible for enforcement of the amended building code requirements for safety glazing. The building officials charged with enforcement of building code requirements are the same persons designated by the safety glazing act to enforce the provisions of that law.

When the provisions of two statutes are irreconcilable, another generally recognized principle of law is that the most recently enacted legislation must prevail. See Sutherland Statutory Construction, section 51.03.

The California safety glazing act was adopted in 1970, and amended in 1971 and 1977. Section 17922 of the California Health and Safety Code, which authorizes the adoption of the Uniform Building Code, was originally enacted in 1961, and amended in 1965, 1969, 1970, 1972, 1974, 1977, and 1979. Section 17958, which requires each city and county to adopt and enforce the most recent change to the Uniform Building Code, was enacted in 1970, and amended in 1972, 1974, and 1979.

If the 1979 amendments to sections 17922 and 17958 of the Health and Safety Code were viewed as the most recent expressions of the intent of the California legislature, the principle that the most recently enacted legislation shall prevail would require building officials to enforce the applicable provisions of the Uniform Building Code rather than the state safety glazing act in case of conflict.

A similar situation exists in the state of Washington. In 1973, that state enacted legislation to require safety glazing to be used in specified locations in buildings. Section 70.89.060 of the Washington safety glazing act states that it supersedes any county, municipal, or local ordinance relating to the same subject. Section 70.89.070 places responsibility for enforcement of the safety glazing act with the building department of each county, city and local jurisdiction.

However, in 1974, the state of Washington enacted other legislation (section 19.27.030) which makes the Uniform Building Code published by ICBO applicable in every county, city, and local jurisdiction in the state. Unlike California, the Washington law, as amended in 1979, adopted the 1976 edition of the Uniform Building Code as the state building code, but section 19.27.040 gives each local jurisdiction the option to adopt the most recent revision of the Uniform Building Code. The building department of each county and city within the state is responsible for enforcement of the state building code.

If the Uniform Building Code were modified to adopt the performance requirements of the Commission's standard and the proposed uniform definition of the term "glazed panel," provisions of section 19.27.040 would give each local jurisdiction in Washington the option of adopting and enforcing that change.

To the extent that the provisions of section 19.27.040 conflict with the preemptive provisions of the Washington safety glazing act, we would expect that sections 19.27.030 and 19.27.040, the more recent legislative enactments would prevail.

The Michigan safety glazing act was passed in 1972. Section 5.2893(11) of that act defines safety glazing materials as those which comply with ANSI Standard Z97.1. That section also defines the term "hazardous locations" to include fixed glazed panels with an area greater than 300 square inches which are adjacent to doors, or in any other location where the use of other than safety glazing would present an unreasonable hazard.

Section 5.2893(17) of the Michigan act provides that compliance with the safety glazing act shall not relieve any person from responsibility for complying with other state or local codes "not in conflict with this act."

Section 5.2949(4) of the Michigan Annotated Statutes, as amended in 1978, directs the State Construction Code Commission to promulgate a state construction code. That section states: "The code shall consist of nationally recognized model building codes, other nationally recognized model codes and standards, and amendments, additions, or deletions to [the] building code or other codes and standards as the Commission determines appropriate." That section provides further "Periodically, the Commission shall add, amend, and rescind rules to update the code."

Section 5.2949(8) of the Michigan Statutes Annotated, which was enacted in 1974, and amended in 1978, provides that the state construction code shall be applicable throughout the state. However, "...a city, village, or township may elect to exempt itself from this act and the code by adopting and enforcing a nationally recognized model building code and other nationally recognized model codes." Cities electing not to accept the state building code may adopt a model building code by reference and without amendment. As amended in 1978, section 5.2949(8), requires that a city which elects not to accept the state construction code by adopting a model building code must review and update its code once every three years "by adopting without amendment all changes [to the codes] accepted by the bodies promulgating the nationally recognized model codes."

While we do not know which of the three model codes has been promulgated by the Michigan State Construction Code Council for use as the Michigan state construction code, the legislation directing the establishment of that code clearly authorizes the council to adopt any changes to the provisions of that model code concerning requirements for safety glazing materials once those changes are issued by any of the three model code groups. Those jurisdictions which elect not to use the state code by adopting one of the three model codes will be under a legal obligation to adopt any change to the provisions of that model code concerning requirements for safety glazing within three years after the change is made by the organization which publishes the model building code.

In 1974, the state of Minnesota enacted a state safety glazing act. Section 299G.18 of the Minnesota safety glazing act states that the provisions of that law "shall supersede any local, municipal or county ordinances or parts thereof" which establish requirements for safety glazing.

Section 16.85 of the Minnesota Statutes Annotated directs the state Commissioner of Administration to issue a state building code. This section was enacted in 1965, and amended in 1969, 1971, 1976, and 1977. In its present form, that section states: "The code and any amendment thereof shall conform insofar as practicable to model building codes generally accepted and in use throughout the United States." That section also authorizes the Commissioner to amend the state code from time to time.

Unlike the Michigan statute directing issuance of a state building code, section 16.851 of the Minnesota Statutes Annotated provides that the state building code shall apply throughout the state and shall supersede the building code of any municipality. That section was enacted in 1971, and amended in 1971, 1974, and 1977.

As amended in 1977, section 16.851 requires all municipalities to adopt and enforce the state building code with respect to new construction in their respective jurisdictions no later than July 1, 1978. Thus, in the state of Minnesota, local jurisdictions are affirmatively required to enforce the state building code.

While we do not know which of the three model codes has been issued as the Minnesota state building code, we believe that the Minnesota statutes which direct the establishment of that code clearly authorize the state Commissioner of Administration to amend that code to incorporate any change to the glazed panel provisions which any of the three model code groups may issue. Once the state building code is amended, local jurisdictions are required to adopt and enforce the change.

Since the legislature amended section 16.851 three years after enactment of the safety glazing act, we do not believe that the preemptive language in section 299G.18 of the Minnesota safety glazing act will prohibit any city in Minnesota from adopting the uniform requirements for glazed panels proposed by the three model code associations, once the three model codes are changed in the manner proposed by the building officials.

CLEAR PREEMPTION

CSGC has cited provisions in the safety glazing laws enacted by Connecticut, Delaware, and Massachusetts as prohibiting local jurisdictions from enforcing requirements for use of materials other than those which comply with the ANSI standard in applications next to doors.^{4/} After examination of those three statutes, we agree with CSGC that their preemptive provisions would prohibit cities and counties from adopting the requirements for glazed panels proposed by the three model code groups.

LIMITED PREEMPTION

Section 8 of the Illinois safety glazing act provides that it supersedes any county, municipal, or local law requiring the use of safety glazing, but provides an exception for "any municipality or county with home rule powers" which enacts local legislation to require safety glazing. Consequently, any city or county in Illinois with home rule power could legally adopt the glazed panel provisions proposed by the three model code groups, but those cities and counties without home rule power could not.

Section 34-28-10 of the South Dakota statute provides that it "shall not be construed as repealing any local ordinance, but shall be held and construed as ancillary and supplemental thereto...." However, this section provides further that in case of any conflict between the state law and a local law, the state law "shall supersede applicable provisions of local ordinances."

This language appears to allow cities and counties in South Dakota to enact laws requiring the use of safety glazing materials, including laws which are not identical to the state statute. However, this language also states that if any provision of a local law conflicts with a provision of the state law, the state law prevails.

The argument could be made that if a city or county in South Dakota enacted the glazed panel provisions proposed by the three model code groups, that language in the local law requiring the use of materials meeting the Commission's standard would conflict with provisions in the state law

^{4/} Connecticut General Statutes, Section 19-399d; Delaware Code, Title 16, Section 8606; Massachusetts Annotated Laws, Chapter 143, Sections 3A, 3T through 3V.

requiring use of materials that conform to the ANSI standard, and that the provisions defining the term "glazed panel" would conflict with the state law's definition of "hazardous location." If such an argument were accepted by a court, CSGC would be correct in asserting that the safety glazing law of South Dakota would have the effect of prohibiting cities and counties in that state from enforcing the glazed panel provisions proposed for adoption by the model code groups.

However, an argument could also be made that if a city or county enacted the glazed panel provisions proposed by the model code groups, no conflict with the performance requirements for safety glazing in the state law would arise. Any item of glazing material which meets the requirements of the Commission's standard will also meet the requirements of the ANSI standard.

To the extent that the model code provisions are applicable to glazed panels located between two walking surfaces, they would require the use of safety glazing in certain areas not defined as "hazardous locations" by the state law. The requirement of the model code provision for use of safety glazing in applications between two walking surfaces could be viewed as being in addition to, rather than in conflict with, the requirements for use of safety glazing next to doors set forth in the state law.

The state law defines the term "hazardous locations" to include "fixed glazed panels" which are "immediately adjacent" to doors, and "fixed or operable sidelites" adjacent to primary residential entrance and exit doors. The definition of "hazardous locations" excludes any item of glazing material which has no dimension greater than 18 inches.

The state law further defines the term "fixed flat glazed panels immediately adjacent to entrance or exit doors" to mean the "first fixed glazed panel" on either side of a door having its nearest vertical edge within 48 inches of a door. However, this definition specifically excludes any item of glazing material which has its bottom edge more than 18 inches above a floor, and any item of glazing material more than 48 inches wide.

For this reason, we believe that if a city or county in South Dakota enacted the glazed panel provisions proposed by the model code groups, the preemptive language of the state safety glazing act would cause the exceptions for items of glazing material with no dimension greater than 18 inches, items of glazing material which are wider than 48 inches, and items of glazing material located more than 18 inches above a floor to prevail over the definitions glazed panel in local laws, if they did not also contain those exceptions.

CONCLUSION

After analysis of the statutory citations submitted by CSGC, and the other state laws discussed above, the Directorate for Compliance and Enforcement concludes that safety glazing laws currently in effect in 31 states will not present a major legal obstacle to implementation of the plan advanced by the three model code associations to formulate a uniform definition of the term "glazed panel" for adoption by their member jurisdictions. However, the existing laws of the states of Connecticut, Delaware, and Massachusetts will prohibit enactment and enforcement in those states of the glazed panel provisions proposed by the model code groups. Additionally, only those cities and counties with home rule power will be able to adopt the proposed glazed panel provisions in the state of Illinois. In South Dakota, exceptions to the requirements for safety glazing set forth in the state safety glazing law can be expected to take precedence over any local code requirements which do not contain the same exceptions.

Attached as Appendix B is a chart summarizing this directorate's analysis of the state safety glazing acts and building code legislation discussed in this memorandum.

APPENDIX A

I State safety glazing laws cited by
counsel for Consumer Safety Glazing
Committee in letter dated August 14, 1979

- (1) Arizona Revised Statutes, section 36-1631, et seq.
- (2) Arkansas Statutes Annotated, section 82-732, et seq.
- (3) California Health and Safety Code, section 25997, et seq.
- (4) Colorado Revised Statutes, section 9-2-101, et seq.
- (5) Connecticut General Statutes, section 19-399a.
- (6) Delaware Code, title 16, section 8601, et seq.
- (7) Georgia Code, section 92A-2001, et seq.
- (8) Hawaii Revised Statutes, section 321-131, et seq.
- (9) Illinois Revised Statutes, Chapter 17 1/2, section 1,
et seq.
- (10) Kansas Statutes, section 65-3801, et seq.
- (11) Louisiana Revised Statutes Annotated, section 40:1711,
et seq.
- (12) Maryland Annotated Code, article 41, section 266GG-1,
et seq.
- (13) Massachusetts Annotated Laws, chapter 143, section 3T,
et seq.
- (14) Michigan Compiled Laws, section 125.1381, et seq.
- (15) Minnesota Statutes, section 299G.13, et seq.
- (16) Missouri Annotated Statutes, section 701.010, et seq.
- (17) New Jersey Statutes Annotated, section 51:12-1,
et. seq.
- (18) New York General Business Law, section 389-m, et seq.

- (19) Ohio Revised Code Annotated, section 3781.51, et seq.
- (20) Oklahoma Statutes Annotated, title 63, section 2351, et seq.
- (21) Oregon Revised Statutes, section 447.150.
- (22) Pennsylvania Statutes Annotated, title 35, section 5813, et seq.
- (23) Rhode Island General Laws, section 23-27.1-1, et seq.
- (24) South Dakota Compiled Laws Annotated, section 34-28-5, et seq.
- (25) Tennessee Code Annotated, section 53-2549, et seq.
- (26) Washington Revised Code, section 70.89.005, et seq.
- (27) West Virginia Code, section 47-5-1, et seq.

II Additional citations compiled
by CPSC staff

- (28) Alaska Statutes, section 18.60.750, et seq.
- (29) Florida Statutes Annotated, section 553.24 et seq.
- (30) Code of Laws of South Carolina 1976, section 23-37-10, et seq.
- (31) Wisconsin Statutes Annotated, section 101.125..

