Product Liability Risk Control Checklist

This material will help you evaluate your products liability exposure. It is designed to enable you to focus on areas that need to be addressed to safeguard your business. The worksheet is divided into six key areas that contribute to the development of a safe product.

Management

Involvement

- ☐ There is a written policy statement that clearly expresses the company's commitment to producing safe and reliable products.
- ☐ Authority for implementing the program is delegated to top-level management.
- ☐ Product Safety budgets are prepared, and properly funded, as part of normal operating functions.

Culture

- ☐ Specific product safety objectives are established and linked to total quality management.
- ☐ There is a product safety committee involving engineering, production, purchasing, quality control, legal, sales service, etc.
- ☐ There is a company wide awareness and concern regarding product liability and the legal pitfalls to be avoided in the design, manufacture, marketing, distribution, sale, and disposal of a product.

Communication

- ☐ Product safety responsibilities are clearly communicated to each department in the company.
- ☐ An effective procedure is in place for communicating pertinent information to all parties (including sub-contractors, suppliers, vendors, etc.)
- ☐ Training courses and effective methods of communication are in place for all personnel, commensurate with their responsibilities in an integrated product safety program.

Accountability

- ☐ Audits are performed periodically to insure that all company functions and external organizations are effectively performing their assigned duties.
- ☐ Product incident reports and product liability claims are reviewed and appropriate corrective action is taken promptly.
- ☐ Compensation for operating unit management is directly impacted by accomplishment of product safety objectives.

Documentation

- ☐ Product safety program and product recall procedures are written, current, and available to all levels.
- ☐ Records and documentation required by law are properly maintained.
- ☐ Records of all formal product safety program activities are maintained at least for the expected life of a product.

Safety Design

Design Criteria

- ☐ Design criteria are well documented and meet all applicable mandatory and voluntary codes and standards.
- ☐ Design is “fail safe” (i.e. failure or malfunction will not cause injury or harm to user).
- ☐ Product is designed to be safe for intended use, and reasonable misuse or abuse, for its expected life.
- ☐ Safe design criteria are applied to packaging, shipping, storage, assembly, installation, serviceability, and disposal.
- ☐ Safe operating procedures or user instructions and adequate warnings are stipulated when critical hazards cannot be engineered out or fully safeguarded.

Design Reviews

- ☐ Reviews are made of similar products, including competitors’ to avoid problems or losses associated with them.
- ☐ Industry or trade literature is continuously reviewed for new developments or information that can help improve product safety.
- ☐ Reviews consider how recent or pending court decisions or laws might affect product design or safety requirements.
- ☐ A systems analysis method is used to identify critical hazards, and “safety-critical” components, materials or procedures requiring special safeguarding, testing, or design considerations.
- ☐ Documented reviews continue throughout stages of product development, testing, manufacturing, and post sale-service to identify and incorporate needed design improvements.

Design Evaluation and Testing

- ☐ Testing, examinations, and analyses, whether done in-house or by outside laboratories, are conducted in accord with applicable standards, codes, and certification requirements.
- ☐ Testing is conducted to insure safeguards function as intended and that the product does “fail-safe.”
- ☐ Testing anticipates the impact of the operating environment, operator-user limitations, and foreseeable misuse or abuse on product safety.
- ☐ Test results are documented and analyzed to evaluate need for design improvements.

Legal

Legal Counsel

- ☐ Services of an attorney, experienced in product liability law, are employed full-time, part-time, or on retainer.
- ☐ Management is kept informed on all current or pending court decisions, laws, and regulations that may impact product liability potential or product safety requirements.
- ☐ Attorney prepares all contracts, hold-harmless agreements, warranties, guarantees, and disclaimers.
- ☐ Attorney has helped prepare a contingency plan for a product recall campaign.
- ☐ Attorney maintains liaison with trade associations, to stay current on developments affecting company’s products.

Legal Review

- ☐ Possible mergers or acquisitions are reviewed for potential product liability implications.
- ☐ Advertising, sales brochures, and marketing literature are reviewed for "sales puffery" or unintended misrepresentations.
- ☐ Labels are reviewed for compliance with codes and regulations and to be sure they clearly warn of product hazards and how to avoid them.
- ☐ All product manuals and instructions are reviewed for compliance with codes and regulations and to ensure they clearly warn against product misuse or modification.
- ☐ Attorney reviews product design decisions that may "trade-off" product safety improvement for cost savings or product function considerations.

Claims Management

- ☐ All pertinent records (e.g. design, production, quality control, etc.) are reviewed for usefulness in defense of suits, and adequacy for product recall purposes.
- ☐ Effective procedures are in place for responding to and handling product liability claims.
- ☐ Effective procedures are in place for receiving and recording customer complaints and product incidents and actions taken to address them.
- ☐ Data on customer complaints, claims, and product incidents are analyzed to pinpoint trends and potential problems.
- ☐ Product liability claims are discussed at product safety committee meetings so corrective action can be planned and taken.

