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Review of: Ralph L. Barnett & Steven R. Schmid, Safeguard Evaluation Protocol - A Decision Tree for Standardizing, Optionalizing, Prohibiting, Ignoring, Enhancing or Characterizing Safeguards (Triodyne Inc., 1995)

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Erratum

The citation for this review is 7 *RISK* 89 (1996) in most commercial databases.

Ralph L. Barnett & Steven R. Schmid, *Safeguard Evaluation Protocol — A Decision Tree for Standardizing, Optionalizing, Prohibiting, Ignoring, Enhancing or Characterizing Safeguards* (Triodyne Inc., 1995). Figures, references, table. ISSN 1041-9489. [14 pp. \$25.00. 5950 W. Touhy, Niles, IL 60714.]

Should a safeguard such as a rear seat air bag be standard equipment in an automobile, or a particular warning label be applied to an extension ladder? Questions like these are common for manufacturers, distributors and retailers of industrial equipment and consumer goods, and failure to consider them carefully exposes such suppliers to legal liability. This booklet describes a flowchart protocol, created with suppliers in mind, for the evaluation of equipment safeguards. It is number 11(2) of the periodical, *Safety Brief*, published by a group of consulting scientists and engineers.

The purpose of *Safeguard Evaluation Protocol* is to provide an objective framework for decision making that will satisfy guidelines developed within the engineering and manufacturing communities, as well as meet legal and regulatory requirements. The authors make good use of specific examples, both to introduce the evaluation flowchart and to explore the process of choosing between various options it presents. The evaluation protocol involves three basic considerations. First, in considering the safety value of the safeguard, all information from various value systems (e.g., regulatory requirements or industry standards) is reflected in a single decision point: Is the safeguard required, recommended, or permitted? When value systems have conflicting positions with regard to a safeguard, the most stringent is adopted. Next, use of the safeguard in conjunction with the underlying product is assessed: Will the safeguard eliminate any of the product's functions? Last, the protocol invites analysis of the economic impact of implementing the safeguard: Would the cost be reasonable or not?

While the authors hold out their flowchart as a tool for helping decision makers meet later legal scrutiny of their actions, they acknowledge the difficulties inherent in balancing the benefits and costs of a safeguard.¹ The authors' defensive attitude toward the legal system does nothing to dispel these difficulties, however.

¹ At 12.

For example, Barnett & Schmid suggest that determining whether the cost of a safeguard is reasonable depends more on supplier perception of the judicial system, including anticipation of possible "jury award(s)," than on an objective evaluation.² And when it comes to balancing the costs to suppliers of additional safeguards against the value of human health and safety, they recommend an estimation of the cost of saving human lives, as "courts have severely punished manufacturers who have had the temerity to publish their valuations of human life and limb."³ Rather than make what is basically an editorial comment, it would have been more useful for the authors to support this point of view with references or cases in which similar economic evaluations have been made successfully (or unsuccessfully) from both a manufacturing and a legal standpoint.

The booklet concludes with the discussion of two frequently cited product liability cases, *Barker v. Lull Engineering Co.*⁴ and *Bexiga v. Havir Mfg. Corp.*,⁵ as examples of the compatibility of their evaluation protocol with overall judicial analysis of product safeguards. The evaluation protocol does incorporate many of the factors discussed in *Barker* for cost/benefit analysis of alternative product designs and is useful in identifying weak points in the assessment of safeguard feasibility in *Bexiga*. While the authors intend this protocol to help suppliers reach a legally defensible *result* with respect to a potential safeguard, **Safeguard Evaluation Protocol** must be regarded as only a useful *starting point* in the complex process of legally defensible cost/benefit analysis.

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² *Id.*

³ At 6.

⁴ 573 P.2d 454 (Cal. 1976).

⁵ 290 A.2d 281 (N.J. 1972).

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