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110TH CONGRESS *2d Session*	SENATE	REPORT 110–265

CONSUMER PRODUCT SAFETY COMMISSION REFORM ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2045

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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Mr. INOUYE, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2045]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2045) to reform the Consumer Product Safety Commission to provide greater protection for children's products, to improve the screening of noncompliant consumer products, to improve the effectiveness of consumer product recall programs, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

Established in 1973, the Consumer Product Safety Commission (CPSC) is an independent Federal health and safety regulatory agency that was created by the passage of the Consumer Product Safety Act of 1972 (15 U.S.C. 2051 et seq.) (CPSA). The CPSC has not been reauthorized since 1992, and its current statutory authority has limited the agency in monitoring and enforcing against entities participating in a global marketplace. In addition, the resources of the agency have been in decline for several years.

The need for the agency and the product safety regime have been highlighted by a recent series of high profile nationwide recalls of noncompliant products. In addition to the recalls, there are continued reports of products with potentially deadly flaws that have been voluntarily recalled, yet are still readily available in the stream of commerce. S. 2045, as amended, would address several concerns about the CPSC, including but not limited to: increased CPSC resources; the creation of a joint enforcement regime with

the States; the improvement of reporting requirements; the creation of new mandatory product standards; mandatory third-party certification of the safety of children's products; stronger authority to manage imported product safety; and increased civil and criminal penalties.

BACKGROUND AND NEEDS

The CPSC estimates that consumer products under its jurisdiction are related to 27,100 deaths and 33.1 million injuries each year. The agency estimates that the dollar cost of these deaths, injuries, and related property damage exceeds $700 billion annually. The Commission has four primary missions:

- To protect the public against unreasonable risks of injury associated with consumer products;
- To assist consumers in evaluating the comparative safety of consumer products;
- To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and
- To promote research, investigation into causes for, and prevention of products-related deaths, illnesses, and injuries.

In addition to the CPSA, the agency fulfills these missions via several statutes. The most significant of these corollary statutes include:

- The Federal Hazardous Substances Act (15 U.S.C. 1261) (FHSA);
- The Flammable Fabrics Act (15 U.S.C. 1191) (FFA); and
- The Poison Prevention Packaging Act (15 U.S.C. 1471) (PPPA).

The CPSC employs approximately 400 full-time employees (FTEs) who are responsible for monitoring the safety of more than 15,000 different consumer products. The agency strives to accomplish its mission by: working in tandem with industry leaders to develop voluntary standards; conducting research on potentially dangerous products; issuing and implementing mandatory standards or banning consumer products if no reasonable standard to protect the public can be agreed upon; and obtaining recalls of products deemed unsafe or making arrangements for product repair. The agency does not have jurisdiction over products such as automobiles and other street-legal vehicles, tires, boats, tobacco, alcohol, firearms, food, drugs, cosmetics, medical devices, and pesticides.

Currently, the CPSC operates as a three person Commission. The Commissioners are nominated by the President and confirmed by the Senate for staggered seven-year terms. Ms. Nancy Nord, a Republican, is the current Acting Chairman since the resignation of Mr. Harold "Hal" Stratton on July 15, 2006. She was confirmed on April 28, 2005, and her term expires in 2012. Mr. Thomas Hill Moore, the Democratic Commissioner, was reconfirmed on May 21, 2004, with his term expiring in October 2010. Until the President nominates a third Commissioner, the CPSC will operate as a two-person panel under a temporary quorum proviso. That temporary authority will expire in February 2008.

Funding and Staffing Levels: The President's fiscal year (FY) 2008 budget proposed to fund 401 FTEs, the fewest number in the agency's 34 year history, and to provide only $63.25 million to oper-

ate the agency. The agency has undergone attrition in anticipation of this funding level and is slightly below 400 FTEs at this time. Funding for the CPSC has remained essentially flat for FY 2005 through FY 2007, forcing staff decreases of 31 FTEs in FY 2006 and approximately 20 FTEs in FY 2007. Since 2000, the CPSC has lost approximately 79 FTEs. The size of the CPSC workforce today is less than half its size at the end of the 1970's. The Consolidated Appropriations Act of 2008 contains $80 million for the operation of the CPSC for FY 2008. This bill was signed into law (P.L. 110–161) on December 26, 2007.

Quorum: Section 4(d) of the CPSA provides that three members serving at the Commission constitute a quorum, which is necessary for the transaction of business. If there are only two Commissioners because of a vacancy, two members constitute a quorum for six months after the vacancy was created. The CPSC operated without a quorum from January 2007 to August 2007, when a temporary quorum was extended by an amendment to H.R. 1, the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110–53) ("9/11 Act"), which was signed into law on August 3, 2007. That quorum extension expired on February 3, 2007. Without a quorum, the Commission cannot conduct any business requiring a vote, including rulemakings or civil penalties, or hold public hearings.

Conversions of Employees from Noncareer to Career Positions: In the General Accountability Office's (GAO) Report *Personnel Practices: Conversions of Employees from Noncareer to Career Positions May 2001–April 2005*, the CPSC was highlighted for promoting a nonqualified appointee working for then Chairman Stratton to a Senior Executive Service (SES) position. The case is detailed on page 68 of the report (GAO–06–381, May 2006).

> Case 16: Consumer Product Safety Commission (CPSC): Positions: From Schedule C Appointment, GS–0301–15/10, Special Assistant, Office of the Chairman, Consumer Product Safety Commission:
>
> To ES–0340–00/00, Director, Office of International Programs and Intergovernmental Affairs, Office of the Executive Director, Consumer Product Safety Commission:
>
> Issue: Agency did not appear to address [Office of Personnel Management (OPM)] qualification concerns about the conversions in a substantive manner:
>
> Details: Prior to applying for the career position, the eventual selectee had served for over a year as a Schedule C Special Assistant in the office of the Chairman. According to his resume, as a Special Assistant, the eventual selectee directly supported the Chairman by (1) providing senior level policy advice on current and developing issues, (2) preparing written materials for presentation at external speaking engagements, (3) acting as a liaison with internal and external parties, and (4) drafting documents as needed.
>
> On November 14, 2003, CPSC posted a vacancy announcement for the SES career position of Director, Office of International Programs and Intergovernmental Affairs. Based on the vacancy announcement, the director would

oversee and coordinate the Commission's international and intergovernmental efforts related to product safety standards. The desired qualifications listed in the announcement closely matched the eventual selectee's previous experience in the private sector, and as an elected official to the New Mexico State Legislature, as listed on his resume.

Twenty-four applicants applied, and of these, nine were considered qualified for the position and assigned numerical scores. The eventual selectee received the highest numerical score and the selecting official selected him for the career position on December 19, 2003.

Because this is an appointment to the career SES, CPSC submitted the selectee's case to OPM for approval on February 13, 2004. An OPM administered [Qualifications Review Board (QRB)] denied the agency's request citing weakness in three of the five Executive Core Qualifications (ECQ). The QRB also noted that the selectee's lack of managerial experience would be a handicap to successful performance in the SES. Based on comments from CPSC's Executive Director, the selectee revised his ECQ statement by citing different examples from his experiences. Although the selectee refers to his "career as a senior manager and leader" the only concrete examples he provided of his experiences in the ECQs relate to his 15-month position at the CPSC or his 2-terms as an elected official in the New Mexico State Legislature. However, in describing his specific role and duties for each of these positions on his resume, he does not mention managerial or supervisory duties for either. Using the revised ECQs, CPSC resubmitted its request. OPM pointed out that the resubmission was provided to a different QRB, which was not involved or familiar with the initial QRB's concerns or decision. This QRB approved the appointment on April 2, 2004.

Conclusions: Although the selectee modified his second submission to OPM, the primary basis for the selectee's qualifications remained his experience from the 15-month appointment at the CPSC and 2-terms as a State Representative. It is unclear whether or how this revised submission addressed the concerns raised by the initial QRB regarding the candidate not meeting the "demonstrated executive experience" required for SES positions by 5 U.S.C 3393, or the "well-honed executive skills and broad perspective of government" recommended by OPM guidance on the SES.

The Committee is concerned about the anomalies in the employment selection process as evidenced in the GAO report. The Committee would strongly encourage the CPSC develop a human resource selection protocol to ensure that non-political Commission staff have clear opportunities for development and promotion, and that candidates for SES positions be technically qualified for the demands of the position.

Civil Penalty Caps: In 1972, Congress passed the CPSA with penalties of $2,000 per violation up to $500,000 for any related series of violations. In 1990, Congress raised the penalty amounts in recognition that the previous penalties had been insufficient to mo-

tivate compliance and had not kept pace with inflation. Congress raised the penalty amount to $5,000 per violation up to a $1.25 million cap for a series of related violations and added a cost of living adjustment (COLA) factor. Congress also added penalty authority under the FHSA and the FFA.

On January 1, 1995, the first COLA pushed the penalties to $6,000 per violation with a $1.5 million cap. On January 1, 2005, the COLA increased penalties to $8,000 per violation with a $1.825 million cap. The largest civil penalty ever levied by the CPSC was against Graco Children's Products for $4 million. The penalty combined fines for seven different products that violated the CPSA. The CPSC entered into a settlement with Graco, which failed to report more than 12 million products that imposed dangers to children over an 11 year period.

A comparison of current CPSC penalty authority highlights differences in enforcement regimes for consumer protection and consumer safety. The Federal Trade Commission has uncapped civil penalty authority (15 U.S.C. 45(m)). In 2002, Schering-Plough agreed to pay a $500 million fine as a result of a Food and Drug Administration investigation into the company's drug manufacturing practices. Some States may have stronger penalties than the CPSC in protecting consumers from dangerous products. For example, in 2003, the State of New York fined Dow Chemical $2 million for misleading consumers about the safety of its pesticides.

Preemption of State Product Safety Laws: In 2006, the CPSC included language in the preamble of its mattress flammability rule that would foreclose common law tort claims applied to mattress fire safety. The preemption language was not included in the draft rule that was released to the public for the notice and comment period, giving constituents no opportunity to comment on this significant change. In addition, the Commission did not fulfill the requirements of Executive Order 13132 (August 4, 1999) that mandated consultation with local and State governments before enacting a rule that would substantially impact them, such as extinguishing common law actions in tort as part of a rule regulating product safety. The Executive Order states "National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity . . . [and] agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means."

Many members of the Committee believe that the CPSC went beyond Congressional intent in placing this limitation of State common law actions in the preamble of the rule. The preemption section of the FFA, 15 U.S.C. 1203, uses the narrow term "standard or other regulation" in subsections (a), (b) and (c) to encompass the action and subject matter to be preempted (15 U.S.C. 1203, emphasis added).

> (a) STANDARDS OR REGULATIONS DESIGNED TO PROTECT AGAINST SAME RISK AS STATE STANDARDS OR REGULATIONS; IDENTICAL STATE STANDARDS.—Except as provided in subsections (b) and (c) of this section, whenever a **flammability standard or other regulation** for a fabric, related material, or product is in effect under this chapter, no State or political subdivision of a State may establish or

continue in effect **a flammability standard or other regulation** for such fabric, related material, or product if the **standard or other regulation** is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this chapter is in effect unless the State or political subdivision **standard or other regulation** is identical to the Federal standard or other regulation.

(b) STATE STANDARDS OR REGULATIONS WHICH AFFORD A HIGHER DEGREE OF PROTECTION.—The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a **flammability standard or other regulation** applicable to a fabric, related material, or product for its own use which **standard or other regulation** is designed to protect against a risk of occurrence of fire with respect to which a **flammability standard or other regulation** is in effect under this chapter and which is not identical to such **standard or other regulation** if the Federal, State, or political subdivision **standard or other regulation** provides a higher degree of protection from such risk of occurrence of fire than the **standard or other regulation** in effect under this chapter.

(c) EXEMPTION FOR STATE *STANDARDS OR REGULATIONS;* REQUIREMENTS; DETERMINATION OF BURDEN ON INTERSTATE COMMERCE; NOTICE AND HEARING.—(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a) of this section, under such conditions as may be prescribed in such regulation, any **flammability standard or other regulation** of such State or political subdivision applicable to a fabric, related material, or product subject to a **standard or other regulation** in effect under this chapter, if—

(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the **standard or other regulation** in effect under this chapter, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal **standard or other regulation** is in effect, and (ii) does not unduly burden interstate commerce. In determining the burden, if any, of a State or political subdivision **flammability standard or other regulation** on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such **flammability standard or other regulation,** the cost of complying with such **flammability standard or other regulation,** the geographic distribution of the fabric, related material, or product to which the **flammability standard or other regulation** would apply, the probability of other States or political subdivisions applying for an exemption under this sub-

section for a similar **flammability standard or other regulation**, and the need for a national, uniform **flammability standard or other regulation** under this chapter for such fabric, related material, or product.

(2) A regulation under paragraph (1) granting an exemption for a **flammability standard or other regulation** of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

The preamble, if read in context with all the subsections, would require different interpretations of "standard or other regulation" between (a) and (c). While (a) sets forth the foundation of the agency's ability to preempt a State flammability standard or regulation, (c) allows States to apply to the Commission to exempt flammability standards or regulations from being preempted. Therefore, if one accepts the CPSC's interpretation, then a State court in the midst of a ruling between independent parties for economic and noneconomic damages regarding a mattress flammability matter would have to apply to the CPSC for an exception to allow the court to use its own common law.

The preamble language extinguishing common law cases in this area of consumer product safety runs counter to the role of State courts and the most basic notions of Federalism and judicial economy. If the Congress wished to extinguish common law private rights of action for consumer products covered by a specific Federal product safety standard, it would have explicitly stated such a notion as it has in several other areas of law.