APPENDIX B

Analysis of Preemptive Provisions of State Safety Glazing Legislation

No preemptive provisions

<u>State</u>	<u>Citation</u>
Arkansas	Arkansas Statutes Annotated, Sections 82-732 through 82-736
Georgia	Georgia Code, Chapter 92A-20.
Kansas	Kansas Statutes, Sections 65-3801 through 65-3804.
Louisiana	Louisiana Revised Statutes, Sections 1711 through 1715. Not applicable to any location which is a "glazed panel."
Missouri	Vernon's Annotated Missouri Statutes, Chapter 701. Does not define "safety glazing" by reference to ANSI Standard Z97.1. Does not apply to any location which is a "glazed panel."
Ohio	Ohio Revised Code Annotated, Sections 3781.51 through 3781.99.
Oregon	Oregon Revised Statutes, Section 447.150. Does not define "safety glazing" by reference to ANSI Standard Z97.1. See also section 456.755, which authorizes Director of Commerce to promulgate state building code. Oregon has prom- ulgated Uniform Building Code of ICBO as state building code.
Pennsylvania	Pennsylvania Statutes Annotated, Sections 5811 through 5818.
Rhode Island	Rhode Island General Laws, Chapter 27.1.
South Carolina	Code of Laws of South Carolina 1976, Sections 23-37-10 through 23-37-60.
West Virginia	West Virginia Code, Sections 47-5-1 through 47-5-6.
Wisconsin	Wisconsin Statutes Annotated, Section 101.125.

No preemption if local requirement is more stringent.

<u>State</u>	<u>Citation</u>
Alaska	Alaska Statutes, Section 18.60.770 State law supersedes city or borough ordinance" [e]xcept where a city or borough ordinance is more strict in terms of the test and labeling standards required or more broad in its application to persons or locations covered."
Arizona	Arizona Revised Statutes, Section 36-1635. This article does not supersede any city, town or county ordinance which is greater than the standards provided in this article, nor does this article prohibit such city, town or county from inspection pursuant to the provisions of this article or its ordinances, and otherwise enforcing ordinances.
Colorado	Colorado Revised Statutes, Section 9-2-106. The governing body of any city, town, county, or city and county may adopt standards governing the use of safety glazing in hazardous locations which are no less stringent than the provisions of this article.
Maryland	Maryland Annotated Code, Section 266GG-5. Effect on municipal or county ordinances. This subheading supersedes any local, municipal or county ordinance or parts thereof relating to the subject matter thereof, except that requirements and regulations more stringent than those in effect under this subheading may be adopted and enforced by the political subdivisions of this State.
New Jersey	New Jersey Statutes Annotated, Section 51:12-9 This act shall not supersede any municipal ordinance ...relating to the subject matter hereof more stringent than the requirements of this act.

State

Citation

Tennessee Tennessee Code Annotated, Section 53-2554.
Statutory conflict. Whenever
sections 53-2549-53-2554 shall conflict
with any local, municipal or county
ordinance or resolution, or parts thereof,
the more stringent shall apply.

Other limitations on preemption.

Florida Florida Statutes Annotated, Section 553.26.
Application. Part III shall apply
statewide in both incorporated and
unincorporated areas to all new build-
ings and structures, both public and
private, and to all alternations or
permanent replacements in any new or
existing structure.

Section 553.27. Adoption of standards. The
following are adopted as minimum
standards for transparent and obscure
glazing material used in all glass
doors, bathtub and shower enclosures,
and hazardous locations: (1) All such
glass shall meet the requirements of
United States of America Standard
Z97.1-1966, which shall apply to obscure
as well as transparent glazing materials.

Hawaii Hawaii Revised Statutes, Section 321-136.
Local Ordinances. This part shall
supersede any local or county ordinance
or parts thereof relating to the subject
matter hereof, except where the director
of the department of health approves such
ordinance or parts thereof as meeting
the intent of this part.

Oklahoma Oklahoma Statutes Annotated, Section 2355.
Law governing. Local ordinances that
substantially comply to this act shall
take precedence over this act.

Limited preemption

<u>State</u>	<u>Citation</u>
Illinois	Illinois Revised Statutes, Chapter 17 1/2. Section 8, Local ordinances. This Act supersedes any local, municipal or county ordinance or parts thereof relating to the subject matter hereof, except that this Act shall not apply to any municipality or county with home rule powers from and after the date such municipality or county has enacted a superseding ordinance.
South Dakota	South Dakota Compiled Laws Annotated, Section 34-28-10. Local ordinances supplemental -- Conflicts. Sections 34-28-5 to 34-28-9, inclusive, shall not be construed as repealing any local ordinance but shall be held and construed as ancillary and supplemental thereto, provided, however, that in the case of any conflict, the provisions of Sections 34-28-5 to 34-28-9, inclusive, shall supersede applicable provisions of local ordinances.

Clear preemption

<u>State</u>	<u>Citation</u>
Connecticut	Connecticut General Statutes, Section 19-399d. Statute supersedes local ordinance. Sections 19-399a to 19-399c, inclusive, shall supersede any local ordinance or parts thereof relating to the subject matter of said sections.
Delaware	Delaware Codes, Section 8606. Local ordinances. This chapter shall supersede any local, municipal or county ordinance or parts thereof relating to the subject matter hereof.
Massachusetts	Massachusetts Annotated Laws. Chapter 143, section 3A. State building code supersedes local ordinances except in case of local laws regulating historic buildings.

Safety glazing act preempts local requirements, but separate statute directs issuance and enforcement of state building code.

Citations

<u>State</u>	<u>Preemption Local requirements</u>	<u>State building code established</u>
California	California Health and Safety Codes, Section 25998.	Sections 17922, 17958
Michigan	Michigan Statutes Annotated, Section 5.2893(17)	Sections 5.2949(4), 5.2949(8).
Minnesota	Minnesota Statutes Annotated, Section 299G.18.	Sections 16.85, 16.851
New York	New York General Business Law, Section 389-r.	Executive Law, Article 18. Executive Law, Section 386.
Washington	Washington Revised Code, Section 70.89.060.	Sections 19.27.030, 19.27.040, 19.27.050.

Memorandum

TO : Harry Cohen, Program Manager,
Mechanical Hazards, OPM

FROM : *Ron Younger*
Ron Younger, Deputy Director, State
Programs and Communications, FO

SUBJECT: "Glazed Panels" Proposed Revocation

DATE: March 19, 1980

On May 31, 1979 the Commission published in the Federal Register a proposal to revoke one section of the standard for architecture glazing materials as it applies to "glazed panels" or to revise the definition for same. Should revision rather than revocation be the final outcome, there were two proposals put forward for comment, one drafted by the Commission staff and one which was requested by the National Glass Dealers Association (NGDA).

Basically, the comments to the Federal Register proposal give the appearance of 2 factions, the glass industry (represented by the NGDA and the Consumer Safety Glazing Committee, CSGC) and the building code enforcement officials representing various states, cities, counties etc. In all, nearly 100 comments were received. The majority of the industry is not in favor of revocation and support the NGDA proposal for revision of glazed panels.

With the exception of one building official, all building officials who commented, (23 in all) support revocation of glazed panels from the federal standard. Their arguments are basically the same; they are the responsible enforcement agency at the building site and can best handle the job on glazed panels. A number of the building officials pointed out that the public's safety was their business and that they can best do it because they have the staff, expertise and experience. The one building code official opposed to revocation is from Minnesota and his opposition stemmed from the fact that the Minnesota legislature had recently enacted a provision which allowed communities in Minnesota which do not want a building code to simply eliminate it. His concern is that other States may elect to do the same. However, according to our contacts and correspondence with the many other building code officials, we don't believe this is a problem. In almost all cases, changes which are made by States and local jurisdictions in a model code is in administrative procedures and fee schedules and not in safety aspects.

In March of 1978 some of the building code officials traveled to Washington, D.C. and appeared before the Commissioners. This meeting evidenced that the 3 major model building codes and the CPSC regulated many of the same products and were concerned with the same type hazards. The building code officials were very concerned that CPSC had promulgated a glazing standard which preempted all State and local standards on glazing which covered the same risk of injury and did not have the resources to enforce it. The building code officials attending the meeting pointed out that there are about 50,000 building code inspectors who are constantly supervising the construction of new buildings and remodeling at the job sites. These building inspectors are in a far better position to supervise the use of safety glazing in hazardous human impact areas.

In October of 1978, two of the Commission staff met with the technical directors from the 3 model building code groups, the Building Officials and Code Administrators International (BOCAI), the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI) to determine if they would recommend adoption of a uniform standard for glazed panels if the Commission should revoke glazed panels from the federal standard.

The support and commitment received from the technical directors was extremely favorable as evidenced by their attached letters, exhibits A-1, A-2 and A-3. As a result of this meeting ICBO and SBCC made decisions to retain all provisions pertaining to glazing in their codes and BOCA immediately initiated procedures to return glazing to their code. This was done so that as soon as CPSC might revoke the glazed panel provisions the State and local building code officials could begin enforcement. The primary purpose of this was so that there would be no break in enforcement if the Commission were to revoke the glazed panel provision before the model codes could get a uniform definition into their codes.

In January 1979, the Board for Coordination of Model Codes (BCMC) met in Chicago to work out a uniform definition for glazed panels which could be adopted by the 3 model codes. The Commission had input into the uniform definition. As part of this process the model codes will adopt the remainder of the federal standard as is.

In October 1979, the 3 technical directors were queried as to what the current status was to glazed panels in their respective model codes, whether they were still committed to taking over enforcement on glazed panels and a possible time frame for a uniform definition. As can be seen by the attached letters, exhibits B-1, B-2, and B-3, from the technical directors, they are firmly committed to taking over the enforcement of glazed panels as soon as CPSC revokes those provisions from the federal standard.

Exhibit "C" is another letter, dated 2-21-80, from Paul Heilstedt-BOCA, detailing the progress BOCA has made and indicating that the BCMC uniform definition should be a part of BOCA code to be adopted in June 1980 by the BOCA membership. The other two model codes don't intend to adopt the BCMC uniform definition until CPSC revokes glazed panels from the federal standard.

There is no question that the model codes are committed to the adoption of a uniform code on glazed panels if the Commission revokes those provisions from the federal standard. There will be no break in enforcement if the federal revocation does not take place before June 1980. Conversations with many individual building code officials show they are also committed to this course and are firmly convinced that local enforcement will provide the best protection for the consumer.

Enclosures



BUILDING OFFICIALS & CODE ADMINISTRATORS INTERNATIONAL, INC.

A-1

OFFICERS

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GLENN A. ERICKSON, P.E.
City Architect
Div. of Housing &
Bldg. Code Enforcement
Dept. of Community Services
St. Paul, Minnesota

First Vice-President
ROBERT H. A. LAUDENSLAGER
Dir., Bureau of Inspections
Allentown, Pennsylvania

Second Vice-President
WILBUR H. LIND
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Hackensack, New Jersey

Secretary
GERALD H. JONES, P.E.
Building Code Engineer
Overland Park, Kansas

Treasurer
FRED W. STANLEY
Director, Bldgs. & Inspection
Troy, Michigan

17926 SOUTH HALSTED STREET
HOMewood, ILLINOIS 60430

Area Code 312
799-2300

October 31, 1978

Mr. Ronald P. Younger
Deputy Director
State Programs & Communications
Directorate for Field Operations
U.S. Consumer Products Safety
Commission
Washington, D.C. 20207

Dear Mr. Younger:

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Comr. of Bldgs. &
Admin. Asst. to the Mayor
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Engineering
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STAFF

Executive Director
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Technical Director
PAUL K. HEILSTEDT, P.E.

Managing Director
LEONARD D. MILLS

This is in response to our October 11, 1978 meeting where you discussed several items with the Technical Directors of the three model codes. This was followed with a request to respond to specific questions regarding glazing. We were asked that if the Consumer Product Safety Commission were to amend the Safety Standard to remove the application to glazed panels what would the status of such provisions be in BOCA and what would the reaction be by the BOCA membership.

As we discussed, the 1978 Basic Building Code does not contain specific safety glazing requirements within the text, but references the Safety Standard for Architectural Glazing Materials (CPSC 16-CFR, part 1201). This change was precipitated by our membership in response to the CPSC action and the terms of the Safety Standard. The process by which the Basic Building Code is maintained and changes made initiates by any party submitting a code change which is then distributed to our membership with a public hearing held in conjunction with our Mid-Winter meeting (January). The hearing body at the Mid-Winter meeting is identified as the Code Changes Committee. This committee makes a recommendation to the membership based on the testimony and evidence presented at the public hearing. That recommendation is then distributed to our membership. At our Annual Conference (June) the active (governmental)

Mr. Ronald P. Younger
October 31, 1978
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members of BOCA then vote on the disposition of each change. Any party can present testimony for and against a change at both the Mid-Winter meeting and at the Annual Conference. The final action of the membership is the determining factor in the content of the codes.

Subsequent to our meeting of October 11, a code change was entered under the sponsorship of our President, Mr. Glenn A. Erickson, to return the safety glazing provisions to the text of the Basic Building Code. Enclosed is a copy of that code change which will be presented at the public hearing in January.

Please understand that no one can predict the end result of our code changes process. However, the information the staff has received indicates there is considerable confusion and concern with the current method by which the code treats safety glazing. On this basis it would appear that the situation can be resolved to everyone's benefit if the specific safety glazing requirements were returned to the code text.

If the Commission were to remove the application to glazed panels we would immediately proceed with an advisement to the building officials of the CPSC action with a recommendation that the provisions that were in the Basic Building Code prior to the 1978 edition be employed for identification of the need for safety glazing. The code change mentioned above that has been submitted into our cycle will not be acted upon by our membership before June 29, 1979. I have discussed this process with several members of BOCA and they all agree that the CPSC Safety Glazing Standard contains requirements that can be incorporated within the Basic Building Code. The final action of our membership will reflect not only the provisions that were contained in the prior Basic Building Code but the principles contained in the Safety Glazing Standard.