Quality Assurance and Control

Production

- ☐ Adequate supervision, procedures, and controls are in place to prevent any deviation from design specifications.
- ☐ Precision, accuracy, and condition of equipment and tooling is commensurate with product requirements.
- ☐ Procedures are in place to insure prescribed materials are used and are not modified or degraded during storage, handling, or production.
- ☐ Work instructions for production or testing operations affecting product safety are in writing, detailed, and clear.
- ☐ Procedures are in place to verify and document qualifications of personnel.

Procedures

- ☐ Quality assurance program is in writing, adhered to, and periodically revised.
- ☐ Quality standards and test sample sizes are statistically validated.
- ☐ Procedures are in place for calibration of all test equipment and measuring devices.
- ☐ Non-conforming materials and rejects are clearly labeled and segregated.
- ☐ Products are tested, inspected or certified by an independent testing laboratory or agency.

Testing and Recordkeeping

- ☐ Quality control testing and inspection procedures are performed on raw materials, component parts, work in process and finished products.
- ☐ Quality control testing and inspection procedures are in place for packaging, manuals, labels, and customer service work.
- ☐ Complete records are maintained for "traceability" from supplier and receipt of raw materials or components through finished product and ultimate user-consumer.
- ☐ Adequate records are maintained to identify all activities performed during processing, manufacturing, inspection, testing, packaging, shipping, service, marketing, and sale.
- ☐ Adequate records are maintained of all decisions made regarding design, standards, and product improvements.

Product Labels and Packaging

Product Labeling

- ☐ Labels conform with applicable mandatory and voluntary codes, regulations, and standards.
- ☐ Labels effectively warn against all product hazards the ordinary user may be unaware of.
- ☐ Key warnings are conspicuous, concise, clear, and repeated in various languages of primary user populations.
- ☐ Labels are firmly attached so they will remain legible and in place for the product's life cycle.
- ☐ Labels include adequate instructions for proper use, avoiding misuse, proper disposal, and antidotes.

Packaging

- ☐ Product packaging is considered a product in itself and is given the same product safety-liability consideration given to the product it contains.
- ☐ Effective procedures are in place to ensure that necessary manuals, instructions, labels, parts material safety data sheets, etc., are packaged with the product.
- ☐ Package labeling includes considerations such as warnings, use, disposal, handling, storage, and possible deterioration.
- ☐ Procedures are in place to ensure packaging conforms to customer specifications.
- ☐ Plant staff are instructed on how to package properly so that warnings and instructions are on top and opened first.

Shipping

- ☐ Packages meet standard shipping requirements of the DOT, US Postal Services, States, Municipalities, and others.
- ☐ Records are adequate to identify and trace product shipments for product recall or retrofit purposes.
- ☐ Shipping and handling instructions are clear, conspicuous, and adequate to minimize product damage potential.
- ☐ Procedures are in place to insure that shipping methods conform to legal, industry, and customer requirements.
- ☐ Packaging is designed specifically for the product it contains and is adequate to protect both product and handler during shipment and storage.

Marketing and Customer Service

Advertising

- ☐ Advertising claims about the product do not exceed product capabilities and can be readily substantiated.
- ☐ Advertisements, sales literature, product photographs, TV ads, and oral sales presentations promote safe and proper use of products.
- ☐ Advertising, sales literature, and oral sales presentations avoid use of terms such as “absolutely safe,” “foolproof,” “safest made,” and “fireproof.”
- ☐ Marketing and sales staff, distributors, retailers, and service personnel are fully informed regarding the product liability climate and their responsibilities in product liability loss prevention.
- ☐ Marketing, sales staff, distributors, retailers, and service personnel receive training regarding product development, performance, applications, limitations, warranties, and warnings.

Warranties

- ☐ Marketing, sales staff, distributors, retailers and service personnel are guided by the knowledge that statements they make about a product can be considered “Express Warranties.”
- ☐ Management is guided by the knowledge that every product sold comes with merchantability.
- ☐ Written warranties or guarantees regarding quality, reliability, suitability or safety are clear and can be substantiated by test results or other data.
- ☐ Written warranties or guarantees clearly spell out their limitations as well as end user responsibilities for proper maintenance, care, and use.
- ☐ Certification to a standard is not cited or indicated unless the product complies with all requirements of the certifying agency or laboratory.

Customer Service

- ☐ Procedures are in place to promptly review and respond to customer complaints.
- ☐ A current and comprehensive library of reference materials including shop manuals, bulletins on service modifications, and service standards are available to and used by service personnel.
- ☐ Detailed service records are maintained, showing full extent of work performed, including materials used and repairs needed but not desired by customer.
- ☐ Service department policy is to never accept an order for repair or modification that may compromise product safety.
- ☐ Service procedures are in place for saving faulty or defective products for analysis.

This document is advisory only and does not attempt to list all potential hazards or identify all possible remedial actions. You are responsible for the safety of your premises, operations, and products. FCCI Insurance Group and its affiliates and subsidiaries shall not be liable for any loss, injury, death, damage, or expense arising out of the use of this bulletin.