Recall Effectiveness: In September 2007, approximately 1.3 million toys were recalled for violating lead paint standards; 1 million cribs were recalled for design flaws; and 425,000 infant play yards were recalled for posing strangulation and suffocation hazards. In August 2007, almost 9 million toys were recalled for containing magnets that may come loose and create an ingestion hazard and thousands of pieces of children's jewelry were recalled for high lead content. While recalls for children's products have dominated press reports in recent months, candles, all-terrain vehicles, bunk beds, space heaters, clothes, knives, scuba masks, radios, lamps, and electronic equipment were also recalled. Some commentators have pointed to the number of recalls as a sign of success of the product safety system. Many of these recalls, however, were prompted by attention in the press as opposed to investigations by the CPSC. In particular, three circumstances in recent press reports that called for substantial reform of the CPSC and the recall system.

Simplicity Cribs. On September 21, 2007, the Commission announced a voluntary recall with Simplicity, Inc. of Reading, Pennsylvania, of roughly 1 million baby cribs. The Commission reported two infant deaths, seven infant entrapments, and 55 other incidents involving design flaw and hardware failure that permitted incorrect installation by consumers of one part of the crib. A drop-rail side in some crib models detached from the frame and created a small space that could entrap infants. The cribs were manufac-

tured in China, marketed under the Simplicity and Graco brand names, and sold for $100 to $300 from January 1998 through May 2007 by department stores and mass merchandisers worldwide. The voluntary recall directed consumers to contact Simplicity for a free repair. One month later, the CPSC announced that repair kits were ready to be sent to parents with the recalled cribs. The crib recall announced by the Commission on September 21 was the fourth Federal recall since May 2005 for Simplicity. In press reports, consumer safety groups voiced apprehension about the dangerous cribs, emphasizing that no margin of error exists when dealing with infant products of this nature. Critics have pointed to the Commission's delayed response time: a California attorney has said that he alerted the Commission about the death, caused by a faulty crib, of a 9-month old two years before the agency announced the crib recall. [1]

Kazuma Meerkat 50: In June 2007, the CPSC issued a warning about an all-terrain vehicle (ATV) imported from China called the Kazuma Meerkat 50. The Commission noted in its press release that "Children are at risk of injury or death to multiple safety defects with this off-road vehicle." The Commission could not undertake a mandatory recall because it did not have a quorum and could not undertake any official business. Jason Tsai, President of the company that imports the Meerkat refused to voluntarily recall the ATV, and he told the Washington Post in an October 2007 article that he would never agree to a recall, because agreeing to a voluntary recall "means I agree with CPSC's [accusation] that the Meerkat 50 is a severe hazardous product. [2] The article also highlighted that the CPSC is limited in information it can disclose about a product because of protections provided under section 6(b) of the CPSA. [3] So in a situation such as the Meerkat impasse, the importer can force the CPSC into court over a disclosure that would help the consuming public help themselves. Despite the CPSC warning and the temporary quorum extension granted in the 9/11 Act, the CPSC has not initiated mandatory recall proceedings.

Stand 'n Seal: The Stand 'n Seal case is a powerful illustration of the Commission's inability to protect consumers from harmful products. There have been at least 88 complaints from consumers who have used Stand 'n Seal, including two deaths and 28 cases of overexposure resulting in respiratory symptoms for which medical attention were sought.

Stand 'n Seal, distributed by Roanoke Companies Group Inc. (Roanoke), is a canned aerosol sealant used to waterproof kitchen and bathroom floors. The product entered the market in late 2003 for sale exclusively at Home Depot stores. In the spring of 2005, one of Roanoke's suppliers switched an ingredient in Stand 'n Seal. Shortly after the reformulated cans reached Home Depot shelves, calls from customers, emergency rooms, and doctors poured into poison control centers and the CPSC's own hot line. [4]

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[1] Maurice Possley, Deaths Spur Huge Crib Recall, Chicago Tribune, September 22, 2007 at Zone C-Pg. 1 [hereinafter Possley].

[2] Annys Shin, Stuck in Neutral: Consumer Safety panel Faces Constraints In Its Ability to Force Recalls of ATVs, Washington Post, Oct. 27, 2007 at D1.

[3] Id.

[4] Eric Lipton, *Dangerous Sealer Stayed on Shelves After Recall, New York Times, October. 8, 2007.* Available at www.NYT.com.

After weeks of consumer complaints, in mid-June 2005, Roanoke reported a possible health hazard from the Stand 'n Seal product to the CPSC. Then, for over two months, the CPSC and Roanoke negotiated a recall. During this negotiation period, the public was not alerted to the product hazard and the product remained on Home Depot's shelves. Also during this period, Mr. Tripodi, an executive for Roanoke, sent an e-mail message to a business associate saying, "We are doing everything to convince the Home Depot that there is no reason to take these batches off the shelf." On August 31, 2005, the CPSC announced a voluntary recall of the Stand 'n Seal product. From mid-June 2005, when Roanoke reported to the Commission, to August 31, 2005, when the CPSC issued a voluntary recall, Stand 'n Seal sickened dozens of people, two of them fatally. [5]

After the recall, Roanoke re-supplied Home Depot stores nationwide with 50,000 new cans of Stand 'n Seal and assured the Commission that it had fixed the problem. Since the CPSC's recall notice only applied to cans sold at Home Depot stores between April 2005 and June 2005, consumers were left to believe that the new Stand 'n Seal cans were safe for use. However, the new cans still contained the unsafe chemical implicated in earlier illnesses. Andrew Lamer, a 24-year-old home contractor, ended up in a hospital intensive care unit after using a can of Stand 'n Seal he bought in November 2005, four months after the recall. [6]

It was not until March 2007, a year and a half after the original recall, that Home Depot and Roanoke acknowledged the continuing health problem with Stand 'n Seal. A Home Depot statement conceded that the 50,000 cans used to restock the shelves in 2005 "have been identified as containing the same potentially harmful formulation as the recalled batches." Home Depot then removed Stand 'n Seal from the market and posted a notice on its corporate Web site offering a refund to anyone who, after the recall, had bought one of the 50,000 cans. [7]

The time it took the Commission to take Stand 'n Seal off Home Depot's shelves has revealed serious deficiencies in the Commission's ability to carry out its mission to protect consumers from unsafe products. If the CPSC had acted more quickly to issue recalls of unsafe products or had alerted the public of the potential dangers, deaths and injuries associated with Stand 'n Seal might have been prevented.

Lead in Children's Products: Lead is a highly toxic substance found in consumer products, contaminated-soil, homes, and work environments. Lead poisoning and lead exposure are problematic throughout the United States. Indeed, the U.S. Department of Housing and Urban Development has estimated that 24 million homes still have significant lead-based hazards. Children are especially vulnerable to lead exposure because of their developing nervous systems and brains. In particular, children under the age of six absorb greater amounts of lead than adults absorb when both groups' exposure to lead is identical. According to the Centers for Disease Control and Prevention (CDC), not only are children at increased risk of exposure to lead because they absorb more lead

[5] Id.
[6] Id.
[7] Id.

than adults but also because they tend to exhibit more hand-to-mouth activity than adults. Lead is associated with impaired motor, behavioral, cognitive, and physical functioning in children. The adverse health effects of lead poisoning in children can take many forms: behavior and learning problems like hyperactivity, ADHD, ADD, hearing problems, headaches, memory and concentration problems, stunted growth, brain damage and nervous system damage. According to a 1991 statement by the CDC:

> Very severe lead exposure in children (blood lead levels 380 μg/dL) can cause coma, convulsions, and even death. Lower levels cause adverse effects on the central nervous system, kidney, and hematopoietic system. Blood lead levels as low as 10 μg/dL, which do not cause distinctive symptoms, are associated with decreased intelligence and impaired neurobehavioral development. [8]

In 1991, while the CDC defined 10 micrograms per deciliter (μg/dL) as the blood lead level that should trigger action by public health officials, the CDC acknowledged that the 10 μg/dL did not represent a threshold for the harmful effects of lead. Since then, no safe blood lead level in children has been identified. Based on research conducted since 1991, evidence indicates that blood lead levels of less than 10 μg/dL can affect children's physical and mental development, according to a report written by the CDC's Advisory Committee on Childhood Lead Poisoning Prevention (Advisory Committee) and published in the November 2007 issue of the medical journal Pediatrics. The report noted that lead "has a continuing negative association with IQ as children reach elementary school age." [9] The Advisory Committee's report also enumerated nonhousing lead sources of exposure for children, many of which fall under the jurisdiction of the CPSC, including pottery and toys. The report found that "because no safe BLL [blood lead level] has been defined, small reductions in population-level exposures to lead would likely affect substantial numbers of children and could be expected to reduce the number of children with adverse health outcomes associated with lead exposure." [10]

Highlighting the toxicity of lead and the detrimental impact of lead exposure on children's cognitive, physical, and behavioral development, the American Academy of Pediatrics reiterated much of the CDC's scientific findings on lead accumulation in children in a letter to Acting Chairman Nancy Nord, dated March 7, 2007:

> Lead is well-established as a potent neurotoxin and a particular threat to the developing brain of the young child, with documented negative effects on behavior and permanent loss of IQ points. No threshold for the toxic effects of lead has been identified. When lead accumulates in

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[8] William L. Roper, M.D., M.P.H, Director; Vernon N. Houk, M.D., Henry Falk, M.D., Sue Binder, M.D., *Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control and Prevention–October 1991.* Available online at http://www.cdc.gov/nceh/lead/publications/books/plpyc/chapter2.htm

[9] Helen J. Binns, MD, Carla Campbill, MD, Mary Jean Brown, ScD, RN for the Advisory Committee on childhood Lead Poisoning Prevention, Interpreting and Managing blood Lead Levels of Less Than 10 μg/dL in children and Reducing Childhood Exposure to Lead: Recommendations of the Centers for Disease Control and Prevention Advisory Committee on Childhood Lead Poisoning Prevention, PEDIATRICS Vol. 120, No. 5, November 2007, pp. e1285-e1298 (doi:10.1542/peds.2055-1770). Published online November 1, 2007.

[10] Id.

> the body, it is tightly bound to bone and then released slowly over years or decades. Thus, exposures that may be separated by months to years have an additive effect on the body's burden of lead. Acquisition of lead in the body even in small amounts (i.e., amounts that result in blood lead levels <10 μg/dL) contribute to an accumulation of lead and produce the negative effects of lead on children's health and development that last a lifetime . . . Studies on lead accumulation at lower levels report a loss of 4 to 7 IQ points for lead levels that move from 1 μg/dL to 10 μg/dL. [11]

Increasing children's risk of lead exposure are the millions of toys recently recalled for containing hazardous levels of lead. Posted on the Commission's website are many recalls involving lead in children's jewelry; notable examples include: a July 8, 2004, recall of one hundred fifty million pieces of toy jewelry for containing dangerous levels of lead by four companies, A & A Global Industries, Brand Imports, LLC, Cardinal Distributing Company, and L. M. Becker & Company; and a September 26, 2007, recall by Toby N.Y.C. of 23,500 Toby and Me Jewelry Sets that contained high levels of lead. In 2006, a four-year old child died in Minnesota after swallowing a piece of a Reebok charm bracelet found to be almost entirely composed of lead. In 2004 in Oregon, a child ingested a necklace of high lead content, after which her blood lead level was recorded as 123 μg/dL.

Not only has lead in children's metal jewelry been prevalent in recent recalls, but products have also been recalled for containing dangerous levels of lead paint. Currently, Federal law bans the use of lead in paint above 600 parts per million. Despite the U.S. Federal standard, Mattel revealed to the House of Representatives Subcommittee on Commerce, Trade and Consumer Protection on September 19, 2007, the range of lead levels, in violation of Federal standards, in its recalled products: "The reported noncompliant lead levels found in paint on some samples of recalled toys, so far, has typically been about one (1) percent or 10,000 parts per million. The reported noncompliant lead levels in paint, so far, range from just over the applicable standard to about eleven (11) percent or 110,000 parts per million."

Current science has highlighted the greater danger, especially to children, from lead exposure. Standards need to be updated to reflect this new information and improved testing abilities.

SUMMARY OF PROVISIONS

CPSC Resources: To address CPSC's lack of resources described above, S. 2045 (the "Reform Act" or the "Act") would provide an authorization of $759 million over seven years, which is a 74 percent increase over current funding levels. The Reform Act also would provide $40 million in funding authority to renovate and improve the CPSC laboratory facilities, an additional $1 million to support research into the safety of nanotechnology in consumer products, and $15 million in funding over the next seven years for the Commission's Office of the Inspector General.

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[11]

Commission Administration and Rulemaking: The Reform Act would address current statutory authority and operations of the CPSC. The most significant provisions include:

Quorum. Originally, the CPSC was to be composed of up to five Commissioners, not more than three of whom could be members of the same political party. In 1992, Congress restricted funds for two Commissioners and their staffs for FY 1993 and thereafter. Since that time, the CPSC has functioned as a three-member commission, with a temporary quorum rule to allow the CPSC to function with two Commissioners for up to 6 months. Without a quorum, the Commission cannot conduct any business requiring a vote, including rulemakings or civil penalties, or hold public hearings. After the expiration of the temporary quorum in January 2007, the CPSC operated without a quorum until the signing of the 9/11 Act on August 3, 2007, which included a six month extension of the temporary quorum rule, allowing the CPSC to operate fully until February 3, 2008. The Act would extend the temporary quorum rule for nine months after the date of enactment. Also, the Act would repeal the limit on the use of appropriated funds for more than three Commissioners and urge the President to nominate members to fill all five Commissioner positions.

Personnel. The Reform Act would require the CPSC to increase the number of its FTEs to at least 500 from its current level of approximately 400 by October 1, 2013, and would assign an additional 50 FTEs to ports of entry or overseas inspection duty by October 1, 2010. In addition, to help assure only the most qualified individuals obtain civil service positions within the CPSC and to limit political influence in the professional permanent staff of the Commission, the bill would prohibit the appointment of an active political employee to a civil service position within the Commission, unless the appointment is authorized by a unanimous vote of the Commission or more than one year has elapsed since his or her termination from the CPSC political appointment. The bill also would prohibit the reduction of staff in the office of a Commissioner, unless the reduction is authorized by a unanimous vote of the Commission.