Mr. Ronald P. Younger
October 31, 1978
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Orlando, Fla. →

For your information, on October 13, 1978 the Board for the Coordination of the Model Codes (BCMC) entered "safety glazing" on the agenda for their January 31, 1979 meeting. The BCMC is a cooperative effort by the model codes to develop technical uniformity in the model codes. The final result of BCMC action is a recommendation back to the model code organizations for revision to their respective codes for national uniformity. The text which BCMC will be reviewing includes the glazing requirements of the three model codes and those in the CPSC Safety Glazing Standard.

The definition of glazed panel has never been contained in the Code and has not created any reported hardship. However, as indicated earlier, our membership will be reviewing the CPSC Safety Glazing Standard definitions in conjunction with the past Basic Building Code content. At this point there are dual standards in the code; ANSI Z97.1 and CPSC Safety Glazing Standard. Eventually the staff would like to see total reliance on the CPSC Safety Glazing Standard. This again would be a code change removing the reference to ANSI Z97.1.

Work in an existing building provides a difficult code enforcement problem. Generally speaking, if the code has a requirement for a material, product or system, a building permit is required and the work must conform to the Code. Realistically, work is conducted, perhaps of a minor nature, with which the Building Department has no knowledge and a building permit is not issued. This may constitute illegal construction depending on the scope and extent of the work.



Mr. Ronald P. Younger
October 31, 1978
Page 4

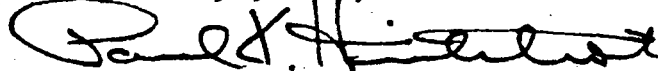
I am enclosing a copy of our membership directory which will indicate the members of BOCA and give you an idea of those states and communities that are involved with or feel impact of BOCA activities. If one were to combine all of the communities impacted by the model codes it would encompass approximately 85 to 90% of the population. Enclosed is a map indicating the scope of influence of BOCA alone.

It is my opinion that if safety glazing in hazardous locations subject to human impact is the objective, the current enforcement process which is through local departments can best accomplish that objective. We are constantly involved in educational programs and we would like to incorporate the safety glazing requirements within our educational program. Uniformity in enforcement and interpretation cannot be accomplished without continued education and dialogue through the model code communication exchange, our magazine and bulletins and courses.

We actively solicit consideration by the Consumer Product Safety Commission of what we have to offer and fully intend to coordinate our activities and objectives with that of the Commission and promise support for items within our mutual concern. The model codes do not have the resources to develop the data for identification of consumer needs or hazards and with that ability of the Consumer Product Safety Commission, we can both serve to accomplish our parallel objectives of protection of health, safety and welfare.

Please contact us if we can be of any further assistance.

Very truly yours,



Paul K. Heilstedt, P.E.
Technical Director

PKH/cw
Encls.

cc Glenn A. Erickson
William J. Tangye
Donald Watson





BOCA INTERN 'ONAL

1313 East 60th Street
Chicago, Illinois 60637

312 / 947-2580

Committee
Recommendation _____

Conference
Action _____

CODE
CHANGE NO. B354-79

PART 1 OF 1

SEE ALSO
CHANGE NO. _____

(do not write above this line)

BASIC Building CODE SECTION 857

PROPONENT Glenn A. Erickson, President, BOCA International

(Check One)

- ☐ Change subsection to read as follows.
☐ Add new subsection to read as follows.

- ☒ Delete subsection and substitute as follows.
☐ Delete subsection without substitution.

857.5.6 Human impact loads: Individual glazed areas in hazardous locations such as those indicated in Section 857.5.6.1 shall pass the test requirements of CPSC 16-CFR, Part 1201 listed in Appendix B, or by comparative test shall be proven to produce at least equivalent performances. Annealed glass shall not be used.

857.5.6.1 Specific hazardous locations: The following shall be considered specific hazardous locations for purposes of glazing:

1. glazing in ingress and egress doors;
2. glazing in fixed and sliding panels of sliding type doors (patio and mall type);
3. glazing in storm doors;
4. glazing in unframed swinging doors;
5. glazing in shower doors and tub enclosures;
6. glazing in fixed panels within sixty (60) inches horizontally of the nearest vertical edge of the ingress or egress door; and
7. glazing in fixed panels with a bulkhead less than thirty-six (36) inches above the finish floor level which because of their size or design may be mistaken as a means of ingress or egress.

State here the specific code change, with the exact and complete current text and the rewording proposed. Show material in brackets [] to be deleted from present text. Show material underscored to be added to text.

SUPPORTING STATEMENT (S): Recent discussions with the Consumer Product Safety Commission's staff has indicated that the incorporation of safety glazing provisions in the Basic Building Code would better serve the consumer. The proposed text is identical to that contained in the Basic Building Code (1976 Supplement) prior to the 1978 Edition with the exception that the CPSC Safety Glazing Standard is referenced for the testing method and criteria.

BOCA INTERNATIONAL'S CODE CHANGES PROCEDURE



APPROVED BY THE EXECUTIVE COMMITTEE OF BUILDING OFFICIALS
AND CODE ADMINISTRATORS INTERNATIONAL ON JUNE 13, 1976

Publication Cycle

The BOCA *Basic Codes* are published in new editions every three years. Each new edition incorporates the provisions of the previous supplement and the results of code changes activity since the last edition.

Code Changes Cycle

The code change cycles shall be as follows:

1978 Publish new editions of *Basic Codes*.

1979 Code Changes submitted prior to August 1, 1978. Public hearing(s) with Conference Action at Annual Business Meeting. Supplement to all codes to be published.

1980 Code Changes submitted prior to August 1, 1979. Public hearing(s) in mid-year with Conference Action at Annual Business Meeting.

1981 Repeat above cycle.

Referenced Standards Up-dating

The up-dating of standards listed in the codes will be handled administratively by the proper committee on an annual basis, with the vote of the committee being final. Parties desiring to comment on an up-dated standard shall file their remarks with the BOCA Executive Office for consideration by the committee. The inclusion of a new standard into the codes is to be through this code change procedure. All referenced standards are to be maintained up-to-date in each supplement and new edition.

Procedure for Submitting Code Changes

All code change proposals shall be submitted (original and two copies) on the forms made available for that purpose. The code change proposal must indicate and contain:

1. the applicable code and section;
2. the proponent;
3. the scope and intent of the proposed change;
4. the existing and revised text; and
5. each proposal shall be concluded with supporting statements for each change and shall specifically identify:

- a. Purposes: The proponent must clearly state the purpose of the proposed code change (e.g., clarify the code; revise outdated material; substitute new or revised material for current provisions of the code; add new requirements, etc.).
- b. Reasons: The proponent must justify changing the current code provisions of the code. Changes which add or delete requirements must be supported by logical arguments which clearly show why the present code provisions are inadequate or overly restrictive and how the change will improve the code.
- c. Substantiation: The proponent must include all available substantiating material such as (but not limited to) research reports, statistical analysis, field related experiences and ease or difficulty in enforcing or interpreting. Wherever possible, technical data should be provided to substantiate the need for a code change. The burden of furnishing all proof lies with the proponent of the code change. When the change proposed is based on a test, standard, specification or similar supporting data, three copies of such supporting data shall be submitted in their published form. Additional copies may be requested when determined necessary by the Technical Director.

Schedule For the Processing of Changes

August 1: Final date for original submittal of proposed substantive code changes (Ex. August 1, 1978, for 1979 cycle).

October 1: Final date for re-submittal of returned proposals for code changes.

November: Publication of proposed code changes and distribution to the BOCA membership.

January: BOCA Public Hearing on proposed code changes.

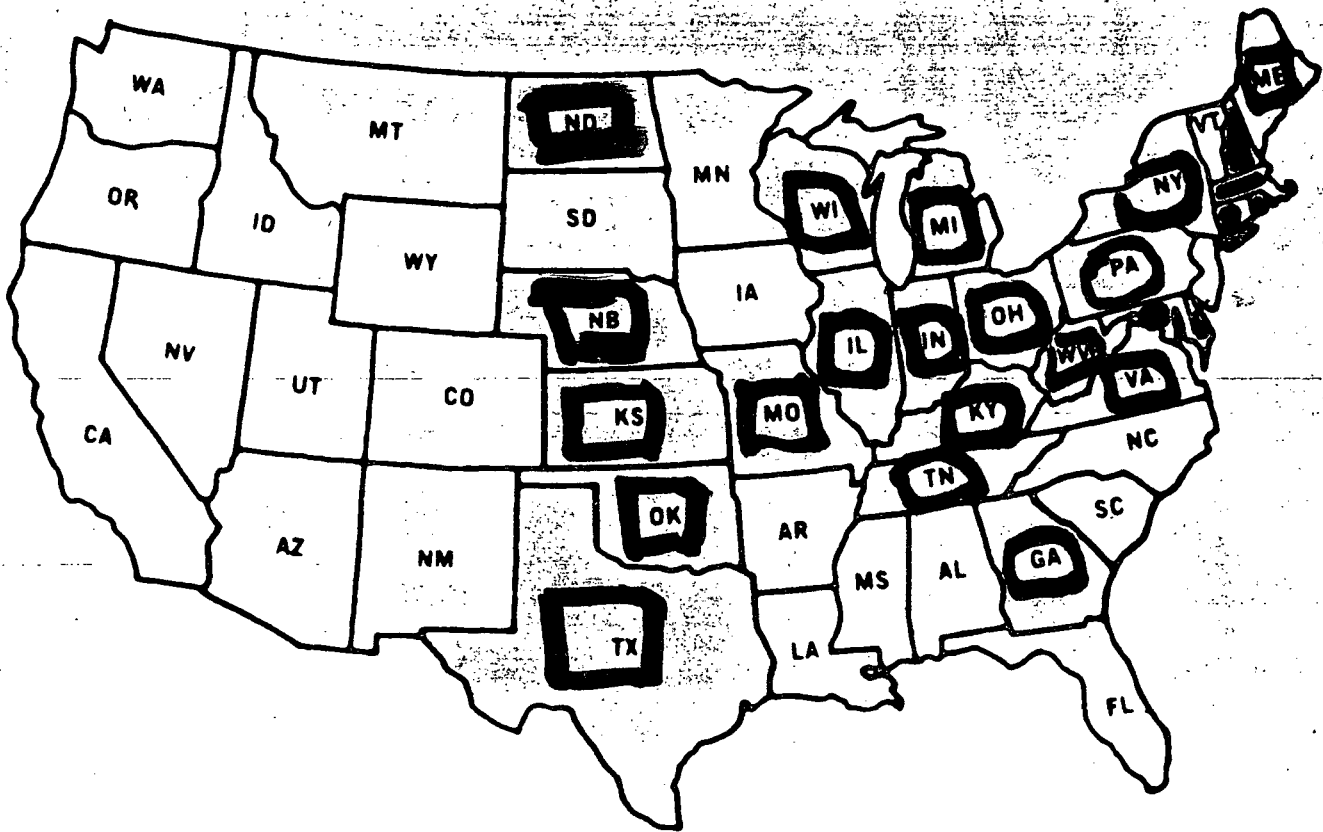
May: (30 days prior to conference action): Publication of code changes committee recommendations for final action.

June:

Annual Business Meeting: Conference final action on proposed code changes.

As soon as practical after Annual Meeting: Publication of approved code changes, supplements or editions.

Who uses the BOCA Codes?



MAP EXPLANATION

The shaded portions of the map show areas in which local government jurisdictions have adopted one or more of the BOCA *Basic Codes*. In addition, states that have adopted one or more of the codes on a state-wide basis are listed below.

Connecticut: Basic Building Code.

Illinois: *Basic Building Code* (for manufactured Housing).

Maine: *Basic Building Code* (for state buildings).

Maryland: Basic Building, Plumbing and Mechanical Codes (for manufactured housing).

Massachusetts: *Basic Building Code* (modified).

Michigan: *Basic Building and Plumbing Codes.*

New Hampshire: *Basic Plumbing Code.*

New Jersey: Basic Building Code.

Rhode Island: *Basic Building Code.*

Pennsylvania: Basic Building Code (for manufactured Housing).

Virginia: Basic Building, Plumbing and Mechanical Codes.

Ohio: Basic Building and Mechanical
Codes (effective 7/1/79)



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A-2



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November 7, 1978

Mr. Ronald P. Younger, Deputy Director
State Programs and Communications
Directorate for Field Operations
U. S. Consumer Product Safety Commission
Washington, D. C. 20207

Dear Ron:

The following is in response to your letter presented at our meeting in Houston. I will attempt to answer each question in the numerical order it was asked.

1. Our people are ready to begin enforcing the regulations on glazed panels immediately. The extent will, of course, depend on the changes made to the CPSC Standard. We still have the glazing provisions in the Standard Building Code.
2. Our members expressed their intent to start enforcing glazed panels by voting to leave in our glazing chapter at our Annual Meeting - October 15 - 19, 1978.
3. It can be done immediately. We will notify our members by special mailing after the Commission meeting.
4. We will continue to define glazed panel as we did prior to the CPSC rule. We will work with BOCA and ICBO through BCMC to arrive at a uniform set of definitions and criteria. At the present time, our code requires compliance with ANSI Z 97.1. It would be at least a year before this could be altered.
5. Most replacement is not covered by the permit process and as such the local official has little or no control. The enforcement of replacement panels, regardless of who does it, in my opinion, is going to require education of the public and glazing contractors.
6. In my estimation about 95% of the U. S. population resides in areas covered by building codes. Seventy - eighty percent

Mr. Ronald P. Younger, Deputy Director

2

November 7, 1978

of this is covered by one of the three model codes or codes based on the model codes.