Rulemaking. Currently the CPSC is required to undertake a three-step rulemaking process (Announced Notice of Proposed Rulemaking (ANPR), Notice of Proposed Rulemaking (NPR), and the Issuance of the Final Rule). By mandating a two-step rulemaking (NPR and Issuance of Final Rule), while allowing the CPSC to use its three-step process when the Commission deems appropriate, the Reform Act would streamline the process.

Preemption. In 2006, the CPSC included language in the preamble of its mattress flammability rule that would foreclose common law tort claims applied to mattress fire safety. The preemption language included in the rule was not authorized by Congress and was not included in the draft rule that was released to the public for the notice and comment period, giving constituents no opportunity to comment on this significant change. S. 2045 would clarify that no consumer product safety standard promulgated by the Commission after the date of enactment of the Reform Act, or any other action taken by the Commission after that date, would preempt any State or local law to an extent greater than currently permitted under the preemption sections of the CPSA, the FHSA,

the FFA, or the PPA. The section would further clarify that the Standard for the Flammability of Mattress Sets promulgated by the CPSC would not limit a State's or a political division of a State's rights to common law actions in tort and to establish standards consistent with section 16(b) and (c) of the FFA, or the other preemption sections within the CPSA, the FHSA, and the PPA.

Recall Effectiveness: S. 2045 contains five major amendments to the current recall system under the CPSA.

Corrective Action Plans. Currently, companies can elect the remedy they wish to use in the recall of a defective product " a repair, replacement, or refund" even though Commission staff may view the recall method as inadequate or lacking in effectiveness. S. 2045 would provide the Commission the authority to approve the corrective action plan it determines to be in the public interest, instead of allowing the manufacturer to select the corrective action plan it believes appropriate. Further empowering the Commission, if the agency finds that an approved corrective action plan is not effective, or that the manufacturer, retailer, or distributor is not executing an approved action plan effectively, S. 2045 would enable the Commission to order the action plan to be amended, if the Commission finds an approved corrective action plan not effective or that the manufacturer, retailer, or distributor is not effectively executing a corrective action plan. If the Commission determines, after notice and the opportunity for comment, that a manufacturer, retailer, or distributor has failed to comply substantially with its obligations under its action plan, the Commission would have the authority to revoke approval of the action plan and require the manufacturer, retailer, or distributor to cease distribution of the product.

Tracking Labels for Children's Products. Currently, no mandatory Federal regime exists for identifying/tracking marks to be placed on children's products. Because of the necessity to identify and remove these products from the stream of commerce as soon as possible after the notice of a voluntary or mandatory recall, S. 2045 would require manufacturers of children's products to place distinguishing marks on the product and its packaging to the extent practicable, enabling the purchaser to ascertain the source, date, and cohort (including the batch, run number, or other identifying characteristic) of the product by reference to those marks. S. 2045 would also authorize the Commission to extend the tracking requirement to other products through a rulemaking proceeding.

Identification of Manufacturers by Importers and Retailers. The CPSA contains no provision that explicitly requires manufacturers, retailers, or importers to maintain and provide records to the Commission of product distribution or sale to related entities. This lack of communication and transparency delays product recall notification to relevant actors. To address this, S. 2045 would require that every importer, retailer, or distributor of any product or substance under the Commission's jurisdiction to identify the manufacturer of that product by name, address, or such other identifying information as the Commission may request. In addition, each manufacturer would be required to identify the retailer, or distributor to which it supplied a given consumer product and each subcontractor involved in the production or component supply of a product by

name, address, or such other identifying information upon the request of the Commission.

Bonding for Recalls or Destruction of Products. In certain situations a manufacturer, importer or retailer may not have the resources to execute an effective recall to remove a dangerous product from the stream of commerce. To address this potentiality, the Reform Act would give the Commission the authority, by rule, require manufacturers or distributors of a consumer product to post a bond (or other security acceptable to the Commission) in an amount sufficient to cover the costs of an effective recall of the product or substance, and in the case of an imported product or substance, to cover the costs of holding the product or substance at the port and destruction of the product or substance should such action be required. Prohibition of Sale of Recalled Products. Currently, the CPSA prohibits individuals from manufacturing, selling, distributing, or importing either a consumer product in noncompliance with an applicable safety standard under the CPSA or a declared banned hazardous substance under the FHSA. S. 2045 would add additional protections pertaining to the sale of a voluntarily recalled product and expand prohibitions on the sale of recalled consumer products under any other Act enforced by the Commission. All persons would be prohibited from selling, manufacturing, distributing or importing into the United States any consumer product that is subject to a voluntary corrective action taken by the manufacturer of which the CPSC has notified the public. As a result of this addition, it would be unlawful for individuals to sell a product that the individual knew or should have known was voluntarily or mandatorily recalled after a public announcement made by the Commission of the recall.

Industry Reporting and Public Disclosure: The CPSC and several outside constituencies have made a number of suggestions to improve the reporting system and to provide more information to consumers about unsafe or potentially unsafe products. After reviewing the submissions, the Committee formulated a comprehensive approach to reporting reform. The most significant of these provisions include:

Company Reporting of Defective Products and Statutory Violations. Under section 15(b) of the CPSA, companies are required to immediately inform the CPSC of information which reasonably supports the conclusion that a consumer product: (1) fails to comply with a product safety rule; (2) contains a defect that could create a substantial product hazard; or (3) creates an unreasonable risk of serious injury or death. This obligation, however, does not extend to substances and products covered by statutes other than the CPSA that the Commission enforces, such as the FHSA. Consistent with the requests of both CPSC Commissioners, S. 2045 would extend the section 15(b) reporting requirements to all statutes that the CPSC enforces.

Whistleblower Protections. S. 2045 would establish whistleblower protections for private and governmental employees who: (1) provided or are about to provide to an employer, the Federal government, or a State attorney general information relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under any law enforceable by the Commission; (2) testified or are about to testify about such matters; (3) assisted

or participated or is about to assist or participate in the investigation of such matters; or (4) objected to, or refused to participate in, an act reasonably believed to be in violation of law or a substantial danger to public health or safety. The bill would set out procedures under which an employee may file a complaint with the Department of Labor (DOL) against an employer alleging unlawful employment action and provide the employer the opportunity to respond and defend itself. If the DOL determines that a complainant was aggrieved as a result of being a whistleblower, the DOL would be authorized to order the employer to provide compensation (including back pay); restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory and consequential damages, reasonable litigation costs, and punitive damages up to $250,000.

S. 2045 would encourage employees to report product safety violations to the CPSC or State attorneys general by granting an employee 15 to 25 percent of any civil penalty collected with respect to a reported violation. If the CPSC or a State attorney general proceeds with an action based on information provided by a nongovernmental employee, the employee would be eligible to receive between 15 and 25 percent, as determined by the Commission, of a civil penalty collected depending upon the extent to which the information provided by the employee substantially contributed to the enforcement action. If the Commission's action is based primarily on disclosures of specific information not directly provided by the employee, the Commission would be authorized to award up to 10 percent of a civil penalty collected as it considers appropriate based on the role of the employee. An employee would not be entitled to a reward if he or she caused the violation without the knowledge and direction of his employer. Additionally, an employee who brings a frivolous lawsuit would be subject to a $1,000 penalty.

Public Disclosure of Information. The Chicago Tribune recently reported that the September 2007 recall of 1 million cribs only occurred after the newspaper began raising questions. This was despite two deaths and 55 complaints received by the CPSC regarding the cribs, beginning in April 2005. A CPSC investigator was quoted as saying "[w]e get so many cases. Once I do a report, I send it in and that's it. I go to the next case. We could spend more time, but we are under the gun. We have to move on." [12]

The CPSC, unlike other safety agencies, is restrained from disseminating to the public product and manufacturer specific information under the CPSA. Under section 6(b) of the CPSA, the Commission cannot disclose complaint information with respect to a product, unless it is an imminent hazard or in violation of the CPSA. Other manufacturer specific information is barred from release unless and until the agency has sent a copy of it to the named manufacturer, allowed the manufacturer 30 days to comment on the information, reviewed the manufacturer's comments regarding the accuracy of the information and the fairness of releasing it, and determined that disclosure of the information would effectuate the purposes of the CPSA. If a manufacturer believes that the CPSC has not complied with the required procedure, it

[12] Possley at Zone C-Pg. 1.

may seek to enjoin the disclosure of information through court action.

Manufacturers believe that section 6(b) restrictions are important because information that may be released by the CPSC may be inaccurate and that it should be incumbent upon the CPSC to ensure that only accurate information be released. Misinformation could hurt the reputation of manufacturers and products. In addition, manufacturers argue that the general release of information will lead to unsupported lawsuits and discourage the voluntary reporting of information.

The dictates of section 6(b), however, are resource intensive for the

> *already overburdened agency, especially when a company chooses to fight the release of information. As a result, releases by the CPSC and responses to Freedom of Information Act requests have been delayed and product safety information has not reached the public. In contrast, the National Highway Traffic Safety Administration (NHTSA) has no similar constraints and routinely posts car safety information, including consumer complaints, on its website by make and model. The information is not reviewed for accuracy by NHTSA and can be used by consumers in evaluating the safety of infant car seats and cars they might purchase.*

S. 2045 would eliminate the current section 6(b) of the CPSA. In its place, the Commission, to the extent practicable, would be required to provide the manufacturer or private labeler of a consumer product up to 15 days to review relevant information for confidentiality prior to disclosure. At the end of this period, in addition to marking proprietary information confidential, the manufacturer would have the opportunity to file comments with the CPSC as to the veracity of the information to be released. The Commission would be required to disclose the comments of a manufacturer as an addendum at the company's request.

Inter-Governmental Sharing of Product Safety Information. Goods made overseas are sold not only in the United States but also in Europe, Africa, and other continents. To the extent that the European Union bans an unsafe product and the United States does not, shipments to Europe may well be diverted to American shores. Once in the United States, the products may move from State to State.

In recognition of this global market, the Committee seeks to empower the CPSC to share information with any other Federal, State, local, or foreign governments, so long as those entities have established the ability to protect such information from premature public disclosure and agree to protect such information. The European Union has voiced an interest in establishing an information sharing relationship with the CPSC but has not been able to do so under the CPSC's current statutory authority.

Based on language in the U.S. SAFE WEB Act of 2006 (P.L. 109–455), which authorized and established procedures under which the Federal Trade Commission may share information with foreign law enforcement agencies, S. 2045 would authorize the CPSC to share information with Federal, State, local, and foreign agencies. Prior to the disclosure of such information, however, the receiving entity must certify through prior agreement or memorandum of under-

standing that the material will only be used for official law enforcement or consumer protection purposes and the agency has set forth a bona fide legal basis for its authority to maintain the material in confidence. S. 2045 also would require the CPSC to maintain the confidentiality of information it receives from foreign governments.

CPSC Import Enforcement Improvements: S. 2045 would provide additional authority to aid in the prosecution of importers that violate the acts enforced by the Commission. S. 2045 would improve the Commission's import enforcement regime by the following statutory changes:

Third Party Certification of Children's Products. Consumers are wary that products are not made to the same safety standards outside of the United States and are surprised to find out that many of the large American toy and children's product companies actually have large manufacturing facilities abroad. S. 2045 would address this growing lack of confidence in the safety of children's products by creating a third party certification regime. Every manufacturer of a children's product subject to CPSC jurisdiction would be required to use third party laboratories to test their products to certify that their product conforms to CPSC safety standards, if applicable. S. 2045 would require that the CPSC establish protocols and standards for credentialing independent third party laboratories or delegate that authority to an independent standard setting organization to carry out those duties. The CPSC or its designee would verify that products tested by such parties comply with safety standards. The Commission may certify a company-owned laboratory so long as it meets or exceeds the standards of a third party laboratory and it is protected from undue influence from the company's other business units. All children's products, and any other product the Commission deems necessary, would be subject to oversight by an independent third party laboratory and would be required to carry a label to inform consumers that the product meets U.S. safety standards. S. 2045 also would prohibit the importation of children's products that are not accompanied by certification from an independent third party laboratory.

Repeated Importation Offenses. S. 2045 would create an "aiding and abetting" violation for customs brokers that repeatedly assist an importer with violative products in evading detection. The Commission would have the authority to share this information with CPB with a recommendation that the offender's custom broker's license be revoked. Those so referred would have their licenses revoked by Customs and Border Protection.

Export of Recalled Products. S. 2045 would authorize the Commission to prohibit the exporting of products that the Commission determines are not in conformity with applicable product safety standards, subject to an order for a banned hazardous substance, or subject to a voluntary corrective action that would have been subject to a mandatory corrective action by the CPSC. The Commission could permit the export of a product that would be subject to this section if that product meets the applicable safety standards of the importing country.

Civil and Criminal Penalties: The Reform Act would modify the current authority in the following ways:

Civil Penalties. S. 2045 would increase the civil penalty cap for each violation of a prohibited act under the CPSA, the FHSA, or

the FFA from $8,000 to $250,000. The maximum civil penalty cap for a related series of violations under each act would increase from $1,825,000 to $100,000,000. S. 2045 would provide strong civil penalty authority for the Commission, creating an incentive for companies to comply with the CPSC enforced statutes.

The Committee believes that this increase in penalty authority should be accompanied by a clear delineation of the factors the Commission will use in determining the size of the civil fine it may seek in a given situation. S. 2045 would direct the Commission, within a year of enactment, to initiate a rulemaking to establish criteria for the imposition of civil penalties. In the rulemaking, the Commission would evaluate the impact of repeat violations, the precedential value of prior adjudicated penalties, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, the appropriateness of such penalty in relation to the size of the business the person charged, and other circumstances.

Criminal Penalties. Currently, the CPSA provides criminal penalties of not more than one year for any person who knowingly and willfully violates the CPSA after having received notice of noncompliance from the Commission. Individual directors, officers, or agents of a corporation who knowingly and willfully authorize, order or perform an action in violation of the CPSA and who have knowledge of notice of noncompliance received from the Commission also may face criminal penalties of not more than one year.

The "notice of noncompliance" requirement poses a substantial hurdle that makes the CPSC's current criminal penalty authority virtually unusable. The notice provision means that a bad actor may intentionally violate the CPSA without fear of criminal prosecution. Only after the CPSC finds the company and provides notice of noncompliance would the company be at risk of criminal sanction and then only if it continued violating the CPSA.

In addition, the "knowing and willful" requirement means that the Commission must demonstrate in any criminal prosecution that a company both had knowledge of the facts that constitute the violation of the CPSA (knowing) and acted with the knowledge that its conduct was unlawful (willful).

The FHSA also contains criminal penalty provisions. Under the FHSA, any person who violates any provision of the FHSA, regardless of his or her mens rea (strict liability), faces a maximum of 90 days in prison. If the CPSC proves that the individual violated the FHSA "with intent to defraud or mislead," or for a second offense, he faces not more than one year in jail. While the language of the FHSA is modeled on the criminal provisions of the Federal Food, Drug, and Cosmetic Act (FDCA), the penalties in the FDCA are stricter. Under the FDCA, an individual faces up to one year imprisonment for strict liability violations and up to three years imprisonment for violations with the intent to defraud or mislead.

S. 2045 would strike "notice of noncompliance" requirement in the CPSA, which would allow the Commission to seek criminal penalties against the most egregious violators when they are first identified. In addition, the bill would harmonize the criminal provisions of the CPSA, the FHSA and the FFA. S. 2045 would make a knowing violation of either statute punishable by imprisonment for not more than one year. A knowing and willful violation of the

CPSA, the FHSA or the FFA would be punishable by imprisonment for not more than five years. In addition, S. 2045 would give the Commission authority to seek asset forfeiture as a criminal penalty.

Attorney General Enforcement. As has been recognized by consumer groups and industry, the CPSC is underfunded and lacks resources to aggressively pursue many aspects of its mission. This includes the CPSC's investigative and enforcement capabilities. Consistent with other bills passed out of the Commerce Committee such as the CANSPAM Act of 2003 and the Identity Theft Prevention Act of 2007, S. 2045 would authorize a State to bring a civil action on behalf of its residents to enforce the provisions of the Acts enforced by the CPSC. By empowering State attorneys general to act, the CPSC will be buttressed by the resources of State attorney general offices.

To encourage uniformity, States would be required to serve written notice to the Commission of any civil action at least 60 days prior to initiating such civil action, if feasible. Upon receiving the notice, the Commission would be authorized to intervene in the civil action, be heard on all matters in the case, and file petitions for appeal of a decision. If the Commission has instituted a civil action or an administrative action, no State attorney general would be authorized to bring an action during the pendency of the Commission action. If the attorney general of the State prevails in any civil action, it is authorized to seek remedies delineated under the CPSA and other Acts enforced by the Commission as well.

Lead and Consumer Products: S. 2045 contains new authority that would ban lead in children's products other than trace amounts. Within 180 days after the date of enactment, any children's product containing lead would be treated as a banned hazardous substance under the FHSA, and the prohibition would apply without regard to whether the lead contained in such children's product is accessible to children.

The Committee recognizes that eliminating lead completely is nearly impossible and so permits trace amounts of lead to remain in products. S. 2045 defines trace amounts of lead as follows: a children's product will be considered to contain lead if, in the case of a children's product that is jewelry, any part of the product contains lead or lead compounds and the lead content of such part is greater than 0.02 percent by weight of the total weight of such part.

The agency would consider a children's product to contain lead if, in non-jewelry children's products, any part of the product contains lead or lead compounds and the lead content of such part is greater than 0.04 percent by weight of the total weight of such part.

If the Commission determines that it is not feasible for certain electronic devices, including batteries, to comply with the prohibition, the Commission would be authorized to issue standards to reduce the exposure of, and accessibility to, lead in such electronic devices, and to establish a schedule by which such electronic devices shall be in full compliance with the regulations.

S. 2045 also would grant the Commission greater rulemaking authority to aggressively reduce lead in children's products. Upon enactment, the Commission would be required to commence a rule-

making as to whether lower thresholds should be prescribed for children's products. If the Commission decides that lower thresholds are appropriate, it would promulgate regulations establishing lower thresholds.

Finally, the bill would direct the Commission to reduce the permissible lead level permitted in consumer use paint from 0.06 percent to 0.009 percent.

Ongoing Product Rule Amendments and Guidance: S. 2045 would address certain specific product safety standards. These include:

Cost-Benefit Analysis Under the PPPA. As part of its Program Assessment Rating Tool process, the Office of Management and Budget is advocating that the CPSC use a cost/benefit analysis in the CPSC's PPPA rulemakings. This runs counter to the legislative intent of Congress which specifically did not include a cost/benefit analysis in the PPPA, as it did for many of the other statutes administered by the CPSC. A cost/benefit analysis under the PPPA would force the Commission to weigh the risk of poisoning children against the cost of preventing it. S. 2045 would clarify the PPPA by preventing all PPPA standards from requiring a comparison of the costs versus benefits.

Toy Safety Standard. The Reform Act would address the lack of a Federal toy safety standard. As of 60 days after the date of enactment, the ASTM-International standard, *Consumer Safety Specifications for Toy Safety (F963–07),* will be considered a mandatory consumer product safety rule issued under the CPSA. Updates to the standard by ASTM-International will be incorporated into the Federal mandatory toy safety standard unless the CPSC determines that the revision does not improve toy safety. If the CPSC makes that determination, the prior version of the F963–07 standard will continue as the mandatory consumer product safety rule without regard to the proposed revision.

All-Terrain Vehicle Safety Standard. S. 2045 would require the CPSC to publish in the Federal Register as a mandatory consumer product safety standard the *American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements* developed by the Specialty Vehicle Institute of America. The standard would take effect 150 days after it is published. If the All-Terrain Vehicle (ATV) safety standard is revised, the Commission would be required to conduct a rulemaking to amend the product safety standard for ATVs to include any such provision that the Commission determines is reasonably related to the safe performance of all-terrain vehicles. The Commission also would have the authority to include any additional provisions that the Commission determines is reasonably necessary to reduce an unreasonable risk of injury associated with all-terrain vehicles.

After the standard takes effect, it would be unlawful for any manufacturer or distributor to import into or distribute in commerce any new assembled or unassembled all-terrain vehicle unless the vehicle complies with each applicable provision of the standard or is subject to or complying with certain other ATV action plans filed with the Commission. Failure to comply with the ATV standard would be deemed a failure to comply with a consumer product safety rule and would be subject to all of the penalties and remedies available under the CPSA.

The section also creates a ban on 3-wheeled all-terrain vehicles. It clarifies that until a mandatory consumer product safety rule applicable to 3-wheeled all-terrain vehicles is in effect, it would be unlawful to import or distribute into commerce new 3-wheeled ATVs in the United States.

Finally, the section requires that the Commission issue a final rule in its proceeding entitled *Standards for all-terrain vehicles and ban of three-wheeled all-terrain vehicles.* In the final rule, the Commission would provide for a multiple factor method of categorization that, at a minimum, would incorporate weight, the maximum speed of the vehicle, velocity, age and height of child riders into its analysis.

LEGISLATIVE HISTORY

On September 12, 2007, Senator Mark Pryor introduced S. 2045, which was referred to the Committee on Commerce, Science and Transportation. Chairman Inouye and Senators Klobuchar, Nelson (FL), Durbin, Schumer, Brown, Casey, and Menendez cosponsored the measure. The Commerce Committee held a legislative hearing on S. 2045 on October 4, 2007. At this hearing, the Committee explored the state of the CPSC, examined reforms that are necessary to make the agency more effective to protect children and other consumers from dangerous and defective products, and sought comments on the proposed bill. CPSC Acting Chairman Nancy Nord, Commissioner Thomas Moore, and representatives from the consumer, manufacturer, and retailer associations testified at the hearing.

On October 30, 2007, the Committee met in open executive session to consider an amendment in the nature of a substitute offered by Senator Pryor and Chairman Inouye that made several substantive changes to the bill as introduced. In addition to that substitute, Senator Pryor and Chairman Inouye offered a package of technical amendments to clarify and correct portions of the substitute. Senator Kerry offered an amendment for the CPSC to study the feasibility of establishing a "units-of-mass-per-area-standard" for measuring lead content in consumer products. Senator Dorgan offered an amendment to assess disparities in the risks and incidence of preventable injuries and deaths among children of minority populations. Senator Boxer offered two amendments. The first would amend the FHSA to require the inclusion of warning labels on Internet and catalog advertising of certain toys and games. The second amendment would require manufacturers of durable infant and toddler products to provide consumer product registration cards to facilitate recalls of those products. Senator Nelson offered three amendments. The first amendment would mandate issuance of the portable generator safety rule to reduce deaths and injuries from carbon monoxide poisoning. The second amendment would mandate the CPSC issue a final rule on cigarette lighter safety. The third amendment would establish the ASTM-International standard for toy safety as a mandatory consumer product safety rule. Senator Pryor offered an amendment to ensure that the consumer product safety standard for garage door openers retain an optical or edge sensor requirement. Senator McCaskill offered three amendments. The first amendment would establish a consumer product safety rule that would require child-

resistant closures on all portable gasoline containers. The second amendment would authorize increased funding for the CPSC Inspector General. The third amendment would strengthen the whistleblower protections in the substitute amendment. Vice Chairman Stevens offered an amendment to establish mandatory safety standards for ATVs. The Vice Chairman offered a second degree amendment that was modified by Senator Kerry that made substantive and technical corrections to the underlying amendment. Senator Snowe offered an amendment to authorize hiring at least fifty additional CPSC inspection personnel for duty stations at U.S. ports or overseas production facilities. Each of these amendments to the Pryor-Inouye substitute, except for Senator McCaskill's amendment strengthening whistleblower protections, was adopted en bloc by voice vote. Senator McCaskill's whistleblower amendment was then adopted by voice vote. The Committee adopted the Pryor-Inouye substitute amendment to the underlying measure, as amended, and ordered the bill reported by voice vote.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 2045—CPSC Reform Act of 2007

Summary: S. 2045 would authorize the appropriation of funds to the Consumer Product Safety Commission (CPSC), for fiscal years 2009 through 2015, for the purpose of implementing an array of consumer protection laws, including the Consumer Product Safety Act. Certain amounts authorized by the bill would be used to fund CPSC's operating expenses, while other funds would be designated specifically for the Office of Inspector General, capital improvements to the agency's testing facility, and research into the use of nanotechnology in consumer products.

CBO estimates that implementing S. 2045 would increase spending subject to appropriation by $447 million over the 2009–2012 period, assuming appropriation of the specified amounts. In addition, CBO estimates the bill would increase federal revenues by $17 million over the 2008–2012 period, and $48 million over the 2008–2017 period by increasing civil penalties levied by CPSC. CBO estimates the bill would not affect direct spending.

S. 2045 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would require state and local governments to comply with whistleblower protections authorized in the bill. CBO estimates that the costs to governments of complying with the mandate would be small and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation).

S. 2045 would impose private-sector mandates, as defined in UMRA, on manufacturers, retailers, distributors, and importers of consumer products subject to CPSC enforcement. Because of the large volume of consumer products that would be affected by the mandates, CBO expects that the total cost of complying with them would exceed the annual threshold established in UMRA for pri-

vate-sector mandates ($131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2045 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By fiscal year, in millions of dollars—						
	2008	2009	2010	2011	2012	2008–2012	2008–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Authorization Level	0	123	131	99	109	462	n.a.
Estimated Outlays	0	107	129	103	108	447	n.a.
CHANGES IN REVENUES							
Estimated Revenues	2	3	4	4	4	17	48

Note: n.a. = not applicable.

Basis of Estimate:

Spending subject to appropriation

Assuming that the specified amounts would be provided for each year, and that spending would follow historical patterns, CBO estimates that implementing S. 2045 would increase discretionary spending by $447 million over the 2009–2012 period.

S. 2045 would amend and reauthorize several consumer protection laws, including the Consumer Product Safety Act. It would authorize appropriations for CPSC starting with funding levels for fiscal year 2009. The bill would authorize separate amounts for CPSC's general operating expenses, the Office of the Inspector General, capital improvements to the agency's research, development, and testing facility, and for research into the use of nanotechnology in consumer products.

The bill would require CPSC to modify and expand regulations regarding levels of lead paint in children's toys, for safety standards for all-terrain vehicles, and standards for portable gasoline containers. The bill also would require CPSC to make changes to rules regarding public notification of safety standards and recalls, its tracking of potentially hazardous products, and its enforcement responsibilities. In addition, the bill would direct the commission to employ at least 500 full-time workers by October 2013. Currently, CPSC employs just over 400 full-time workers.

Revenues

S. 2045 would increase the maximum civil penalty for violations of consumer product safety standards and applicable rules under the Consumer Product Safety Act. CBO estimates that by raising the maximum penalty, the bill would increase revenues by $17 million over the 2008–2012 period and $48 million over the 2008–2017 period.

Those safety standards, which are enforced by CPSC, currently stipulate that any person who knowingly manufactures or sells products that fail to comply with applicable safety standards faces civil penalties up to $1.825 million for each violation in 2007. The bill would increase the maximum penalty to $100 million for each violation.

Since 2001, civil penalties assessed by CPSC have averaged $4.7 million annually. The average penalty collected during that time

was $525,000, or less than 30 percent of the maximum amounts. About 25 percent of the penalties exceeded $1 million.