We believe that the one way to assure continued consumer protection is through the local enforcement of glazing regulations at the site and a co-operative effort with CPSC at the manufacturing facility. We share the CPSC concern over the potential problem of glazing and feel that the local code enforcement agency can play a vital role in assuring compliance with codes and standards.

We look forward to working with you on this matter.

Yours truly,



William J. Tangye, P. E.
Director of Engineering Services

WJT:kf

A-3



International Conference of Building Officials

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Ronald P. Younger, Deputy Director
State Programs and Communications
Directorate for Field Operations
U.S. Consumer Product Safety Commission
Washington D.C. 20207

Dear Mr. Younger:

As requested at our meeting held on October 11, 1978, we have the following comments regarding the possibility of the Consumer Product Safety Commission dropping their requirements for glazed panels.

At our annual meeting held in October, 1978, the ICBO membership voted to retain the safety glazing provisions currently included in the Uniform Building Code in hopes that the Consumer Product Safety Commission would allow building codes to determine where safety glazing is required. In view of this, if the Commission decides not to preempt code provisions for glazed panels, building officials could immediately commence enforcement of the requirements currently included in the Uniform Building Code. To encourage enforcement, we would intend to publish articles in Building Standards.

The Uniform Building Code does not currently have a definition for glazed panels nor do we feel that a specific definition is necessary. Section 5406 delineates areas which require safety glazing which in some cases are more restrictive than requirements of the Consumer Product Safety Commission standard.

Section 104(e) of the Uniform Building Code requires that the installation or replacement of glass in hazardous locations be as specified in Section 5406 for new construction. The code does not waive the requirement for a building permit.

The 1976 edition of the Uniform Building Code currently requires that safety glazing meet the criteria set forth in the ANSI Z-97.1 standard. Based upon the action at our annual meeting, this standard would also be included in the 1979 edition of the code which will be published in April of 1979. Generally, code changes are considered by our membership at our annual meeting which is usually held in October. Accordingly, if normal procedures were followed, it would not be possible for our organization to adopt the Consumer Product Safety Test Standard until our 1979 Annual Conference on Education and Code Development. Our by-laws do permit our Board of Directors to approve a code change when they feel the change is warranted. This action must be ratified by our membership at the next annual meeting.

I would estimate that approximately 80 to 90% of the population uses a model code or a code based on a model code. Some states have also developed requirements for safety glazing which are generally similar to the model code regulations. It is felt that even where there are differences they are considered minor.

I will be able to attend the meeting on November 15, 1978, and if you have further questions, please let me know.

Yours very truly,

D. R. Watson

D. R. Watson, P.E.
Technical Director

DRW:jg



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B-1

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17926 SOUTH HALSTED STREET
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Oct 1979

Area Code 312
799-2300

Mr. Ronald P. Younger
State Programs Division
Office of Field Coordination
U.S. Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20207

Dear Mr. Younger:

The purpose of this is to keep you advised of the status of BOCA's earlier commitment to work with the CPSC in providing protection to the consumer in the area of glazing. Attached is a copy of the provisions adopted by our membership dealing with the requirements for safety glazing in locations subject to human impact. As can be seen this closely parallels the CPSC Safety Glazing Standard requirements. This text will be released to our membership in the next six weeks for adoption. Also, enclosed is a copy of 1980 Proposed Code Change B159-80 which is the product of the coordination efforts of CABO. BOCA's final action on this change will be in June, 1980 and the text will appear in the 1981 Edition. As you will recall, the model codes intend to develop uniformity in this area and have held a series of open meetings and a public hearing with uniformity as a goal.

It is our intention to provide the local building official with the text to regulate glazing in the field and rely on CPSC to inspect glazing in manufactured systems at the location of fabrication. We expect the fourteen states that use the Basic Building Code to adopt the 1981 Edition within eighteen months of its availability. Ninety per cent of the local governments not regulated by a

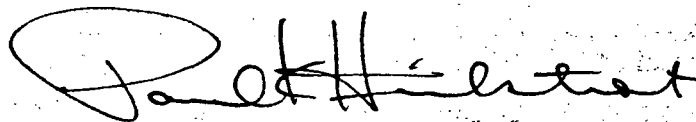
M. Ronald P. Younger

state code will likewise adopt the 1981 Edition within eighteen months.

If the CPSC revokes glazed panels and makes the effective date of revocation on about August, 1980 the BOCA Basic Building Code will be available and dovetail with the revocation. At that time we can expect enforcement of the provisions with the same vigor and comprehensiveness that existed in the past. We have every reason to believe that this level of enforcement is sufficient and full and have not seen evidence to the contrary.

We look forward to the Commission's decision on this matter. Please contact us if you have any questions or comments.

Very truly yours,



Paul K. Heilstedt, P.E.
Deputy Executive Director

PKH/km



Delete subsection and substitute as follows:

857.5.6 Human impact loads: Individual glazed areas in hazardous locations such as those indicated in Section 857.5.6.1 shall pass the test requirements of CPSC 16-CFR, Part 1201 listed in Appendix B, or by comparative test shall be proven to produce at least equivalent performances. Annealed glass shall not be used.

Exception: Polished wire glass shall comply with ANSI Z97.1 listed in Appendix B.

857.5.6.1 Specific hazardous locations:

The following shall be considered specific hazardous locations for purposes of glazing:

1. glazing in ingress and egress doors except wired glass in required fire doors and jalousies

(See Section 857.5.5);

2. glazing in fixed and sliding panels of sliding type doors (patio and mall type);
3. glazing in storm doors;
4. glazing in all unframed swinging doors;
5. glazing in shower and bathtub doors and enclosures;
6. glazing, operable or nonoperable, whose nearest vertical edge is within forty-eight (48) inches of a door in non-residential occupancies or within twelve (12) inches of a door in residential occupancies and whose bottom edge is below the top of the door unless an intervening interior permanent wall is between the door and the glazing; and
7. glazing in fixed panels having a glazed area in excess of nine (9) square feet with the lowest edge less than eighteen (18) inches above the finish floor level or walking surface and having a walking surface on both sides, both of which are within thirty-six (36) inches of such glazing and the horizontal planes of such surfaces are within twelve (12) inches of each other. In lieu of safety glazing such glazed panels may be protected with a horizontal member not less than one and one-half (1-1/2) inches in width when located between twenty-four (24) and thirty-six (36) inches above the walking surface.

Draft text —
1980 Supplement to
the Basic Building
Code.



BOCA INTERNATIONAL

17926 South Halsted Street
Homewood, Illinois 60430

Telephone (312) 799-2300

Committee
Recommendation _____

Conference
Action _____

CODE
CHANGE NO. B159-80

PART 1 OF 1

SEE ALSO
CHANGE NO. _____

(do not write above this line)

BASIC Building CODE SECTION 857

PROPOSER CABO Board for the Coordination of the Model Codes (BCMC)

Gerald Jones, BOCA Representative to BCMC

(Check One)

- ☒ Change subsection to read as follows.
☐ Add new subsection to read as follows.

- ☐ Delete subsection and substitute as follows.
☐ Delete subsection without substitution.

857.5.1 Labeling: [Each light of glass shall be labeled with a removable paper label showing type, thickness and manufacturer.] Each light shall bear the manufacturer's label designating the type and thickness of glass. When approved by the Building Official labels may be omitted from other than safety glazing materials provided an affidavit is furnished by the glazing contractor certifying that each light is glazed in accordance with approved plans and specifications.

To qualify as glass with special performance characteristics, each unit of laminated, heat strengthened, fully tempered, and insulating glass shall be permanently identified by the manufacturer. The identification shall be etched or ceramic fired on the glass and be visible when the unit is glazed. Heat strengthened and tempered spandrel glasses are exempted from permanent labeling. This type of glass shall be labeled with a removable paper label by the manufacturer.

857.5.2 No change.

857.5.3 No change.

857.5.4 No change.

857.5.5 Louvered windows or jalousies: [In jalousie windows and doors regular plate, float sheet or rolled glass thickness shall be not less than three-sixteenths (3/16) inch; glass length shall be not more than forty-eight (48) inches; glass edges shall be smooth. Other types of glass may be used if detailed shop drawings, specifications and analysis by methods described in Section 857.5.2 or test data assuring safe performance for the specific installation are prepared by engineers experienced in this work and approved by the building official.] Regular plate, sheet or patterned glass in jalousies and louvered windows shall be no thinner than nominal 7/32 inch and no longer than 48 inches. When other glass types are used, design shall be submitted to the Building Official for approval. Exposed glass edges shall be smooth.

Wired glass with wire exposed on longitudinal edges shall not be used in jalousies or louvered windows.

857.5.6 No change.

857.5.6.1 Specific hazardous locations: The following shall be considered specific hazardous locations for purposes of glazing:

1. glazing in ingress and egress doors except wired glass in required fire doors and jalousies. (See Section 857.5.5);
2. glazing in fixed and sliding panels of sliding type doors (patio and mall type);
3. glazing in storm doors;
4. glazing in all unframed swinging doors;
5. glazing in shower and bathtub doors and enclosures;
6. glazing, operable or nonoperable, whose nearest vertical edge is within forty-eight (48) inches of a door in non-residential occupancies or within twelve (12) inches of a door in residential occupancies and whose bottom edge is below the top of the door unless an intervening interior permanent wall is between the door and the glazing; and
7. glazing in fixed panels having a glazed area in excess of nine (9) square feet with the lowest edge less than eighteen (18) inches above the finish floor level or walking surface [and having a walking surface on both sides, both of which are] within thirty-six (36) inches of such glazing. [and the horizontal planes of such surfaces are within twelve (12) inches of each other.] In lieu of safety glazing such glazed panels may be protected with a horizontal member not less than one and one-half (1½) inches in width when located between twenty-four (24) and thirty-six (36) inches above the walking surface.

Exceptions: The following products, materials and uses are exempt from the above hazardous locations:

1. openings in doors through which a three (3) inch sphere is unable to pass;
2. leaded glass panels where no individual piece of glass has an area greater than thirty (30) square inches;
3. glazing materials used as curved glazed panels in revolving doors;
4. commercial refrigerated cabinet glazed doors;
5. faceted and decorated glass.

SUPPORTING STATEMENT (S): BCMC has reviewed the glazing provisions in the model codes and the CPSC Safety Glazing Standard and is recommending the above for national uniformity. Part of the model code organization's commitment to the Consumer Product Safety Commission was that we would proceed to develop national uniformity in the codes through BCMC. The proposed text is compatible with the CPSC Standard except for the revision to item 7 of section 857.5.6.1. It is the opinion of BCMC that fixed panels should be safety glazed if so located as to be subject to accidental human impact when not mistaken as a means of egress. For example, the CPSC standard would not require a mercantile show window less than 18 inches above a sidewalk on one side and a display on the other to safety glazed. The revision to item 7 and section 857.5.6.1.8 of the 1975 Basic Building Code would require safety glazing in that location.

The exceptions proposed are as contained in the CPSC Standard.



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Director of Education

October 22, 1979

Mr. Ron Younger
Consumer Products Safety Commission
5401 Westbend Avenue
Bethesda, Maryland 20207

Dear Ron:

Transmitted herewith are our responses to the questions relating to safety glazing.

1. We have not adopted nor have we attempted to adopt in the Standard Building Code the CPSC standard.
2. Presently our code contains a glazing chapter which includes safety glazing requirements. As a result of the issuance of the CPSC standard, a change was submitted to delete from the Standard Building Code all reference to safety glazing. This change is still pending and has not been acted on and will be held until the CPSC makes a decision on fixed glazed panels. As soon as a determination is made by CPSC, we will act to unify safety glazing regulations with BOCA and ICBO. Copies of our chapter are included for your reference.
3. A definition has been approved by the three model code groups and will be submitted in the 1980 code change cycle.
4. The time frame for getting a uniform definition is submittal by 1 April 1980 and final action, October 1980.
5. In my opinion the likelihood that such change will be adopted by local jurisdictions is very good because this change will permit local enforcement of glazing regulations. We will encourage adoption through articles in our magazine, newsletter, special mailings, etc.

6. Since we presently have wording in the Standard Building Code it would have little effect on us. We would simply notify our members that on a certain date effective they could start enforcement.
7. To my knowledge there was enforcement prior to CPSC action. Most enforcement was, however, on the local level rather than the state level because the requirements were in the Building Code.

If we can be of further assistance, please do not hesitate to contact us.

Yours truly,



William J. Tangye, P.E.
Director of Engineering Services

WJT:kf

B-3



International Conference of Building Officials

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October 25, 1979

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State Programs Division

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U. S. Consumer Product Safety Commission

5401 Westbard Avenue

Bethesda, Maryland 20207

SUBJECT: Proposed Revocation of Provisions for Glazed Panels from the Standard for Architectural Glazing Materials

Dear Ron:

In an effort to provide the Commission with a brief summary of ICBO's position regarding the enforcement impact resulting from the proposed revocation of the glazed panel portion of the CPSC Standard, the following is offered.