Based on an analysis of historical assessments, CBO expects that a small number of cases would be directly affected by the higher maximum penalty. Specifically, only a few fines per year were assessed at more than 50 percent of the maximum amount. However, the fines collected over the past several years may have been constrained by the current-law limit. CBO expects that increasing the cap would change the dynamics of litigating and settling large cases and estimates that the average penalty for larger cases would eventually double, while the average penalty for smaller cases would be about 20 percent higher.

Estimated impact on state, local, and tribal governments: S. 2045 would extend whistleblower protection to employees of state and local governments who provide information about violations of safety standards enforceable by the CPSC. State and local governments would be prohibited from discharging or discriminating against those employees and would be subject to an order by the Secretary of Labor that could require reinstating the employee and providing damages. The requirement to comply would be an intergovernmental mandate as defined in UMRA. Because compliance with the protections likely would involve only adjustments to administrative procedures, CBO estimates that the mandate costs would be small and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation).

In general, state and local governments would benefit from a provision in the bill that would authorize the commission to provide them product information. States also would benefit from other provisions that would give them broader flexibility to implement their own safety standards as well as authority to enforce federal safety standards. Any related costs state and local governments incur to enforce safety standards or to comply with confidentiality agreements tied to information from the commission would be incurred voluntarily.

Estimated impact on the private sector: S. 2045 contains several private-sector mandates as defined in UMRA. The bill would impose requirements to address the incidence and effects of unsafe products, ban the use of lead in certain products, and establish new product safety standards. Based on information from the CPSC and industry sources, CBO expects that the total cost of complying with the mandates would exceed the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation).

ADDRESSING THE INCIDENCE AND EFFECTS OF UNSAFE PRODUCTS

The bill would impose requirements aiming to reduce consumers' exposure to unsafe products, including but not limited to:

- Requiring that all children's products manufactured in and imported into the United States be tested by third-party laboratories and certified to meet applicable standards;
- Requiring manufacturers of children's products to display tracking labels with the source, date, and cohort of production on each product and its packaging;
- Requiring manufacturers of durable infant and toddler products to include consumer registration forms with each product,

maintain a record of registered consumers to inform them of recalls, and permanently place tracking information on each product; and

• Making it illegal to manufacture, distribute, import, or sell banned, non-compliant, or recalled products.

Both CPSC and industry sources expect that these mandates could impose substantial costs on the private sector. The costs would depend on the specific requirements imposed by CPSC. Manufacturers of children's products would be required to have their products tested and certified by third-party laboratories and include tracking labels on each product and its packaging within one year of the date on which the CPSC Reform Act is enacted.

Toy manufacturers, which account for about $37 billion in toy sales (including video games) each year, could be most affected by these mandates. Though many manufacturers currently test products, requirements that differ from current testing practices would lead to significant costs to the industry due to the volume of toys sold each year and the costs associated with testing products. Also, the certification requirement would likely impose new costs on all manufacturers of children's products since currently manufacturers either self-certify or do not certify products at all.

Additionally, the requirement to display tracking labels with the source, date, and cohort of production would be a new requirement and would consequently impose new costs on all manufacturers, though the cost would vary by product. For example, according to industry sources, manufacturers would have to pay around $5,000 per toy (or other product) for products made in molds to have the molds remanufactured to include the tracking label. For clothes and stuffed toys, the cost to retool would be considerably less.

The Juvenile Products Manufacturers Association (JPMA), which represents makers of products ranging from cribs to car seats for children, expects that its members could experience as much as a 10 percent increase in costs as a result of the testing and certification requirements, including the registration requirements for manufacturers of durable infant and toddler products. For an industry with about $7 billion in sales (excluding diapers), the incremental cost to comply with those mandates could be large relative to UMRA's threshold for private-sector mandates.

The costs associated with the provision that would make it illegal to manufacture, distribute, import, or sell banned, non-compliant, or recalled products would be relatively small. Most manufacturers and retailers stop producing or selling recalled products as soon as the recall is known. Since most recalls are voluntary, however, it is currently legal to sell such goods. Businesses in secondary markets—such as "mom-n-pop" shops, discount stores, and Internet Web sites—that sell such recalled goods would incur costs.

BANNING LEAD IN CONSUMER PRODUCTS

S. 2045 would ban children's products that have a lead content that exceeds 200 parts per million (ppm) in children's jewelry and 400 ppm in all other children's products. It also would lower the permissible lead content in paint used by consumers from 600 ppm to 90 ppm. The bill would allow CPSC to temporarily modify the permissible lead levels for electronic products, for which the 400 ppm lead requirement may not be feasible.

A considerable number of manufacturers, especially those that make children's jewelry and electronic devices, are concerned about the feasibility of the lead requirement. According to the Fashion Jewelry Trade Association, metal jewelry cannot be made with a lead content as low as 200 ppm. Though children's jewelry (intended for children 7 and under) only comprises around 5 percent of the sales of the fashion jewelry industry, manufacturers of jewelry products could still experience significant costs, as even plastic jewelry uses metal clasps. Manufacturers of complex and electronic toys might also experience significant costs as a result of the lead requirement, though the costs would depend on future CPSC decisions regarding interim requirements on lead content in electronic children's products. Ultimately, manufacturers of many types of children's products might have to modify operations to comply with this mandate.

ESTABLISHING NEW PRODUCT SAFETY STANDARDS

Finally, the bill would impose private-sector mandates by establishing several consumer product safety rules and standards based on voluntary industry standards set by the American Society for Testing and Materials (ASTM-International), the American National Standards Institute (ANSI) and the Specialty Vehicle Institute of America (SVIA), including standards for:

- Child-resistant closures on portable gasoline containers (ASTM F2517–05),
- Toy safety (ASTM-International Standard F963–07), and
- All-terrain vehicle safety (ANSI/SVIA–1–2007).

The bill also would require all automatic garage door openers that directly drive the door in the closing direction to include an external secondary entrapment protection device that does not require contact with a person or object for the garage door to reverse its movement. CPSC and industry sources expect the cost of compliance with these mandates to be relatively small as most manufacturers already comply voluntarily.

Estimate prepared by: Federal Costs: Geoffrey Gerhardt; Revenues: Pamela Greene; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: MarDestinee C. Perez.

Estimate approved by: Keith J. Fontenot, Deputy Assistant Director for Health and Human Resources, Budget Analysis Division.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The regulatory changes to the authority of the CPSC would apply to all of the manufacturers, importers and retailers of consumer products under the jurisdiction of the agency. Currently, there are more than 15,000 types of consumer products under the jurisdiction of the CPSC.

ECONOMIC IMPACT

It is anticipated that manufacturers would have to make significant design changes, use different materials and improve safety protocols to ensure compliance with new mandatory consumer product rules and recall requirements issued from the CPSC Reform Act. Retailers will have to change protocols in regards to recalled product management to be in compliance with S. 2045.

PRIVACY

S. 2045 would have no anticipated impact on the privacy of individuals.

PAPERWORK

The legislation would increase paperwork requirements for the impacted manufacturers, retailers and importers that have to work with the CPSC to prove compliance with the amended Acts under the authority of the Commission.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Table of Contents.

The act would be cited as the CPSC Reform Act of 2007.

Section 2. Amendment of Consumer Product Safety Act.

Unless specified to the contrary, section references in the bill are to the CPSA.

Section 3. Reauthorization.

S. 2045 would authorize funding of the Commission at the following levels:

(1) $80,000,000 for FY 2009;
(2) $88,500,000 for FY 2010;
(3) $96,800,000 for FY 2011;
(4) $106,480,000 for FY 2012;
(5) $117,128,000 for FY 2013;
(6) $128,841,000 for FY 2014; and
(7) $141,725,000 for FY 2015.

In addition to the general funding delineated in the schedule above, the Reform Act would authorize funds to improve the Office of the Inspector General for the CPSC at the following levels:

(1) $1,600,000 for FY 2009;
(2) $1,770,000 for FY 2010;
(3) $1,936,000 for FY 2011;
(4) $2,129,600 for FY 2012;
(5) $2,342,560 for FY 2013;
(6) $2,576,820 for FY 2014; and
(7) $2,834,500 for FY 2015.

The bill also creates separate authorizations for improving the CPSC testing laboratories and improving research resources for the nanotechnology safety in consumer products. S. 2045 would authorize an additional $40,000,000 for use in FY 2009 and 2010 for renovating and improving the CPSC laboratories. The $40,000,000 is to be expended over the two-year period. The Reform Act would

also authorize $1,000,000 for use in FY 2009 and 2010 for research into the safety impact of nanotechnology in consumer products.

Section 4. Personnel.

Subject to the availability of appropriations, S. 2045 would require the CPSC to increase the number of its fulltime personnel to at least 500 from its current level of 420 by October 1, 2013. The personnel level is a floor, and as resources and duties dictate, the CPSC may hire more than 500 in the prescribed timeframe as needed to fulfill its mission and its current and new authority. In addition to the minimum requirement for personnel, an additional 50 employees must be hired for duty stations at U.S. ports of entry, or for deployment to inspect overseas production facilities by October 1, 2010. Under no circumstances should the 50 employees reduce the number of personnel assigned to duties at CPSC headquarters or to CPSC regional offices.

Professional Career Path. S. 2045 would require the CPSC to develop and implement a professional career development program to encourage the retention and promote the development of career personnel.

Change of Employment Status by Political Appointees. The bill prohibits the appointment of a political employee to a civil service position within the Commission, unless the appointment is authorized by unanimous vote of the Commission or more than 1 year has elapsed since his or her termination from the CPSC political position.

Personnel in the Immediate Office of Commissioners. S. 2045 would prohibit the reduction of staff in the office of a Commissioner, unless the reduction is authorized by a unanimous vote of the Commission.

Section 5. Full Commission Requirement; Interim Quorum.

The Committee continues to be concerned about the current cycle of the Commission losing its quorum as a matter of course over the past few years. The instability of this occurrence is a waste of resources in that the CPSC is foreclosed from fulfilling its duties whenever a Commissioner or a Chairman decides to leave the Commission. It is the opinion of the Committee that returning the CPSC to its full complement of five Commissioners brings stability and a diversity of experience that would aid in the execution of the CPSC mandates. The Reform Act would repeal the limit on the use of appropriated funds for more than three Commissioners and would urge the President to nominate members to fill all five Commissioner positions.

Temporary Quorum. In recognition of the current Commission make-up, the section also would allow 2 Commissioners of the CPSC, if they are not affiliated with the same political party, to constitute a quorum for the transaction of business for the nine-month period beginning on the date of enactment.

Section 6. Submission of Copy of Certain Documents to Congress.

S. 2045 would require the CPSC to concurrently submit to Congress any budget or legislative recommendations, testimony or comments on legislation sent to the President or to the Office of Man-

agement and Budget. The section further amends P.L. 104–66, which eliminated this requirement from the CPSA in 1995.

Section 7. Public Disclosure of Information.

The Reform Act would modify section 6(a) of the CPSA to provide manufacturers and private labelers 15 days to review information for confidentiality prior to disclosure. If the CPSC disagrees with the company's confidentiality designation, the company can appeal the decision to the CPSC General Counsel, who shall act within 30 days. The General Counsel's decision may be appealed to the full Commission, which shall act within 15 days. The modification takes the appeals process out of the Federal courts as is under current law. The new appeals procedure is similar to the process at the National Highway Traffic Safety Administration and greatly streamlines the procedure for issuing a decision.

S. 2045 would modify section 6(b) of the CPSA, which requires the CPSC to submit to manufacturers and private labelers information that is to be disclosed to the public before it is released. The Commission then must take reasonable steps to assure that the information is accurate and reasonably related to effectuating the purposes of the Act. Currently, section 6(b) provides manufacturers and private labelers with the right to challenge a CPSC decision to release information in Federal court.

Under the bill, prior to its public disclosure of any information obtained under this Act, and to the extent practicable, the Commission would be required to notify and provide a summary of the information to each manufacturer or private labeler of any consumer product intended to be released, and provide the manufacturer or private labeler 15 days to submit comments to the Commission as to the accuracy of such information, and to mark documents confidential as appropriate. In disclosing any information under this subsection, the Commission would be required to disclose any comments or other information at the request of the manufacturer or private labeler as an addendum. If a manufacturer or private labeler disagreed with the Commission's decision to disclose information to the public, it would be able to appeal that determination to the General Counsel of the Commission. A second and final appeal may be made to the full Commission. The document in question may not be made public during the pendency of either appeal.

The requirement to disclose manufacturer or private labeler addendums would not apply to Commission actions on imminent hazards, substantial product hazards, or if the Commission has reasonable cause to believe a company has violated one of the prohibited acts of the CPSA. The requirement also does not apply to information concerning a rulemaking proceeding, an adjudicatory proceeding, or other administrative or judicial proceeding. The Commission also may not disclose the names or addresses of consumers in its release of information to the public, unless the consumer consents in writing.

Section 8. Rulemaking.

S. 2045 would revise the CPSC's rulemaking procedures under the CPSA, FHSA, and the FFA to make permissive the current requirement that the CPSC issue an advanced notice of proposed rulemaking before issuing a notice of proposed rulemaking. The

section clarifies that rulemaking proceedings under the FHSA are governed by the procedures set forth in the FHSA and not the Federal Food, Drug, and Cosmetic Act. The section also deletes references to the Secretary of Health, Education, and Welfare and replaces with references to the CPSC consistent with the transfer of functions to the CPSC in 1972 under section 30 of the CPSA (P.L. 92–573).

Section 9. Prohibition on Stockpiling Under Other Commission-Enforced Statutes.

The Reform Act would authorize the Commission to prohibit, by rule, a manufacturer from stockpiling a product that is subject to a rule under the CPSA or any other law enforced by the CPSC.

Section 10. Third-Party Certification of Children's Products.