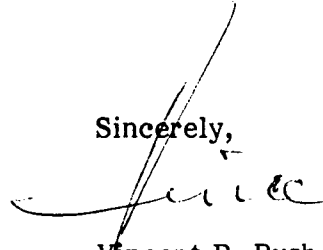
Although the Uniform Building Code provisions dealing with architectural glazing materials placed in locations subject to human impact have been preempted by the Commission Standard, the provisions have been retained in the code in anticipation of possible revocation of portions of the CPSC Standard thereby necessitating the availability of such regulations which could be immediately placed into effect by local jurisdictions.

The provisions regarding glazed panels which still remain within the Uniform Building Code have been under review by the Board for Coordination of Model Codes (BCMC) during the past eighteen months; and as a result, the BCMC has finalized a proposed change for submittal to the model code groups. This change would bring the model code documents into line with the CPSC Standard should the glazed panel portions of the Standard be revoked, and the time frame for amending of the present Uniform Building Code provisions as recommended by the BCMC would be approximately eighteen months. This does not, however, indicate that an eighteen-month period without regulations for control of glazed panels would exist but rather an interim eighteen-month period in which the present Uniform Building Code regulations would be applied. Therefore, an enforcement lag would not exist.

A question of local adoption is one which is somewhat difficult to respond to, but it would certainly be our opinion based upon past experience that the changes would be incorporated on the local level within a reasonable period of time. This is truly not too important because the local jurisdictions, as stated above, would have existing regulations within their presently adopted code which they would enforce in the interim.

In summary, ICBO stands ready to assist within the limits of its resources in the development and education necessary to insure the level of enforcement which existed prior to adoption of the CPSC Standard preempting locally adopted uniform model code regulations.

Sincerely,

A handwritten signature in dark ink, appearing to read 'V. R. Bush', is written over a diagonal line that extends from the word 'Sincerely,'.

Vincent R. Bush, P.E.
Assistant Technical Director

VRB:ev



Exl 'bit C

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PAUL K. HEILSTEDT, P.E.

17926 SOUTH HALSTED STREET
HOMewood, ILLINOIS 60430

Area Code 312
799-2300

February 21, 1980

Ronald P. Younger
State Programs Division
Office of Field Coordination
U.S. Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Md 20207



Dear Ron:

As we recently discussed I am enclosing a copy of the new text relative to section 857 as it appears in the 1980 Supplement to the 1978 Basic Building Code.

Our earlier correspondence and conversations indicated that BOCA would attempt to work with the CPSC in implementing provisions dealing with safety glazing in hazardous locations. The text appearing in the 1980 Supplement should greatly assist in accomplishing the mutual objective of CPSC and the code enforcement community.

Now comes a new Code Changes Cycle. Enclosed are copies of Code Change Nos. B159-80 and B160-80 both of which deal with section 857.

As can be seen change No. B159-80 is the text developed by the CABO Board for the Coordination of the Model Codes (BCMC). As the model codes indicated to the CPSC, we are working toward national uniformity in the area of safety glazing. The recommendation of BCMC was the important first step. I am also enclosing the code change committee recommendation on this change as a result of our public hearing. You will see that they are recommending that our membership approve the change "as submitted (AS)" that is; as you see it on the change form.

You may also notice that the committee is recommending approval of B160-80 with a certain modification.

February 21, 1980
Page 2

Final action on each of these changes will be at our Annual Conference June 15-20, 1980 in Cincinnati, Ohio. The resulting text will appear in our 1981 Edition.

For your information I am also enclosing a copy of the committee recommendation on change No. B169-80 which you were listed as proponent.

If you have any questions or comments, please contact us.

Very truly yours,



Paul K. Heilstedt, P.E.
Deputy Executive Director

PKH/dmc

Enclosures



Section 856.0 (B219-79)

Add new subsection to read as follows:

856.2.1 Exposed structural glued laminated timber: Those portions of glued laminated timbers which form the structural supports of a building or other structure and are exposed to weather and not properly protected by a roof, eave overhangs, or similar covering shall be pressure preservatively treated or be manufactured from approved durable woods.

Section 857.0 (B354-79)

Change subsection to read as follows:

857.5.6 Human impact loads: Individual glazed areas in hazardous locations such as those indicated in Section 857.5.6.1 shall pass the test requirements of CPSC 16-CFR, Part 1202 listed in Appendix B, or by comparative test shall be proven to produce at least equivalent performances. Annealed glass shall not be used.

Exception: Polished wire glass shall comply with ANSI Z97.1 listed in Appendix B.

Add new subsection to read as follows:

857.5.6.1 Specific hazardous locations: The following shall be considered specific hazardous locations for purposes of glazing:

1. glazing in ingress and egress doors except wired glass in required fire doors and jalousies (see Section 857.5.5);
2. glazing in fixed and sliding panels of sliding type doors (patio and mall type);
3. glazing in storm doors;
4. glazing in all unframed swinging doors;
5. glazing in shower and bathtub doors and enclosures;
6. glazing, operable or nonoperable, whose nearest vertical edge is within forty-eight (48) inches of a door in non-residential occupancies or within twelve (12) inches of a door in residential occupancies and whose bottom edge is below the top of the door unless an intervening interior permanent wall is between the door and the glazing; and
7. glazing in fixed panels having a glazed area in excess of nine (9) square feet with the lowest edge less than eighteen (18) inches above the finish floor level or walking surface and having a walking surface on both sides, both of which are within thirty-six (36) inches of such glazing and the horizontal planes of such surfaces are within twelve (12) inches of each other. In lieu of safety glazing such glazed panels may be protected with a horizontal member not less than one and one-half (1½) inches in width when located between twenty-four (24) and thirty-six (36) inches above the walking surface.

**BOCA INTERNATIONAL**17926 South Halsted Street
Homewood, Illinois 60430

Telephone (312) 799-2300

Committee Recommendation _____
Conference Action _____

CODE
CHANGE NO. B159-80
PART 1 OF 1
SEE ALSO
CHANGE NO. _____

(Do not write above this line)

BASIC Building CODE _____ SECTION 857PROPOSER CABO Board for the Coordination of the Model Codes (BCMC)
Gerald Jones, BOCA Representative to BCMC

(Check One)

- | | |
|---|---|
| ☒ Change subsection to read as follows. | ☐ Delete subsection and substitute as follows. |
| ☐ Add new subsection to read as follows. | ☐ Delete subsection without substitution. |

857.5.1 Labeling: [Each light of glass shall be labeled with a removable paper label showing type, thickness and manufacturer.] Each light shall bear the manufacturer's label designating the type and thickness of glass. When approved by the Building Official labels may be omitted from other than safety glazing materials provided an affidavit is furnished by the glazing contractor certifying that each light is glazed in accordance with approved plans and specifications.

To qualify as glass with special performance characteristics, each unit of laminated, heat strengthened, fully tempered, and insulating glass shall be permanently identified by the manufacturer. The identification shall be etched or ceramic fired on the glass and be visible when the unit is glazed. Heat strengthened and tempered spandrel glasses are exempted from permanent labeling. This type of glass shall be labeled with a removable paper label by the manufacturer.

857.5.2 No change.

857.5.3 No change.

857.5.4 No change.

857.5.5 Louvered windows or jalousies: [In jalousie windows and doors regular plate, float sheet or rolled glass thickness shall be not less than three-sixteenths (3/16) inch; glass length shall be not more than forty-eight (48) inches; glass edges shall be smooth. Other types of glass may be used if detailed shop drawings, specifications and analysis by methods described in Section 857.5.2 or test data assuring safe performance for the specific installation are prepared by engineers experienced in this work and approved by the building official.] Regular plate, sheet or patterned glass in jalousies and louvered windows shall be no thinner than nominal 7/32 inch and no longer than 48 inches. When other glass types are used, design shall be submitted to the Building Official for approval. Exposed glass edges shall be smooth.

Wired glass with wire exposed on longitudinal edges shall not be used in jalousies or louvered windows.

857.5.6 No change.

857.5.6.1 Specific hazardous locations: The following shall be considered specific hazardous locations for purposes of glazing:

1. glazing in ingress and egress doors except wired glass in required fire doors and jalousies. (See Section 857.5.5);
2. glazing in fixed and sliding panels of sliding type doors (patio and mall type);
3. glazing in storm doors;
4. glazing in all unframed swinging doors;
5. glazing in shower and bathtub doors and enclosures;
6. glazing, operable or nonoperable, whose nearest vertical edge is within forty-eight (48) inches of a door in non-residential occupancies or within twelve (12) inches of a door in residential occupancies and whose bottom edge is below the top of the door unless an intervening interior permanent wall is between the door and the glazing; and
7. glazing in fixed panels having a glazed area in excess of nine (9) square feet with the lowest edge less than eighteen (18) inches above the finish floor level or walking surface [and having a walking surface on both sides, both of which are] within thirty-six (36) inches of such glazing, [and the horizontal planes of such surfaces are within twelve (12) inches of each other.] In lieu of safety glazing such glazed panels may be protected with a horizontal member not less than one and one-half (1½) inches in width when located between twenty-four (24) and thirty-six (36) inches above the walking surface.

Exceptions: The following products, materials and uses are exempt from the above hazardous locations:

1. openings in doors through which a three (3) inch sphere is unable to pass;
2. leaded glass panels where no individual piece of glass has an area greater than thirty (30) square inches;
3. glazing materials used as curved glazed panels in revolving doors;
4. commercial refrigerated cabinet glazed doors;
5. faceted and decorated glass.

SUPPORTING STATEMENT (S): BCMC has reviewed the glazing provisions in the model codes and the CPSC Safety Glazing Standard and is recommending the above for national uniformity. Part of the model code organization's commitment to the Consumer Product Safety Commission was that we would proceed to develop national uniformity in the codes through BCMC. The proposed text is compatible with the CPSC Standard except for the revision to item 7 of section 857.5.6.1. It is the opinion of BCMC that fixed panels should be safety glazed if so located as to be subject to accidental human impact when not mistaken as a means of egress. For example, the CPSC standard would not require a mercantile show window less than 18 inches above a sidewalk on one side and a display on the other to safety glazed. The revision to item 7 and section 857.5.6.1.8 of the 1975 Basic Building Code would require safety glazing in that location.

The exceptions proposed are as contained in the CPSC Standard.

**BOCA INTERNATIONAL**

17926 South Halsted Street
Homewood, Illinois 60430
Telephone (312) 799-2300

Committee
Recommendation _____
Conference
Action _____

CODE
CHANGE NO. B160-80
PART 1 OF 1
SEE ALSO
CHANGE NO. _____

(do not write above this line)

BASIC BUILDING CODE SECTION 857

PROPOSER ROHM and HAAS Company, A.J. Bartosic

(Check One)

- ☐ Change subsection to read as follows. ☐ Delete subsection and substitute as follows.
☒ Add new subsection to read as follows. ☐ Delete subsection without substitution.

Add exception 2 to read as follows:

Section 857.5.6

Individual glazed areas in hazardous locations such as those indicated in Section 857.5.6.1 shall pass test requirements of CPSC 16 CFR 1201 listed in Appendix B or by comparative tests shall be proven to produce at least equivalent performance. Annealed glass shall not be used.

Exceptions:

1. Polished wire glass shall meet the requirements of ANSI Z97.1.
2. The unbacked specimens of plastic materials shall be exposed in Arizona and Florida to 45° facing south for three years. Approved plastic materials shall be acceptable if the impact strength is not reduced by more than 25 percent during exposure when tested in accordance with Section 1201.4(c) (2) (ii) of the CPSC Standard. Some discoloration is permissible, but defects other than this discoloration shall not be permissible. No bubbles or other noticeable decomposition shall be permissible in the irradiated portion.

State here the specific code change, with the exact and complete current text and the rewording proposed. Show material in brackets [] to be deleted from present text. Show material underlined to be added to text.

SUPPORTING STATEMENT (S): The CPSC is considering removing weathering requirements for plastic safety glazing materials. The weathering requirements in both 16CFR Part 1201 and ANSI Z97.1 require the retention of impact strength after artificial weathering. The requirements of these standards are different. The Plastic Safety Glazing Committee has petitioned both the CPSC and ANSI Z97 Steering Committee to require retention of impact strength after three years of actual outdoor weathering.

The reason for the substitution of outdoor weathering for artificial weathering is because of the lack of correlation between artificial weathering and actual weathering. The excellent safety record for plastic glazing materials has been established because of their excellent breakage resistant characteristics. The removal of retention of impact strength after weathering seriously weakens any standard and increases the possibility of injury with plastic glazing materials.

State here the substantiation for the proposed change. Technical revisions are to be supported with references to specific documents.

Submit three copies of each proposed change, substantiation and documentation.
Additional copies of this form available from BOCA without charge, upon request.
(Use additional pages if necessary)

and the distance between embedded ends of adjacent beams consists entering into the wall from opposite sides shall be not less than four (4) inches.

B153-80, AS.

B154-80, AS.

B155-80, AM. To incorporate an appropriate reference to an applicable standard, revise proposal to read, . . . *Metal Plate Connected Wood Trusses and the NFPA National Design Specifications for Wood Construction listed in Appendix B.*

B156-80, AM. To clarify the text, revise proposed exception to read, *Exception: When approved by the building official, flashing is not required . . .*

B157-80, AS.

B158-80, AS.

B159-80, AS.