S. 2045 would establish a process that would ensure that manufacturers use third party laboratories to test all children's products and certify the products' compliance with applicable consumer product safety standards. The Reform Act would require every manufacturer of a children's product (and the private labeler of such product if it bears a private label), which is subject to a consumer product safety standard under the CPSA, or a rule under this or any other Act enforced by the Commission declaring a consumer product a banned hazardous substance to: have the product tested by a qualified third-party laboratory; certify that such product conforms to such consumer product safety standard or is not a banned hazardous substance; and specify the applicable consumer product safety standard or rule. If an advertisement, label, or package contains a reference to a consumer product safety standard, a statement with respect to whether the product meets all requirements of that standard also would be required.

Within one year after the date of enactment of this Act, the Commission would be required to, by rule: (1) establish protocols and standards for acceptance of certification or continuing guarantees of compliance by manufacturers; (2) establish protocols and standards for verifying that such products tested by third-party laboratories comply with the applicable standards under this Act or other Acts enforced by the Commission; (3) prescribe standards for accreditation of third party laboratories, either by the Commission or by one or more independent standard-setting organizations to which the Commission delegates authority, to engage in certifying compliance; (4) establish requirements, or delegate authority to one or more independent standard-setting organizations for third-party laboratory testing, as the Commission determines is necessary to test random samples of products certified under this section on an ongoing basis to ensure they meet the requirements for certification; (5) establish requirements for periodic audits of third-party laboratories by an independent standard-setting organization as a condition for accreditation; and (6) establish a program by which manufacturers may label products as compliant with the certification requirements.

Interim Procedure. Within 30 days after the date of enactment of S. 2045, the Commission would be required to consider existing laboratory testing certification procedures established by independent standard-setting organizations and designate an existing

procedure for manufacturers of children's products to follow until the Commission issues its final rule.

Definitions:

CHILDREN'S PRODUCT.—A product (other than a medication, drug, or food) designed or intended for use by, or care of, a child 7 years of age or younger. In determining whether a product is intended for use by a child 7 years of age or younger, the following factors shall be considered: (a) a statement by a manufacturer about the intended use of such toy or article, including a label on such good, if such statement is reasonable; (b) the context and manner of the advertising, promotion, and marketing associated with the good; (c) whether the good is commonly recognized by consumers as being intended for use by a child 7 years of age or younger; and (d) the Age Determination Guideline issued by the CPSC in September 2002 and any subsequent version of such Guideline.

THIRD PARTY LABORATORY.—A testing entity that is designated by the Commission or by an independent standard-setting organization to which the Commission delegates the authority to make such a designation, as a testing laboratory that is competent to test products for compliance with applicable safety standards under the CPSA and other Acts enforced by the Commission. Upon request, the Commission would have the authority to certify a laboratory that is owned, managed, controlled, or directed by the manufacturer or private labeler as a third party laboratory, if the Commission: (1) finds that certification of the laboratory would provide equal or greater consumer safety protection than the manufacturer's use of an independent third party laboratory; (2) establishes procedures to ensure that the laboratory is protected from undue influence, including pressure to modify or hide test results, by the manufacturer or private labeler; and (3) the laboratory establishes procedures for confidential reporting of allegations of undue influence to the Commission. The Commission or an independent standard-setting organization to which the Commission has delegated such authority, may decertify a third party laboratory if it finds, after notice of investigation, that a manufacturer or private labeler has exerted undue influence on the laboratory.

LABEL AND CERTIFICATION.—Not later than one year after the date of enactment of S. 2045, the Commission would be required to prescribe a product certification and labeling rule for children's products as defined in this section.

Prohibition on Imports of Children's Products Without Third-Party Testing Certification. S. 2045 also would prohibit the importation of any children's product that is not accompanied by certification from a third party laboratory as required by this section.

Section 11. Tracking Labels for Products for Children.

S. 2045 would expand existing labeling requirements to provide important safety information to consumers, facilitate recalls, and limit the scope of recalls to veritable unsafe products.

Internet and Catalogue Advertising Labeling. S. 2045 would amend the FHSA to require manufacturers, retailers, distributors,

private labelers, and licensors for any toy, game, balloon, small ball, or marble that requires a warning label in stores under current law to provide a similar cautionary statement to be displayed in a catalogue or online advertisement.

Tracking Labels. S. 2045 would require manufacturers of children's products to place distinguishing marks on the product and its packaging, to the extent practicable, that would enable the purchaser to ascertain the source, date, and cohort (including the batch, run number, or other identifying characteristic) of production of the product by reference to those marks. To the extent that small toys and other small products are manufactured and shipped without individual packaging, the Committee recognizes that it may not be practical for a label to be printed on each item. The packaging of the bulk shipment of those items, however, would be required to be labeled so that retailers and vendors would be able to easily identify products that are recalled. The CPSC would also be authorized to extend this requirement to other products through a rulemaking proceeding.

Section 12. Substantial Product Hazard Reporting Requirement.

S. 2045 would require that every manufacturer, including an importer, of a consumer product or other product or substance under the jurisdiction of the Commission, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product fails to comply with any safety-related rule or standard promulgated by the Commission, to immediately inform the Commission of such failure.

Section 13. Corrective Action Plans.

The Reform Act would provide the Commission with the authority to approve the corrective action plan elected by the person recalling the products. If the Commission finds that an approved corrective action plan is not effective, or that the person is not executing an approved action plan effectively, the Commission may order the action plan to be amended. If the Commission determines, after notice and the opportunity for comment, that a person failed to comply substantially with its obligations under an action plan, the Commission would have the authority to revoke approval of the action plan and the person would be prohibited from distributing the product.

Section 14. Identification of Manufacturer by Importers, Retailers, and Distributors.

S. 2045 would give the Commission the authority to require every importer, retailer, or distributor of a consumer product or other product under the Commission's jurisdiction to identify the manufacturer of that product by name, address, or such other identifying information as the Commission may request. Every manufacturer also would be required to identify each retailer, or distributor, to which it supplied a given consumer product by name, address, or such other identifying information as well as the identifying information as to each subcontractor involved in the manufacturing of a product upon the request of the Commission.

Section 15. Repeated Importation Offenses.

S. 2045 would authorize the Commission to designate as a repeat offender, after notice and an opportunity for a hearing, any customs broker found by the Commission to have aided and abetted the importation of a consumer product on multiple occasions in violation of section 17 of the CPSA. Minor violations of the CPSA would not be counted for purposes of determining whether a customs broker was a repeat offender. The Committee intends that the Commission have the ability to penalize customs brokers who actively aid importers in circumventing customs processes, entry inspections, or other safeguards for the purpose of violating consumer product safety laws and regulations. The Commission also would be authorized to refer any such repeat offender to U.S. Customs and Border Protection with a recommendation that the custom broker's import license be revoked in accordance with that agency's procedures. The U.S. Customs and Border Protection agency would be required to revoke the customs broker license of any customs broker in violation of this section.

Section 16. Prohibited Acts.

Sale of Recalled Products. S. 2045 would make it unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product that is not in conformity with an applicable consumer product safety standard, is subject to a voluntary corrective action taken by the manufacturer of which action the CPSC has notified the public of the extent to which the seller knew or should have known of the corrective action, or has been designated a banned hazardous substance.

Export of Recalled Products. The Reform Act also would authorize the Commission to prohibit a person from exporting from the United States for the purpose of sale any product or substance regulated by the Commission that the Commission determines, after notice to the manufacturer, is not in conformity with an applicable product safety standard and does not violate applicable safety standards established by the importing country; has been designated a banned hazardous substance; or is subject to voluntary corrective action taken by the manufacturer and would have been subject to a mandatory corrective action by the CPSC, except that the Commission may permit the export of such product if it meets applicable safety standards established by the importing country. S. 2045 would make conforming changes to the FHSA and FFA to ensure that the Commission's authority to prohibit the export of certain recalled products extends to products and substances regulated under those acts.

False Certification of Compliance with Testing Laboratory Standard. S. 2045 would make it unlawful for any person to sell, offer for sale, distribute in commerce, or import into the United States any consumer product bearing a false certification mark of compliance with a safety standard established by a nationally recognized testing laboratory, if such person knew or should have known that the certification mark was false.

Misrepresentation of Information in Investigation. The Reform Act would make it unlawful to misrepresent to any officer or employee of the Commission the scope of consumer products subject

to a corrective action or to make a material misrepresentation to such an officer or employee in the course of an investigation under the CPSA or another Act enforced by the Commission.

Certificates of Compliance with Mandatory Standards. S. 2045 would make it unlawful to fail to furnish a certificate required by any statute enforced by the Commission, or to issue a false certificate if a person in the exercise of due care has reason to know that the certificate is false or misleading in any material respect; or to fail to comply with any other labeling rule promulgated under CPSA section 14(c).

Undue Influence on Third Party Laboratories. S. 2045 would make it unlawful to exercise undue influence on third party laboratories with respect to the testing, or reporting of the results of testing, of any product for compliance with a standard under the CPSA or any other Act enforced by the Commission.

Section 17. Penalties.

CPSA Civil Penalties. The civil penalty cap for each violation of a prohibited act under the CPSA would increase from $8,000 to $250,000. The maximum civil penalty cap for any related series of violations would increase from $1,825,000 to $100,000,000.

FHSA Civil Penalties. The civil penalty cap for each violation of a prohibited act under the FHSA would increase from $8,000 to $250,000. The maximum civil penalty cap for any related series of violations would increase from $1,825,000 to $100,000,000.

FFA. The civil penalty cap for each violation of a prohibited act under the FFA would increase from $8,000 to $250,000. The maximum civil penalty cap for any related series of violations would increase from $1,825,000 to $100,000,000.

This section also would change the start date of inflation adjustments for the penalties in the CPSA, the FHSA, and the FFA. The maximum penalty amounts authorized in this section would be adjusted for inflation not later than December 1, 2011, and December 1 of each fifth calendar year thereafter.

Criminal Penalties. S. 2045 would make a knowing violation of the CPSA, FFA, or the FHSA punishable by imprisonment for not more than 1 year and a knowing and willful violation of the CPSA, FFA, or FHSA punishable by imprisonment for not more than 5 years. Criminal fines would be set in accordance with section 3571 of title 18, United States Code. This section would strike the requirement that the CPSC provide a person with notice of noncompliance and wait until the person violates the law again before seeking a criminal penalty.

Civil Penalty Criteria. Within one year after the date of enactment of S. 2045, the Commission would be required to initiate a rulemaking to establish criteria for the imposition of civil penalties for the CPSA and any other Act enforced by the Commission. Such rulemaking should take into consideration whether the person has repeatedly violated product safety laws, the precedential value of prior adjudicated matters, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, the appropriateness of such penalty in relation to the size of the business charged, and other circumstances when determining the civil penalty imposed.

Criminal Penalties to Include Asset Forfeiture. In addition to other penalties provided, the section would authorize the Commission to seek the forfeiture of assets associated with a violation as a criminal penalty under any Act enforced by the Commission.

Section 18. Preemption.

Effect of Rules and Policy Statements on Preemption. The section provides that the provisions of sections 25 and 26 of the CPSA, section 18 of the FHSA, section 16 of the FFA, and section 7 of the PPA, establishing the extent to which those acts preempt, limit, or otherwise affect any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under any State or local law, may not be expanded in scope, or limited, modified or extended in application, by any rule or regulation, referenced in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation.

Clarification of Preemption. The section further provides that the provisions of sections 25 and 26 of the CPSA, section 18 of the FHSA, section 16 of the FFA, and section 7 of the PPA would be preemptive of any State or local law, or any cause of action under State or local law, only to the extent provided in those Acts unless compliance with duties imposed by State law would make compliance with the Federal rule or regulations promulgated under those Acts impossible.

Section 19. Sharing of Information with Federal, State, Local, and Foreign Law Enforcement Agencies.

S. 2045 would authorize the Commission to make information obtained by the Commission available to any Federal, State, local, or foreign law enforcement agency upon the prior certification that such material will be maintained in confidence and will be used only for official law enforcement or consumer protection purposes, provided: (a) the agency has set forth a bona fide legal basis for its authority to maintain the material in confidence; (b) the materials are to be used for purposes of investigating or enforcing violations of product safety laws, aiding a CPSC investigation or enforcement proceeding, or, with the approval of the Attorney General, aiding in investigating an offense covered by a criminal mutual legal assistance treaty. The CPSC would not be authorized to share information with a foreign government agency that the Secretary of State has determined has repeatedly provided support for acts of international terrorism. The section also would require the CPSC not to disclose confidential information provided by foreign governments, except pursuant to a court order or Congressional request. The Commission also would have the authority to terminate a memorandum of understanding or other agreement with another agency if it determines that the other agency has not conformed to the Commission's confidentiality requirements.

In this section, the term "foreign government agency" would be defined as any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, a multinational organization comprised of foreign states, or any multinational organization acting on behalf of one of the aforemen-

tioned entities that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters.

Section 20. Bonding.

The Reform Act provides the Commission the authority in a rulemaking proceeding to require that a person that has committed multiple significant violations of any rule or act enforced by the Commission, or the manufacturer or distributor of a category or class of consumer products, or the manufacturer or distributor of any product or substance regulated under any other Act enforced by the Commission to post a bond (or other security acceptable to the Commission) in an amount sufficient to cover the costs of an effective recall of the product or substance, or, in the case of an imported product or substance, to cover the costs of holding the product or substance at the port and destroying the product or substance - should such action be required by the Commission.

Section 21. Enforcement by State Attorneys General.

S. 2045 authorizes a State to bring a civil action on behalf of its residents in an appropriate State or district court to enforce the provisions of the CPSA or any other Act enforced by the Commission to obtain penalties and relief provided under the applicable act. It is the intent of the Committee that a State attorney general that seeks penalties under this section would be entitled to retain any penalty awarded. If multiple State attorneys general or the Commission participate in an action, conferral of an award would be at the discretion of the court based on the level of participation of the party, the harm experienced by the State, and any other equitable factor. The State would be required to serve written notice to the Commission of any civil action at least 60 days prior to initiating such civil action, if feasible. Upon receiving the notice the Commission would be authorized to intervene in the civil action, be heard on all matters in the case, and file petitions for appeal of a decision.

In a civil action, the venue would be required to be a judicial district in which the manufacturer, distributor, or retailer was authorized to do business. If the Commission has instituted a civil action or an administrative action for a violation of the CPSA or any other Act enforced by the Commission, no State attorney general would be authorized to bring an action during the pendency of the Commission action against any defendant or agency named in the complaint. If the attorney general of the State prevails in any civil action, he or she would be authorized to recover reasonable costs and attorneys' fees from the covered entity.

Section 22. Whistleblower Protections.

Whistleblower Protection. S. 2045 would make it unlawful for a manufacturer, private labeler, distributor, or retailer, or any Federal, State, or local government employing agency to discharge an employee or otherwise discriminate against an employee because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties: (1) provided, caused to be provided, or is about to provide to the employer, the Federal Government, or the attorney general of a State information relating to any violation or alleged violation of any order, regulation, or consumer

product safety standard under any other law enforceable by the Commission; (2) testified or is about to testify in such a proceeding; (3) assisted or participated or is about to assist or participate in such a proceeding; or (4) objected to, or refused to participate in, any activity the individual believed to be in violation of an applicable law or to be a substantial and specific danger to public health or safety.

Employee Award. The section further provides that if the Commission or State attorney general proceeds with an action against a manufacturer, private labeler, distributor, or retailer for a violation of any act enforced by the Commission, on the basis of information provided by such an employee, the employee would receive at least 15 percent but not more than 25 percent (as determined by the Commission in consultation with the attorney general that brought the action) of any civil penalty assessed and collected by the Commission or State attorney general for the violation, depending upon the extent to which the information provided by the employee substantially contributed to the enforcement action. If the Commission's action is based primarily on disclosures of specific information not provided by the employee, the Commission may award such sums as it considers appropriate based on the significance of the information or role of the employee, but in no case more than 10 percent (as determined by the Commission in consultation with the attorney general that brought the action) of the civil penalty assessed and collected.

Employee Recourse and Complaint Procedures. A person who believes that he or she has been discharged or otherwise discriminated against may, not later than one year after the date on which such violation occurs, file a complaint with the Secretary of Labor. Upon receipt of such a complaint, the Secretary would notify, in writing, the person named in the complaint of the allegations, the substance of evidence supporting the complaint, and the opportunities to respond that will be afforded to such person. Not later than 60 days after the date of receipt of a complaint and after affording the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary would be required to conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit. The Secretary would notify, in writing, the complainant and the person alleged to have committed the violation of his findings. If the Secretary concludes that he has a reasonable cause to believe that a violation has occurred, the Secretary would be required to accompany the Secretary's findings with a preliminary order providing the relief. Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings would be required to be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order would be deemed a final order that is not subject to judicial review.

If the complainant does not make a prima facie showing, the Secretary would be required to dismiss a complaint filed under this subsection and would not be authorized to conduct an investigation into employee discrimination. Similarly, no investigation or relief would be authorized if the employer demonstrates by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior. The Secretary would be authorized to determine a violation occurring if the complainant demonstrates that certain actions were a contributing factor in the unfavorable personnel action alleged in the complaint. Relief would not be ordered unless the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

Not later than 120 days after the date of conclusion of a hearing, the Secretary would be required to issue a final order providing the relief or denying the complaint. At any time before issuance of a final order, a proceeding may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

If, in response to a complaint, the Secretary determines that a violation of a certain subsection has occurred, the Secretary would be required to: order the person who committed such violation to take affirmative action to abate the violation; reinstate the complainant to his or her former position together with the compensation (including back pay); restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, would be required to assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred.

If the Secretary finds that a complaint is frivolous or has been brought in bad faith, the Secretary would be authorized to award to the prevailing employer a reasonable attorney's fee not exceeding $1,000 to be paid by the employee.

If the Commission has not issued a final decision within 180 days after the filing of the complaint, or within 10 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States. At the request of either party, the case would be tried by the court with a jury. The court would have jurisdiction to grant all appropriate relief to a whistleblower available by law or equity including punitive damages up to $250,000.

Any person adversely affected or aggrieved by a final order would be able to obtain review of the order in the U.S. Court of Appeals. The petition for review would be required to be filed not later than 60 days after the date of the issuance of the final order of the Secretary. The commencement of proceeding under this subparagraph would not, unless ordered by the court, operate as a stay of the order.

An order of the Secretary would not be subject to judicial review in any criminal or other civil proceeding. Whenever any person has failed to comply with an issued order, the Secretary would be au-

thorized to file a civil action in the U.S. district court for the district in which the violation was found to occur, or in the U.S. district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

A person on whose behalf an order was issued would be authorized to commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate U.S. district court shall have jurisdiction to enforce such order. The court, in issuing any final order under this paragraph, would be authorized to award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate. Any nondiscretionary duty imposed by this section would be enforceable in a mandamus proceeding.

Whistleblower protections would not apply to an employee who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of a consumer product safety law or regulation.

Section 23. Ban on Children's Products Containing Lead.

S. 2045 would require that beginning 180 days after the date of enactment: (1) any children's product containing lead would be treated as a banned hazardous substance under the FHSA; and (2) the prohibition would apply without regard to whether the lead contained in such children's product is accessible to children.

Trace Amounts of Lead. A children's product would be considered to contain lead if: (1) in the case of a children's product that is jewelry, any part of the product contains lead or lead compounds and the lead content of such part is greater than 0.02 percent by weight of the total weight of such part; or (2) in the case of a children's product that is not jewelry, any part of the product contains lead or lead compounds and the lead content of such part is greater than 0.04 percent by weight of the total weight of such part. The Commission may establish lesser permissible levels. If the Commission determines that it is not feasible for certain electronic devices, including batteries, to comply with the prohibition, the Commission is authorized to issue standards to reduce the exposure of and accessibility of lead in such electronic devices, and to establish a schedule by which such electronic devices shall be in full compliance with the regulations.

Regulations. The section further requires that, on the day after the date of enactment, the Commission commence a rulemaking as to whether lower thresholds should be prescribed for children's products. It is the intent of the Committee that the Commission examine, as part of this rulemaking, the potential effects of trace levels of lead on children and to mandate the lowest thresholds practicable to protect the health of children. If the Commission makes a determination that lower threshold levels are warranted, the Commission shall promulgate regulations establishing such lower thresholds in lieu of the previous thresholds. Pending the establishment of lower thresholds, it is the intent of the Committee that the statutory thresholds apply.

Lead Paint Standards. S. 2045 also would direct the Commission, within 30 days of enactment, to reduce the permissible lead level permitted in consumer use paint from 0.06 percent to 0.009 percent.

Section 24. Alternative Measures of Lead Content.

S. 2045 would require the Commission, in cooperation with the National Academy for Sciences and the National Institute of Standards and Technology, to study the feasibility of establishing a measurement standard based on a units-of-mass-per-area standard that is statistically comparable to the parts-per-million measurement standard currently used in laboratory analysis.

Section 25. Study of Preventable Injuries and Deaths of Minority Children Related to Certain Consumer Products.

S. 2045 would require the Commission, within 90 days after the date of enactment, to initiate a study to assess disparities in the risks and incidence of preventable injuries and deaths among children of minority populations, including Black, Hispanic, American Indian, Alaskan Native, and Asian/Pacific Islander children in the United States. Not later than one year after the date of enactment of this Act, the Commission would be required to report its findings to Congress. There would be $500,000 authorized to the Commission for carrying out this section for FY2008.

The study would examine the racial disparities of the rates of preventable injuries and deaths related to suffocation, poisoning, and drowning including those associated with the use of cribs, mattresses and bedding materials, swimming pools and spas, and toys and other products intended for use by children.

Section 26. Cost-Benefit Analysis Under the Poison Prevention Packaging Act of 1970.

This section would clarify that nothing in the PPA requires the Commission to prepare a comparison of the costs that would be incurred in complying with such standard with the benefits of such standard.

Section 27. Inspector General Reports.

S. 2045 would require the Inspector General of the Commission to conduct reviews and audits of implementation of the Reform Act and report on those findings in an annual report to Congress. The Inspector also would be required to conduct a review and report on complaints from employees of the Commission about violations of the CPSA and other Acts enforced by the Commission and leaks and unlawful disclosures of information by employees of the Commission to persons not authorized to receive such information.

Section 28. Public Interest Website Links.

S. 2045 would require that the Commission, not later than 30 days after the date of enactment, establish and maintain a direct link on the homepage of its Internet website to the Internet website of the Office of Inspector General of the Commission and a mechanism on the homepage of the Office of Inspector General's Internet website by which individuals may anonymously report cases of waste, fraud, or abuse with respect to the Commission.

Section 29. Child-Resistant Portable Gasoline Containers.

The Reform Act would establish, as a consumer product safety rule issued by the Commission, that each portable gasoline container for sale in the United States conform to the child resistance requirements as specified in the ASTM F2517-05 standard and its successors unless the Commission determines otherwise. The rule established in this section would apply to each portable gasoline container manufactured on or after the date that is 6 months after the date of enactment of the Reform Act.

Not later than 2 years after the date of enactment of this Act, the Commission would be required to submit to Congress a report on the degree of industry compliance, any enforcement actions brought by the Commission, and incidents involving children interacting with portable gasoline containers.

Section 30. Toy Safety Standard.

Beginning 60 days after the date of enactment of the Act, S. 2045 would establish the ASTM 963-07 standard for toy safety as a consumer product safety rule issued by the Commission. If ASTM International proposes to revise the toy safety standard, it would be required to notify the Commission of the proposed revision and the proposed revision would be incorporated in the consumer product safety rule, unless the Commission determines that the revised standard would not improve the safety of the consumer product covered. If the Commission so notifies ASTM-International with respect to a proposed revision, the existing standard would continue to be considered a consumer product safety rule.

Section 31. All-Terrain Vehicle Safety Standard.

Within 90 days after the date of enactment, the Commission would be required to publish in the Federal Register as a consumer product safety standard the Specialty Vehicle Institute of America, ANSI/SVIA–1–2007. The standard would take effect 150 days after it is published. If ANSI/SVIA–1–2007 is revised, the Commission would be required to conduct a rulemaking, within 180 days, to amend the product safety standard for ATVs to include any such provision that the Commission determines is reasonably related to the safe performance of ATVs. The Commission also would have the authority to include any additional provisions that the Commission determines is reasonably necessary to reduce an unreasonable risk of injury associated with ATVs.

After the standard takes effect, it would be unlawful for any manufacturer or distributor to import into or distribute in commerce any newly assembled or unassembled ATV unless the vehicle complies with each applicable provision of the standard and is subject to or complying with an applicable ATV action plan filed with the Commission. Failure to comply with any ATV standard would be deemed a failure to comply with a consumer product safety rule and would be subject to all of the penalties and remedies available under the CPSA.

The section also would ban the import and distribution of 3-wheeled ATVs until a mandatory consumer product safety rule with respect to such vehicles is in effect.

Finally, the section requires that the Commission issue a final rule in its proceeding entitled *Standards for All-Terrain Vehicles*

and Ban of Three-Wheeled All-Terrain Vehicles. In the final rule, the Commission would have the authority to incorporate weight, the maximum speed of the vehicle, velocity, age and height of children into its analysis.

The GAO would be required to conduct a study of the utility, recreational, and other benefits of ATVs, and the costs associated with ATV-related accidents and injuries.

Section 32. Garage Door Opener Standard.

The Reform Act would require that all automatic garage door openers that directly drive the door in the closing direction that are manufactured more than 6 months after the date of enactment include an external secondary entrapment protection device that does not require contact with the person or object for the door to reverse.

Section 33. Reducing Deaths and Injuries from Carbon Monoxide Poisoning.

S. 2045 would require the Commission to issue a final rule in its proceeding entitled *Portable Generators* for which the Commission issued an advance notice of proposed rulemaking on December 12, 2006, no later than 18 months after the date of enactment of this Act. No later than 120 days after the date of enactment of this Act, the Commission would be required to submit a report that reviews the effectiveness of its labeling requirements for its charcoal briquettes during the windstorm that struck the Pacific Northwest on December 14, 2006, identifies any specific challenges faced by non-English speaking populations with use of the current standards, and contains recommendations for improving the labels on charcoal briquettes.

Section 34. Completion of the Cigarette Lighter Rulemaking.

S. 2045 would require the Commission to issue a final rule mandating general safety standards for cigarette lighters in its proceeding entitled *Safety Standard for Cigarette Lighters* for which the Commission issued an advance notice of proposed rulemaking on April 11, 2005, no later than 24 months after the date of enactment of this Act.

Section 35. Consumer Product Registration Forms.

No later than one year after the date of enactment, S. 2045 would require the Commission to promulgate consumer product safety rules that require manufacturers of durable infant or toddlers' products to provide consumers with postage-paid registration forms. Manufacturers would be required to maintain a record of the names, addresses, e-mail addresses, and other contact information of consumers who register their ownership of such products in order to improve the effectiveness of campaigns to recall such products and to place permanently the manufacturer name, contact information, model name and number, and the date of manufacture, on each durable infant or toddler product.

The registration forms would be required to provide space sufficiently large to permit easy, legible recording of the following information: the consumer's name, the consumer's telephone number, the consumer's postal address, the consumer's e-mail address, the

manufacturer's name, the model name and number for the product, the date of manufacture of the product, a message that explains the purpose of the registration and is designed to encourage consumers to complete the registration, a statement that information provided by the consumer would not be used for any other purpose other than to facilitate a recall of or a safety alert regarding that product, and a message that explains the option to register via the Internet. Such form would be required to be attached to the surface of the product so that, as a practical matter, the consumer will notice and handle the form after purchasing the product. The Commission would have the authority to prescribe the exact text and format of such registration forms.