B160-80, AM. To clarify the text and the reference to the CPSC standard, revise the proposed exception to read, . . . *in Arizona and Florida for three years with an orientation of 45 ° to the vertical facing south. Approved plastic . . . in accordance with CPSC 16 CFR Part 1201 listed in Appendix B. Some discoloration . . .*

B161-80, AS.

B162-80, AM. Parking lots should be included in the requirement for guard rails. Revise proposal to read, . . . *to a walk, path, parking lot or driveway on the . . .*

B163-80, AM. To clarify the text, revise the proposal to read, . . . *All other foundation walls below grade in all use groups enclosing occupiable rooms or spaces shall be dampproofed . . . or other approved methods.*

B164-80, D. Consideration of ratproofing is an appropriate matter in new building construction. Many building officials feel this section is essential.

B165-80, AM. To remove the redundancy regarding identification, delete the first sentence in 874.2.3 which reads, *Where naturally durable . . . certificate of inspection.*

B166-80, AS.

B167-80, AS.

B168-80, WP.

B169-80, AM. The second paragraph is redundant. To incorporate this in the first paragraph, delete the proposed 876.5.1 and revise 876.5 to read, . . . *the requirements of CPSC Standard 16 CFR Parts 1209 and 1404 listed . . .*

B170-80, AM. To limit the application of diversified tests according to the characteristics of the test methods, add the following sentence to the proposed new third paragraph, *Foam plastics approved on the basis of the above conditions shall be limited to installations in use group S (Storage) buildings.*

B171-80, WP.

B172-80, D. There is a lack of definitive data to base this type of regulation on.

B173-80, WP.

B174-80, WP.

B175-80, AS.

Memorandum

RECEIVED

MAY 2 2 54 PM '80

TO : Nick Marchika, OPM

OFFICE OF PROGRAM MANAGEMENT DATE: May 2, 1980

FROM : Ronald P. Younger, Deputy Director State Programs and Communications
for Field OperationsSUBJECT: State Safety Glazing Laws - Delaware, Illinois, Connecticut, Massachusetts,
South Dakota

A review of State Safety Glazing Laws by Al Brauninger for preemptive effects showed 5 States with preemption requirements in their laws. The concern here, is that if CPSC revokes glazed panels from the federal standard, can the States, counties, and cities using a model building code enforce it, or will the preemptive requirements in the State Safety Glazing Law prevent enforcement? It appeared that only in the 5 referenced States could this be a problem.

We have contacted each of the 5 States and find that basically the enforcement of the State law is either non-existent or so confusing as to who has the enforcement authority that enforcement is not being done.

In the State of Delaware, no State agency has been given the responsibility for enforcement. Two of the 3 counties, (Kent and Newcastle, the most populous) subscribe to the Basic Building Code (BOCA) for all building code enforcement. Sussex county is presently without a building code, but may soon pick up the Standard Building Code (SBCCI).

South Dakota's State Safety Glazing law is "handled" out of the fire marshal's office. This office reviews and approves plans for all new State buildings in the State. There is no indication that any residential or commercial buildings have any type review or approval by the fire marshal's office. There are at least 10 cities in South Dakota which subscribe to the Uniform Building Code (UBC) (ICBO). These cities use the entire UBC with the exception of the appendices, (deal with the upgrading to code requirements of existing buildings such as apartment buildings and hotels). The Pierre City engineer (in whose department building inspections rest), was not aware that South Dakota even had a State Safety Glazing Law. He stated that he doubted if any other building officials in South Dakota are aware of it either. The only enforcement he is aware of is done according to the requirements in the UBC.

The situation in Massachusetts and Connecticut appears to be confusing, to say the least. Depending on who you talk to, different statements are received as to who or what is enforced. In Massachusetts, the Department of Public Health is responsible for all product safety matters. However, 2 inspectors charged with this task stated they had never been given assignments having to do with glazing. The State Building Code Commission indicated that Massachusetts had adopted the ANSI Z 97.1 standard in 1973. However, one attorney and one inspector from this office presumed that local building inspectors were "utilizing" the federal standard since the State law had been preempted. Their comments were that the local building inspectors would utilize whatever requirements are in place and enforceable.

In Connecticut, a State building inspector of the State Building Code Board was interviewed. He was under the "impression" that local officials are utilizing the State Code. He was not aware of the preemptive effects of the federal standard. Another individual in a different agency was contacted. The word here is that the State law was most likely being enforced because the federal standard is too difficult to interpret. Individuals in both States would welcome revocation of the glazed panel provisions from the federal standard. They believe local enforcement would be better.

MEMORANDUM OF
TELEPHONE CALL/[REDACTED]

File: _____

Date/[REDACTED]: 5-12-80

Subject: Architectural Glazing

Caller/[REDACTED]: Ron Younger -- FOS

To: Paul Heilstedt, P.E. Deputy Executive Dir., BOCA

I called Paul Heilstedt today to ask about the Massachusetts Building Code which is listed by BOCA as the Basic Building Code (BBC) modified. Paul stated that in substance the Massachusetts code is the same as the BBC, but Massachusetts changed the wording in about 20% of the code. He indicated he had no idea why the changes except that the Massachusetts people wanted to add their personal touch. BOCA prints the code books for Massachusetts and they are only available from BOCA.

Paul stated that the current Massachusetts Building Code, printed in June 1979, reads identical to the 1980 Supplement to the BBC for architectural glazing. Paul theorized, that when Massachusetts was having their Building Code updated last year, they assumed that the uniform definition for glazed panels worked out by the BCMC in CABO, would be finalized. Paul is sending a copy of the Massachusetts Building Code to me.

Route to:	Initials	Action/Comment
_____	_____	_____
_____	_____	_____
_____	_____	_____



STATE OF ILLINOIS

DEPARTMENT OF LABOR

CHICAGO

April 29, 1980

WILLIAM M. BOWLING

DIRECTOR



U. S. Consumer Product Safety Commission
Ronald P. Younger, Deputy Director
State Programs and Communications,
Field Operations - Room 808
Washington, D. C. 20207

Dear Mr. Younger:

In response to your letters dated March 5, and April 7, 1980, this is to inform you that the Illinois Department of Labor has never invoked any provision of the Safety Glazing Material Act (P. A. 77-112, effective January 1, 1976) to prohibit any county, city, or local jurisdiction from enforcing any building code provision regarding safety glazing.

However, after consultation with the Attorney General's Office, it has been brought to our attention that, in the event the standards currently enforced by your Agency are revoked, the Illinois Safety Glazing Materials Act could once again be enforced. Section 3114 of the Safety Glazing Materials Act provides as follows:

Local Ordinances. This Act supersedes any local, municipal, or county ordinance or parts thereof relating to the subject matter hereof, except that this Act shall not apply to any municipality or county with home rule powers from and after the date such municipality or county has enacted a superseding ordinance.

Therefore, the Department cannot state, that if the Federal standards are revoked, we will not enforce the Act. We can, however, state that counties and municipalities with home rule powers are free to impose their own standards.

While the Department agrees with your position that a uniform Law pertaining to glazed panels would be beneficial, at this time the Department cannot state a position regarding the future enforcement of the Act.

If I may be of further assistance to you, please contact this office.

Sincerely,

A handwritten signature in cursive script, reading "Stephen C. O'Donoghue".
Stephen C. O'Donoghue
Deputy Director

SCO:bv

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR 1201]

SAFETY STANDARD FOR ARCHITECTURAL
GLAZING MATERIALS; PARTIAL
REVOCATION OF STANDARD

AGENCY: Consumer Product Safety Commission.

ACTION: Final partial revocation of standard.

SUMMARY: The Commission is revoking the safety standard for architectural glazing materials that are used or intended for use in "glazed panels," which are items of glazing material located next to doors or between two walking surfaces. The standard continues to apply to glazing materials used or intended for use in doors, storm doors, sliding glass doors (patio type), bathtub doors and enclosures, and shower doors and enclosures. The Commission has found that inclusion of glazed panel requirements in the standard, and their enforcement by the Commission, are not "reasonably necessary" to eliminate or reduce an unreasonable risk of injury to consumers. This is true because local building officials will be enforcing the same glazed panel requirements that the Commission is revoking.

EFFECTIVE DATE: The partial revocation becomes effective on [insert date that is 365 days following publication of this document in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Harry I. Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6453.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

On January 6, 1977 the Commission issued a safety standard to reduce or eliminate unreasonable risks associated with architectural glazing materials and with certain products that incorporate such materials (42 FR 1428; 16 CFR 1201). The standard prescribes tests to ensure that architectural glazing materials either do not break when impacted with a specified force or break with such characteristics that they are less likely than other glazing materials to present an unreasonable risk of injury.

Except for wired glass, the glazed panel provisions of the standard became effective on July 6, 1977. A judicial challenge to the standard focused on its application to wired glass, and the provisions affecting the use of wired glass in glazed panels were stayed pending resolution of the challenge. On January 31, 1979 the court remanded to the Commission the provision affecting the use of wired glass in "nonadjacent glazed panels" (located between two walking surfaces and away from doors). The court upheld the provision affecting the use of wired glass in "adjacent glazed panels" (located next to doors). Neither the remainder of the court's decision nor its appeal to the Supreme Court affected glazed panels further.

On May 31, 1979 the Commission proposed to revoke the glazed panel provisions of the architectural glazing standard

(44 FR 31218). After considering the public comments on the proposed revocation, the Commission has decided to issue it in final form. The discussion below describes the glazed panel provisions, the proposed revocation, the public comments received, and the Commission's final action on revocation.

II. BACKGROUND

A. Glazed panel provisions

The architectural glazing standard applies to glazing materials used or intended for use in six products: storm doors, doors, bathtub doors and enclosures, shower doors and enclosures, sliding glass doors (patio-type), and glazed panels.

The standard (in section 1201.2(a)(10)) defines the term "glazed panel" to mean:

1. Any piece of glazing material in a residential building that has a vertical edge within 12 inches of a door and a bottom edge below the top of the door.
2. Any piece of glazing material in a nonresidential building that has a vertical edge within 48 inches of a door and a bottom edge below the top of the door (but not panels with an intervening interior permanent wall between the door and the panel).
3. Any piece of glazing material in a nonresidential building that has walking surfaces on both sides of the glazing material, a bottom edge less than 18 inches above

any walking surface, and an area greater than 9 square feet. Both walking surfaces must be within 36 inches of the panel, and the planes of each walking surface must be within 12 inches of each other. (Panels with a horizontal framing member or permanent chair rail of specified dimensions are not covered.)

B. Effectiveness of enforcement

Based on injury and other available information, the Commission found when it issued the architectural glazing standard that the glazed panel requirements were "reasonably necessary" to address the unreasonable risks that consumers would walk or run into glazed panels after mistaking them for open space or would otherwise fall against or through glazed panels. However, after the glazed panel provisions went into effect, the Commission became aware of several practical problems that arose from them. The preamble to the proposed partial revocation contained a discussion of *the enforcement circumstances* (44 FR 31218-21, May 31, 1979). Because it explains the basis of the proposal and provides a framework for the public comments, that discussion is summarized here:

When the Commission issued its architectural glazing standard, approximately 4,500 cities and counties were enforcing building codes containing provisions to address risks of injury that could result from breakage of glazing materials by accidental human impact. The products and locations covered by most of these building codes were

generally the same products and locations covered by the Commission's standard. However, the products and locations covered by the codes were not identical to those of the Commission's standard, particularly the "glazed panel" provisions. Similarly, the test procedures and criteria contained in the building codes were not identical to those in the CPSC standard.

To the extent that the provisions of any city, county, or state building code apply to any products covered by the CPSC architectural glazing standard, address the same risks of injury, and are not identical to the CPSC provisions, they are preempted by section 26(a) of the Consumer Product Safety Act. Therefore, the Commission and its staff met with representatives of the three major associations of buildings officials--Building Officials and Code Administrators International (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International (SBCCI)--to explore the possibility that state and local building codes might be amended to make their performance requirements identical to those of the Commission's standard and applicable to the same items of glazing materials.

Representatives of the three associations raised the problem that the CPSC glazed panel definition does not allow a building official to exercise judgment about whether a particular item of glazing material in a given location

must comply with the standard on the basis that it may actually be subject to accidental human impact. The Commission agrees that some flexibility would be helpful because there are instances when items of glazing material fall within the definition of glazed panel and yet do not seem to present any unreasonable risk of injury that the standard was intended to address.

Because of the preemption of state and local safety glazing requirements by the Commission's standard, protection of consumers from the risk of injury associated with glazing materials currently depends on the effectiveness of Commission enforcement. Since the standard became effective, Commission investigators have inspected the factories of several hundred manufacturers of doors, sliding glass doors, storm doors, and bathtub and shower doors and enclosures, and have found a high rate of compliance with the standard. However, the standard is also applicable to glazed panels which, aside from the glazing material itself, are generally not constructed or fabricated at a factory. Instead, an item of glazing material becomes a glazed panel within the standard when it is placed in an opening of a building next to a door or between two walking surfaces, if all the applicable provisions of the glazed panel definition are met.

The number of glazing contractors engaged in activities that could result in the manufacture of glazed panels is estimated to be greater than 6,000 firms. Since the effective

date of the standard, the provisions on glazed panels have generated a significantly large number of inquiries and complaints about possible violations of the standard from many of these firms, all of which are potential manufacturers for purposes of the standard. The total number of investigators assigned to all of the Commission's area offices is less than 130 and is not expected to increase **very much** in the foreseeable future. Because of both the large number of firms engaged in the installation of glazing materials that may or may not be glazed panels, depending upon their location in any given building, and the large quantities of glazing materials installed by these firms each day, the Commission's enforcement capabilities are strained. Its ability to ensure a high level of compliance with the standard's glazed panel requirements, given the limited size of its enforcement staff, would be significantly strengthened through the active cooperation and assistance of state, county, and city agencies responsible for enforcing state and local building codes.

C. Possible alternative solutions

The Commission sought public comment on a proposed revocation of the glazed panel provisions, and on the alternative of narrowing the scope of the CPSC standard by revising the definition of glazed panels (44 FR 3122²-23).

In support of its proposed partial revocation, the Commission discussed the intentions of the three model

building code organizations. Briefly, all three organizations expressed willingness to take steps toward adoption of new glazed panel safety requirements, but only if the Commission revokes its provisions. Such revocation would remove state and local glazed panel provisions from the effect of federal preemption under section 26(a) of the CPSA. The glazed panel requirements that the organizations would move to adopt are the ones that the Commission currently enforces. (In addition, the organizations agreed to include all of the Commission's architectural glazing requirements, not merely the ones addressed to glazed panels.)

The Commission's partial revocation proposal was not based on any reconsideration or rejection of its January 1977 finding that certain items of glazing material located next to doors and between two walking surfaces present an unreasonable risk of injury. Rather, the proposal was based on the belief that the public would be better protected if state and local authorities enforced glazed panel requirements, instead of the Commission's limited number of federal inspectors. The preamble also discussed the views of the National Glass Dealers Association (NGDA) ^{in opposition to} ~~the~~ the proposed partial revocation (44 FR 31222).

As an alternative to revocation of its existing glazed panel provisions, the Commission sought public comment on two different possible revisions of them. One was suggested by the CPSC staff and the other by NGDA (in a petition filed

with the Commission). Both would revise the definition of glazed panel so that coverage of the standard would be more limited than it currently is. Both would ^{attempt to} address the problem posed by violative glazed panels that do not present any serious danger to consumers.

To facilitate public comment on the various alternatives, the Commission highlighted four issues that are particularly pertinent to any regulatory action on the glazed panel provisions:

1. To what extent are architectural products subject to the standard, other than glazed panels, assembled or fabricated at fixed factories and plants or at the site of installation in a building?

2. What is the relative effectiveness of enforcement of safety requirements for glazing materials, particularly glazed panels, by the Commission; by state and local agencies through enforcement of building codes; and by industry through self enforcement and educational activities as a supplement to Federal enforcement?

3. Would revocation of the Commission standard as it applies to glazed panels result in adoption by model building code organizations, and hence state and local buildings authorities, of uniform safety requirements for glazed panels? Would these requirements consist of test methods and performance requirements similar to those presently contained in the Commission standard?...

4. Is either of the suggested revisions of the glazed panel definition...more desirable than revocation of the standard's coverage of glazed panels? If so, which suggested version is preferable, and why?

III. PUBLIC COMMENTS

The Commission received 93 written comments on its May 31 proposal, and six witnesses made oral presentations at a July 16, 1979 hearing. In general, two groups were represented in the written and oral comments--the glazing industry and building code enforcement officials. Practically without exception, the industry supports amendment of the glazed panel provisions and the code officials support revocation.

The issues raised ^{by the proposal and} by the commenters, along with the Commission's responses, are:

A. Installation of glazed panels

In proposing to revoke the glazed panel provisions of the architectural glazing standard, the Commission expressed its preliminary belief that the same provisions can be enforced better by local inspectors than by CPSC inspectors. Whether this would be the case depends on a number of factors related to the installation of glazed panels. The first is the extent to which they are assembled or fabricated (i.e., manufactured) at or near the site of installation in a building, and how this compares with the installation of other glazing products covered by the standard.

The Consumer Safety Glazing Committee (CSGC), a glass and glazing industry group whose members represent all facets of the industry, commented on this issue. CSGC asserted that glazed panels are not unique in being glazed on site because a large percentage of the other five products covered by the standard are also glazed on site or in a shop near the site of installation. According to data submitted by CSGC to support its assertion, 95 percent of storm doors, 45 percent of patio doors, 29 percent of shower enclosures and 27 percent of tub enclosures are glazed on site or in dealers' shops near the site. In addition, CSGC stated that 44 percent of all glazing installations are for replacement and, therefore, outside the enforcement capabilities of CPSC personnel altogether, because they are glazed by necessity on or near the site of installation.

The statistical data presented by CSGC are the results of a survey conducted among its membership. The CSGC sent questionnaires to the 1100 members of the National Glass Dealer's Association (NGDA) and the 350 members of the Flat Glass Marketing Association (FGMA). Although there is no clear distinction between the kinds of firms represented in each association, NGDA members tend to be dealers and installers, while FGMA members tend to be distributors and contractors. These two associations represent a small minority of the 6,000-10,000 glazing shops nationwide. However, they probably are a significant part of the industry in terms of

volume of glazing installations because a large portion of total glazing shops are hardware stores and home repair stores which carry relatively small inventories for the do-it-yourself market.

The CPSC staff reviewed the CSGC survey data and followed up with interviews of several participants to clarify the data. Based on these activities, the Commission believes that the survey results are questionable. The estimates are based on responses from only 340 member firms whose representativeness is unknown in terms of the various kinds and sizes of firms in the two associations. The phrasing of the questionnaire also raises doubts. The participants were requested to estimate the percentage of new "jobs" where the glazing material is installed in the shop or at the job-site, as opposed to being received pre-glazed or factory-glazed. Aggregating the number of "jobs" is misleading because these firms represent both glass dealers and glazing contractors, and the size of their "jobs" may differ dramatically. One "job" for a dealer may be the installation of glazing in a storefront, while a contractor's "job" may be the installation of all doors in a shopping center complex. The survey treated each response with equal weight, and did not consider the volume of the firm's business.

The questionnaire sought information based on estimated percentages of "number of jobs (not dollars)." (Only the first question of the two in the questionnaire made this

explicit, but the second question was apparently to be answered the same way.) However, two firms contacted by the CPSC staff nevertheless^{had} estimated the dollar value of glazing performed, and four firms^{had} based their estimates on physical volume of glazing installed. Only two firms contacted in the random follow-up stated that their responses estimated the number of units installed.

The results of the CSGC survey are not statistically valid, and it would be extremely difficult to obtain data that are. CPSC staff interviews with glass dealers have revealed that the industry quickly becomes "fragmented" beyond the major manufacturers and processors of glazing materials and products incorporating glazing. Glass dealers, even at the local level, may also be distributors or contractors or fabricators of finished products covered by the standard. Many dealers order standard-size glass in bulk from glass manufacturers, processors or large regional distributors, and they order the metal components from manufacturers of these products. The dealers then fabricate the doors or enclosures in their shops.

Even if the survey results accurately describe the industry, the Commission nevertheless believes that glazed panels are installed at or near the job sites more than other glazing products. Of the products covered by the standard, glazed panels are least able to be pre-cut and assembled into standard sizes. Therefore, the on-site

enforcement efforts of local inspectors would be most important for assuring that glazed panels are made of safety glazing material.

Another important issue is that many glazing products, such as shower enclosures and patio doors, are bought in a "knocked-down" condition, from one or more manufacturers, and then assembled on site or near the job-site. According to CSGC, this lessens the distinction between glazed panels and all other glazing products. However, the Commission believes that the combined enforcement efforts of local and CPSC inspectors will best address the "knocked-down" products. For all safety glazing products that are prepared in a factory, the CPSC will be assuring that they comply with the CPSC test procedures. Then, the local inspectors will be able to look for the certifying label and assure that glazing materials are actually used in the required locations. This will be true whether the locations are showers, tubs, patio doors, or glazed panel locations. According to the comments from the model code organizations (see section B below), the local inspectors will be enforcing all of the Commission's standard and not only the glazed panel provisions (they will be enforcing the glazed panel provisions on their own and the other provisions in conjunction with CPSC inspectors). Therefore, the distinction between glazed panels and other glazing products is less significant than it was when the Commission proposed the partial revocation in May 1979. Now, consumers will be receiving better protection

from risks associated with all architectural glazing products. Local enforcement is most important for glazed panels because virtually all of them are installed on site. This remains the primary basis for partial revocation. However, doors and other architectural glazing products will also be subjected to both local and federal enforcement efforts, once the revocation becomes final.

Commenting on replacement panels, CSGC has made the point that local inspectors would not be enforcing because building permits are not needed for replacement panels. The Commission agrees that local enforcement would be less effective for replacements than for panels installed at the time of original construction. However, CPSC enforcement efforts would be similarly less effective for replacement panels, if the partial revocation were not finalized. The significant difference is that local inspectors would be better able to respond to trade complaints than the CPSC. For example, if two or three local glass dealers bid on a replacement "job", the selected bid might have been low because non-safety glass was projected to be used. If an unsuccessful dealer discovered this (perhaps in a follow-up contact with the general contractor), it would be quicker and easier for a local official to take the necessary enforcement action. In fact, experience in the enforcement of the standard thus far indicates that most violations result from the intentional use of noncomplying annealed glass by product

fabricators, rather than from the unknowing use of materials which were manufactured to comply with the standard but which do not comply.

B. Effectiveness of enforcement by state and local building authorities

If the Commission revokes its glazed panel provisions, consumers will be protected from risks associated with glazed panels only if state and local authorities take over from the Commission the responsibility for enforcing these same requirements. Therefore, the Commission specifically sought public comment on the relative effectiveness of enforcement efforts by the Commission, by state and local agencies, and by the industry. For the industry, the CSGC provided the most detailed comments on how revocation would affect enforcement. Three major model code organizations also commented in detail on the likely enforcement consequences of revocation.

CSGC believes that the Commission should amend, but not revoke, its glazed panel provisions, and has summarized its reasons as follows:

"The Commission enforcement of the standard has been extremely limited; but compliance with the standard has nevertheless been widespread because of the threat of enforcement of this federal law, because of concern for product liability exposure, because of the inclination of the glass and glazing industry to provide safe products for consumers,

and because of the extensive educational efforts of the glass industry to inform others about the existence of the standard and its requirements. The Commission's principal problems regarding 'glazed panels' have been with interpreting the excessive scope of those requirements, not enforcement of the standard. The relative effectiveness of enforcement of building codes for state and local agencies varies and is speculative. For replacement glass and glazing installations, comprising nearly half of those covered by the Commission's standard, enforcement of building codes by state and local agencies is negligible^{gi} because building permits are not generally required. Industry activities to supplement federal enforcement have been very extensive."

In addition, CSGC has expanded on its reasons for believing that effective state and local enforcement is speculative. CSGC pointed out that (1) the model code organizations must adopt a consistent and adequate requirement; (2) there must be promulgation and adoption by the many thousands of state, county or municipal jurisdictions; and (3) twenty-seven state safety glazing laws preempt local building codes in many cases (this third comment is addressed separately in a ~~separate~~ section below).

In their official comments and in other contacts with the CPSC staff, the three model code organizations have described their continuing efforts toward local enforcement of glazed panel requirements, if the Commission does revoke the federal provisions:

In January 1979 the Board for Coordination of Model Codes (BCMC) met in Chicago to work out a uniform definition for glazed panels which could be adopted by BOCA, ICBO, and SBCCI, the three model codes. The Commission had input into the uniform definition and it is virtually identical to the existing CPSC definition. (The only difference is that it is more stringent. The CPSC definition *was changed to* exclude panels that have a walking surface on just one side (cite). The uniform definition, like the original CPSC definition, would include such panels.) As part of this process, the model code organizations will adopt the remainder of the safety standard for architectural glazing materials. This means that the test procedures and criteria will be the same as those in the existing CPSC standard.

In October 1979 the three technical directors of the model code organizations were queried as to the current status of glazed panels in their respective model codes, whether they were still committed to taking over enforcement on glazed panels, and, if so, ^{when} ~~where~~ this would occur. The technical directors are firmly committed to taking over the enforcement of glazed panels as soon as CPSC revokes those provisions from the federal standard.

adopted the The technical director of BOCA has indicated that the *BOCA membership* BCMC uniform definition, test procedures, and criteria ~~should be a part of the BOCA code to be adopted~~ in June 1980, ~~by the BOCA membership~~. The other two model code organizations

do not intend to adopt the BCMC uniform definition, test procedures, and criteria until CPSC revokes glazed panels from its standard. However, ICBO and SBCCI have different provisions in their codes pertaining to glazing.*/ As soon as the Commission revokes the glazed panels ^{provisions} ~~definitions~~, the state and local building code officials using these codes could immediately begin enforcement. The primary purpose of this was to avoid any break in enforcement if the Commission were to revoke the glazed panel provisions before the model codes could get uniform provisions into their codes.

There is no question that the model code organizations are committed to the adoption of a uniform code on glazed panels if the Commission revokes those provisions from the federal standard. The organizations have reported that there will be no break in enforcement as long as the federal revocation takes place after June 1980. Conversations with many individual building code officials show they are also committed to this course and are firmly convinced that local enforcement will provide the best protection for the consumer.

The Commission does not believe that its enforcement activities, even combined with industry self-regulation, provide adequate protection to consumers. Based on the

*/ For the most part, these would require that glazed panels, as defined in the ICBO and SBCCI codes, comply with the "American National Standards Institute's Safety Performance Specifications and Methods of Test for Safety Glazing Material Used in Buildings" (ANSI standard Z97.1) which would pass some materials that the CPSC standard would not pass.

comments received, a better approach would be the combination of federal and local enforcement. As discussed in section A above, the Commission would continue to inspect factories to assure that the labeling and certification requirements are being met by manufacturers of safety glazing materials. At the job-sites, the local inspectors will be able to oversee the use of complying glazing material where it is required by local code and/or the CPSC standard. The labeling and certification will serve as helpful signals to the local inspectors.

Nation-wide uniformity of regulation is a desirable goal. Congress recognized this when it enacted the strong preemption provisions of the CPSA (15 U.S.C. 2075). However, uniformity is not always possible. As mentioned earlier, there are instances in which the existing CPSC glazed panel definition would require safety glazing in locations where it is not justified on safety grounds.

Specifically, there are the following examples:

1. Items of glazing material located within 12 inches of a door in a residential building or within 48 inches of a door in a nonresidential building which are not likely to be broken by consumers falling against or through them because of their small size or their distance above the ground or floor level.

2. Items of glazing material located within 12 inches of a door in a residential building which are not likely to

be mistaken as openings for human passage because of their small size or their distance above the ground or floor level.

3. Items of glazing material located within 48 inches of a door in nonresidential buildings which are not likely to be mistaken as openings for human passage because of their small size or their distance above the ground or floor level.

4. Items of glazing material located near doors in both residential and nonresidential buildings which are not likely to be subject to accidental human impact because they are not in the same plane as the door.

5. Items of glazing material located near doors in both residential and nonresidential buildings which are not likely to be mistaken as openings for human passage because of a horizontal framing member or chair rail which gives a visual signal that solid material is present.

After experiencing considerable difficulty in defining glazed panels and then in enforcing that definition, the Commission now believes that its general desire for uniformity should not prevail over consumer protection in this case. By permitting local inspectors to use some discretion in enforcing the glazed panel provisions, the Commission can greatly bolster enforcement of those provisions. If the Commission could modify the definition of glazed panels and obtain the increased enforcement along with uniformity, it

would do so. However, as discussed in section D below, this is not practical.

CSGC has correctly commented that local enforcement depends on adoption of the existing CPSC provisions by the thousands of local jurisdictions, presumably through model codes. However, the comments received from the local jurisdictions should alleviate this concern. Twenty-two building officials in jurisdictions ranging from Seattle and Dallas to Salinas, Kansas and Midland, Michigan--supported the revocation and plan to enforce the uniform requirements. A number of these officials stressed that they have the staff, expertise, and experience to enforce the glazed panel provisions at job sites. According to ~~the three major model code organizations,~~ ^{between 78 and 90 percent} ~~of the U.S. population lives in jurisdictions where the model code provisions are in effect,~~ ~~and another 22 percent live where the codes are in effect~~ or influence the provisions in effect. In fact, BOCA alone affects an estimated 68 million U.S. residents.

CSGC is also concerned that ^{local jurisdictions may not adopt the CPSC} ~~adoption could occur with~~ provisions, ^{but may instead change them.} ~~changes in the provisions.~~ Based on information contained

in the public comments, the Commission is not similarly concerned. In almost all cases, the changes made to model code provisions by local jurisdictions are in administrative procedures or fee schedules, rather than in safety aspects. As just one example, SBCCI has broad experience with model codes, but knows of no changes that local jurisdictions have

ever made to its model glazing provisions. The Commission would not be revoking the glazed panel provisions if current compliance with them were adequate. However, the fact remains that the existing combination of CPSC enforcement efforts ~~including the threat of enforcement~~ and industry voluntary compliance is not adequate. The Commission knows that violations are continuing to occur in greater numbers than its enforcement staff can respond effectively and promptly.

The enforcement efforts of local inspectors will focus on the most serious enforcement problem, that of purposeful installation of noncomplying glazing material in covered locations. In addition, CPSC efforts will not disappear, but will be focused where they can be most useful, in the factories. (To a lesser degree, CPSC inspectors will continue to enforce the standard against the installation of noncomplying glazing material in doors, shower ^{and} ~~A~~ bath enclosures, and other covered locations.) Finally, there is no reason for voluntary industry compliance to play a diminished role following revocation.

C. Preemption by state statutes

An important portion of the Consumer Safety Glazing Committee's comments concerned the effect of preemptive language in various state statutes. The language at issue generally requires safety glazing materials in specified locations. Regardless of the specific content of the state

provisions on glazing, their existence could severely undermine the enforcement efforts of local building officials.

As of now, the CPSC provisions preempt both state and local provisions on glazed panels. If the CPSC provisions were revoked, however, state provisions that once again become effective could preempt the local provisions. Unless the local officials can enforce, as discussed in section B above, revocation of the CPSC provisions is meaningless.

CSGC has asserted that existing laws in twenty-seven states require the use of glazing materials which comply with ANSI standard Z97.1 in specified locations. CSGC has further stated that seventeen of these state laws have preemptive provisions which prohibit citⁱes, count^yies, and other local jurisdictions from enforcing any other requirements for safety glazing. CSGC therefore believes that, to the extent existing state laws would preempt local safety glazing requirements, the building officials will not be able to amend local building codes and enforce uniform requirements for glazed panels.

The CPSC staff has analyzed the twenty-seven laws cited by CSGC, as well as four additional statutes not mentioned in the CSGC comments. After reviewing the staff analysis of these state laws, the Commission has concluded that twenty-six of the thirty-one state laws requiring use of safety glazing in buildings would not pose a serious legal obstacle to enforcement of local building code provisions containing

a uniform glazed panel definition. This means that local building officials in most states would be able to enforce their own glazed panel requirements, along the lines advanced by the three organizations of building officials.

The laws in the remaining five states--Connecticut, Delaware, Massachusetts, Illinois, and South Dakota--could present the legal problems raised by CSGC. However, contacts with officials in these five states indicate that preemption would pose no practical problem to local enforcement. In fact, the Massachusetts Building Code already contains the uniform definition for glazed panels that will be used by all of the model code organizations following revocation of the CPSC requirements. As another example, no state agency in Delaware is responsible for enforcement, and two of the three ~~counties~~^{ties} in the state subscribe ~~the~~^{to} BOCA's model code.

Balancing the possible limits on local enforcement in fewer than a handful of states against the increased local enforcement in the rest of the country, the Commission still believes that revocation of its glazed panel provisions will benefit consumers.

D. Alternative of revised glazed^{panel} definition

As discussed in section IIC above, the Commission sought public comment on two alternatives to the existing glazed panel provisions. Both of these alternatives--the one suggested by NGDA and the one ~~proposed~~^{drafted} by the CPSC staff--would involve a narrowing of the definition of glazed

panel. The glazing industry's comments generally supported an amendment (a vast majority preferred NGDA's suggestion to the Commission staff's). However, the comments from the state and local building code officials clearly show that neither alternative would address the basic problem that now prevents local enforcement. This problem is that the building code officials will enforce glazed panel provisions only if they have some discretion to consider whether the placement of the panel presents a risk that justifies a safety glazing requirement.

CSGC has commented that local discretion in the form of some variance procedure would be possible under federal glazed panel requirements. The Commission believes that its resources would be even more strained by a variance approach than they currently are. Further, the Commission continues to doubt that a variance approach would provide the industry and consumers with the regulatory certainty that the law requires. Unless federal requirements apply uniformly throughout the country, it would be impossible to know ^{which} ~~what~~ glazed panels are included within the regulation and which are not. The proposition that the Commission could now pursue and attain a successful enforcement program based on a variance procedure is much more speculative than the partial revocation approach. Based on its current knowledge, the Commission believes that the latter approach will provide effective enforcement of its glazed panel provisions.

[to p. 26a]

E. Procedural issue

CSGC has raised a ~~procedural~~ procedural issue ~~about the Commission's partial revocation of the glazed~~
~~by claiming~~ that Congress prescribed
section 26 of the CPSA for that purpose. ^{a partial revocation would serve.} Section 26(c),
cited by CSGC, permits a state or local government to seek
an exemption from the preemptive provision of the Act. The
Commission agrees that this is one way in which the preemptive
effect of a consumer product safety standard can be removed.
However, under section 26(a), preemption ^{exists} ~~applies~~ only when a
standard is in effect and "applies to a risk of injury
associated with a consumer product." If the Commission
revokes the provisions that addressed the risk from glazed
panels, there is no preemptive effect and an exemption under
section 26(c) is unnecessary. CSGC has not explained why
the existence of an exemption procedure makes a partial
revocation illegal or otherwise improper. *The Commission continues to
believe that a partial revocation is a proper legal approach.*

F. Effective date

The Commission proposed that the partial revocation
become effective on the date of its publication in final
form, and the model code organizations support this approach.
The revocation would allow the now-preempted local require-
ments to again become effective (as footnoted earlier, these
generally require compliance with ANSI Z-97.1). (In fact,
BOCA has already incorporated the uniform requirements into
its code.) The Commission therefore expects no break in
consumer protection in most jurisdictions, but the uniform
glazed panel requirements could not be enforced until the
local jurisdictions adopted the new BOCA, SBCCI, and ICBO

model code provisions. This could take as long as 18 months to occur.

Notwithstanding the comments of the model code organizations, the Commission believes that some lead time in effectiveness of the partial revocation would assure maximum safety for consumers. Under this approach, the Commission could continue to enforce the glazed panel provisions while local jurisdictions are adopting the model code provisions. If the matter is given priority, it will likely take only 12 months instead of 18 months for this to be accomplished. If some local jurisdictions take longer than 12 months, less stringent requirements (ANSI Z97.1) would probably be in place and available for local enforcement on an interim basis. A delay of longer than 12 months would unnecessarily delay the date on which the local building officials can begin to enforce the Commission's existing requirements for glazed panels. Therefore, the Commission has adopted an effective date that is 12 months from today, and notes that the model code organizations do not object to this approach (while they prefer the immediate effective date approach). The Commission finds for good cause, based on the reasons stated above and in accordance with section 9(e)(2) of the CPSC, that an effective date later than 180 days from today is in the public interest.

G. Enforcement pending revocation

When the Commission proposed the partial revocation in May 1979, it clarified what glazed panel provisions of

the standard would apply in the interim (pending a final partial revocation or alternative regulatory action). The Commission has decided to continue in effect the same interim enforcement policies until the partial revocation becomes effective in one year:

a) The requirements of the standard will continue to apply to items of glazing materials which meet the definition of glazed panel . However, the Commission's enforcement policy will be to give priority to alleged violations involving glazed panels that present obvious risks of injury from accidental human impact breakage because of a panel's size and shape, its proximity to a door or floor or walking surface, its presence in the same plane as a door, or the absence of any visual signal that solid material is present.

b) In response to petition CP 78-10, the standard will not be enforced against any item of glazing material located within 12 inches of the nonmovable panel of a sliding glass door in a residential building or within 48 inches of the nonmovable panel of a sliding glass door in a nonresidential building.

c) In response to petition CP 79-6, the standard will not be enforced against louvers of jalousie windows or other jalousie assemblies located within 12 inches of a door in a residential building or within 48 inches of a door in a nonresidential building.

H. Environmental considerations

As stated in the preamble to the proposed partial revocation, the Commission does not foresee any environmental effects from the revocation which would necessitate an environmental review, and has not prepared an environmental impact statement.

IV. CONCLUSION

The Commission has carefully considered whether its glazed panel provisions are reasonably necessary to address an unreasonable risk of injury associated with architectural glazing materials. An unreasonable risk does exist, but the public comments on the proposed partial revocation have largely discussed the best approach for addressing it. The glazing industry generally supports the present approach under which the Commission enforces a uniform set of federal requirements. In contrast, the model code organizations and the local building officials generally support an approach under which these officials would adopt and enforce the Commission's existing requirements.

Based on its enforcement experience of over three years, the Commission believes that the glazed panel provisions would be best enforced at the local level. This is true because the nature of glazed panels and the way they are generally installed place limits on the Commission's enforcement capabilities. After balancing these and all other relevant factors, discussed above, the Commission has concluded that mandatory federal safety provisions for

glazed panels are not reasonably necessary to address the unreasonable risk presented by them. A more reasonable approach is to withdraw the provisions and permit the state and local governments to enforce the same provisions.

In accordance with section 9(e) of the Consumer Product Safety Act (section 9(e), Pub. L. 92-573, 86 Stat. 1215, 15 U.S.C. 2058(e)) and 5 U.S.C. 553, the Commission revokes the safety standard for architectural glazing material as it applies to glazed panels by making the following changes in Part 1201 of Title 16, Code of Federal Regulations:

§1201.1 [Amended]

1. In 16 CFR 1201.1(a), paragraph (5), consisting of the term "Glazed panels" is revoked and reserved;

2. In 16 CFR 1201.1(b), the fifth sentence is revised to read as follows: "For purposes of this standard, fabricators are considered to be manufacturers of the architectural products listed in paragraph (a) of this section."

§1201.2 [Amended]

3. In 16 CFR 1201.2(a), paragraphs (3)(iii), (4)(vi), and (10) are revoked and reserved.

4. In 16 CFR 1201.2(a)(11)(ii), the phrase "glazed panels or" is deleted.

Dated:

Sadye E. Dunn, Secretary
Consumer Product Safety Commission