Manufacturers would be required to maintain the records for a period of not less than 6 years after the date of manufacture of the product concerned. It would be unlawful for a manufacturer to disseminate to any other party the information collected by the manufacturer for any purpose other than notification to the consumer concerned in the event of a product recall or safety alert. Nothing in this section requires a manufacturer to collect, retain, or use any information unless it is provided by the consumer.

Not later than four years after the date of enactment, the Commission would be required to conduct a study on the effectiveness of the consumer product registration forms in facilitating product recalls and submit to Congress a report on its findings.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

CONSUMER PRODUCT SAFETY ACT

PRODUCT SAFETY INFORMATION AND RESEARCH

[15 U.S.C. 2054]

SEC. 5. (a) The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data, and information, relating to the causes and prevention of death, injury, and illness associated with consumer products;

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary;

(3) following publication of [an advance notice of proposed rulemaking or] a notice of proposed rulemaking for a product safety rule under any rulemaking authority administered by the Commission, assist public and private organizations or groups of manufacturers, administratively and technically, in the development of safety standards addressing the risk of injury identified in such notice; and

(4) to the extent practicable and appropriate (taking into account the resources and priorities of the Commission), assist

public and private organizations or groups of manufacturers, administratively and technically, in the development or product safety standards and test methods.

(b) The Commission may—

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

(2) test consumer products and develop product safety test methods and testing devices; and

(3) offer training in product safety investigation and test methods.

(c) In carrying out its functions under this section, the Commission may make grants or enter into contracts for the conduct of such functions with any person (including a governmental entity).

(d) Whenever the Federal contribution for any information, research, or development activity authorized by this Act is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention.

PUBLIC DISCLOSURE OF INFORMATION

[15 U.S.C. 2055]

SEC. 6. (a)(1) Nothing contained in this Act shall be construed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(2) All information reported to or otherwise obtained by the Commission or its representative under this Act which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, or subject to section 552(b)(4) of title 5, United States Code, shall be considered confidential and shall not be disclosed.

(3) The Commission shall, prior to the disclosure of any information which will permit the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product, offer such manufacturer or private labeler an opportunity to mark such information as confidential and therefore barred from disclosure under paragraph (2). *A manufacturer or private labeler shall submit any such mark within 15 calendar days after the date on which it receives the Commission's offer.*

(4) All information that a manufacturer or private labeler has marked to be confidential and barred from disclosure under paragraph (2), either at the time of submission or pursuant to paragraph (3), shall not be disclosed, except in accordance with the procedures established in paragraphs (5) and (6).

(5) If the Commission determines that a document marked as confidential by a manufacturer or private labeler to be barred from disclosure under paragraph (2) may be disclosed because it is not confidential information as provided in paragraph (2), the Commis-

sion shall notify such person in writing that the Commission intends to disclose such document at a date not less than 10 days after the date of receipt of notification.

[(6) Any person receiving such notification may, if he believes such disclosure is barred by paragraph (2), before the date set for release of the document, bring an action in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the documents are located, or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.]

(6) If a manufacturer or private labeler receives a notification from the Commission under paragraph (5) of the Commission's intent to disclose a document marked as confidential by that manufacturer or private labeler, it may appeal the determination of the Commission under paragraph (5) with respect to that document. The appeal shall be made in writing to the general counsel of the Commission before the date set for release of the document and set forth the reason the manufacturer or private labeler believes disclosure of the document is barred by paragraph (2). The general counsel shall act on the appeal within 30 days after receiving it. If the general counsel determines that disclosure of the document is not barred by paragraph (2), the manufacturer or private labeler may appeal the determination of the general counsel to the full Commission, which shall decide within 15 days after receiving it whether the determination of the general counsel is supported by the law and the evidence. The document may not be disclosed during the pendency of an appeal under this paragraph.

(7) Nothing in this Act shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees or subcommittees of the Congress, and the provisions of paragraphs (2) through (6) shall not apply to such disclosures, except that the Commission shall immediately notify the manufacturer or private labeler of any such request for information designated as confidential by the manufacturer or private labeler.

(8) The provisions of paragraphs (2) through (6) shall not prohibit the disclosure of information to other officers, employees, or representatives of the Commission (including contractors) concerned with carrying out this Act or when relevant in any administrative proceeding under this Act or in judicial proceedings to which the Commission is a party. Any disclosure of relevant information—

(A) in Commission administrative proceedings or in judicial proceedings to which the Commission is a party, or

(B) to representatives of the Commission (including contractors),

shall be governed by the rules of the Commission (including in camera review rules for confidential material) for such proceedings or for disclosures to such representatives or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

[(b)(1) Except as provided by paragraph (4) of this subsection, not less than 30 days prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith (unless the Commission finds that the public health and safety requires a lesser period of notice and publishes such a finding in the Federal Register), the Commission shall, to the extent practicable, notify and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act. In disclosing any information under this subsection, the Commission may, and upon the request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler to the extent permitted by and subject to the requirements of this section.

[(2) If the Commission determines that a document claimed to be inaccurate by a manufacturer or private labeler under paragraph (1) should be disclosed because the Commission believes it has complied with paragraph (1), the Commission shall notify the manufacturer or private labeler that the Commission intends to disclose such document at a date not less than 10 days after the date of the receipt of notification. The Commission may provide a lesser period of notice of intent to disclose if the Commission finds that the public health and safety requires a lesser period of notice and publishes such finding in the Federal Register.

[(3) Prior to the date set for release of the document, the manufacturer or private labeler receiving the notice described in paragraph (2) may bring an action in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the documents are located or in the United States District Court for the District of Columbia to enjoin disclosure of the document. The district court may enjoin such disclosure if the Commission has failed to take the reasonable steps prescribed in paragraph (1).

[(4) Paragraphs (1) through (3) of this subsection shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of section 19 (relating to prohibited acts); or (B) information in the course of or concerning a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking), an adjudicatory proceeding (which shall commence upon the issuance of

a complaint) or other administrative or judicial proceeding under this Act.

[(5) In addition to the requirements of paragraph (1), the Commission shall not disclose to the public information submitted pursuant to section 15(b) respecting a consumer product unless—

[(A) the Commission has issued a complaint under section 15 (c) or (d) alleging that such product presents a substantial product hazard;

[(B) in lieu of proceeding against such product under section 15 (c) or (d), the Commission has accepted in writing a remedial settlement agreement dealing with such product; or

[(C) the person who submitted the information under section 15(b) agrees to its public disclosure.

The provisions of this paragraph shall not apply to the public disclosure of information with respect to a consumer product which is the subject of an action brought under section 12, or which the Commission has reasonable cause to believe is in violation of section 19(a), or information in the course of or concerning a judicial proceeding.

[(6) Where the Commission initiates the public disclosure of information that reflects on the safety of a consumer product or class of consumer products, whether or not such information would enable the public to ascertain readily the identity of a manufacturer or private labeler, the Commission shall establish procedures designed to ensure that such information is accurate and not misleading.

[(7) If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.

[(8) If, after the commencement of a rulemaking or the initiation of an adjudicatory proceeding, the Commission decides to terminate the proceeding before taking final action, the Commission shall, in a manner equivalent to that in which such commencement or initiation was publicized, take reasonable steps to make known the decision to terminate.]

(b)(1) Except as provided by paragraph (3) of this subsection, prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith (unless the Commission finds that the public health and safety requires otherwise), the Commission shall, to the extent practicable, notify and provide a summary of the information to each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler not less than 15 days to submit comments to the Commission as to the accuracy of such information.

(2) In disclosing any information under this subsection, the Commission may, and upon the request of the manufacturer or private

labeler shall, include with the disclosure any comments or other information or a summary thereof submitted under paragraph (1) by such manufacturer or private labeler as an addendum.

(3) Paragraphs (1) and (2) of this subsection do not apply to the public disclosure of—

(A) information about any consumer product—

(i) with respect to which the Commission has filed an action under section 12;

(ii) with respect to which the Commission has issued a complaint under section 15(c) or (d) alleging that such product presents a substantial product hazard; or

(iii) which the Commission has reasonable cause to believe is in violation of any regulation promulgated by the Commission or any Act enforced by the Commission, or where the Commission determines that the public health or safety requires immediate disclosure or a substantial product hazard exists;

(B) information in the course of, or concerning, a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking), an adjudicatory proceeding (which shall commence upon the issuance of a complaint), or other administrative or judicial proceeding under this Act.

(4) If, after the commencement of a rulemaking or the initiation of an adjudicatory proceeding, the Commission decides to terminate the proceeding before taking final action, the Commission shall, in a manner equivalent to that in which such commencement or initiation was publicized, take reasonable steps to make known the decision to terminate.

(5) The Commission may not disclose the names or addresses of consumers pursuant to its authority under this section unless the consumer consents in writing to the disclosure.

(c) The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product.

(d)(1) For purposes of this section, the term "Act" means the Consumer Product Safety Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, and the Federal Hazardous Substances Act.

(2) The provisions of this section shall apply whenever information is to be disclosed by the Commission, any member of the Commission, or any employee, agent, or representative of the Commission in an official capacity.

(e)(1) Notwithstanding the provisions of section 552 of title 5, United States Code, subsection (a)(7) of this section, or of any other law, except as provided in paragraphs (2), (3), and (4), no member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may—

(A) publicly disclose information furnished under subsection (c)(1) or (c)(2)(A) of section 37;

(B) use such information for any purpose other than to carry out the Commission's responsibilities; or

(C) permit anyone (other than the members, officers, and employees of the Commission or officers or employees of the Department of Justice who require such information for an ac-

tion filed on behalf of the Commission) to examine such information.

(2) Any report furnished under subsection (c)(1) or (c)(2)(A) of section 37 shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding, except in an action against such manufacturer under section 20, 21, or 22 for failure to furnish information required by section 37.

(3) The Commission may, upon written request, furnish to any manufacturer or to the authorized agent of such manufacturer authenticated copies of reports furnished by or on behalf of such manufacturer in accordance with section 37, upon payment of the actual or estimated cost of searching the records and furnishing such copies.

(4) Upon written request of the Chairman or Ranking Minority Member of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives or any subcommittee of such committee, the Commission shall provide to the Chairman or Ranking Minority Member any information furnished to the Commission under section 37 for purposes that are related to the jurisdiction of such committee or subcommittee.

(5) Any officer or employee of the Commission or other officer or employee of the Federal Government who receives information provided under section 37, who willfully violates the requirements of this subsection shall be subject to dismissal or other appropriate disciplinary action consistent with procedures and requirements established by the Office of Personnel Management.

PROCEDURE FOR CONSUMER PRODUCT SAFETY RULES

[15 U.S.C. 2058]

SEC. 9. (a) A proceeding for the development of a consumer product safety rule [shall be commenced] *may be commenced* by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the product and the nature of the risk of injury associated with the product;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary consumer product safety standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall

specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed consumer product safety standard; and

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary consumer product safety standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(b)(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (a)(5) if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a consumer product safety standard, would eliminate or adequately reduce the risk of the injury identified [in the notice] *in a notice* under subsection (a)(1), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed consumer product safety rule.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (a)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a consumer product safety rule respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(c) No consumer product safety rule may be proposed by the Commission [unless, not less than 60 days after publication of the notice required in subsection (a), the] *unless the* Commission publishes in the Federal Register the text of the proposed rule, includ-

ing any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (a)(5) was not published by the Commission as the proposed rule or part of the proposed rule;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (a)(6) and assisted by the Commission as required by section 5(a)(3) would not, within a reasonable period of time, be likely to result in the development of a voluntary consumer product safety standard that would eliminate or adequately reduce the risk of injury addressed by the proposed rule; and

(4) a description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed rule.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Any proposed consumer product safety rule shall be issued within twelve months after the date of publication of [an advance notice of proposed rulemaking under subsection (a) relating to the product involved,] *the notice* unless the Commission determines that such proposed rule is not reasonably necessary to eliminate or reduce the risk of injury associated with the product or is not in the public interest. The Commission may extend the twelve-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Such notice shall include an explanation of the reasons for such extension, together with an estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register.

(d)(1) Within 60 days after the publication under subsection (c) of a proposed consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the risk of injury associated with such product, if it makes the findings required under subsection (f), or

(B) withdraw the applicable notice of proposed rulemaking if it determines that such rule is not (i) reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or (ii) in the public interest;

except that the Commission may extend such 60-day period for good cause shown (if it publishes its reasons therefor in the Federal Register).

(2) Consumer product safety rules shall be promulgated in accordance with section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(e) A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this Act. In the promulgation of such a rule the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule.

(f)(1) Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings for inclusion in such rule with respect to—

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

(2) The Commission shall not promulgate a consumer product safety rule unless it has prepared, on the basis of the findings of the Commission under paragraph (1) and on other information before the Commission, a final regulatory analysis of the rule containing the following information:

(A) A description of the potential benefits and potential costs of the rule, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final rule which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the rule.

(3) The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)—

(A) that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(B) that the promulgation of the rule is in the public interest;

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with such product;

(D) in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary consumer product safety standard, that—

(i) compliance with such voluntary consumer product safety standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary consumer product safety standard;

(E) that the benefits expected from the rule bear a reasonable relationship to its costs; and

(F) that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

(4)(A) Any preliminary or final regulatory analysis prepared under subsection (c) or (f)(2) shall not be subject to independent judicial review, except that when an action for judicial review of a rule is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(g)(1) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. The effective date of a consumer product safety standard under this Act shall be set at a date at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case may the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard shall be applicable only to consumer products manufactured after the effective date.

(2) The Commission may by rule prohibit a manufacturer of a consumer product from stockpiling any product to which a consumer product safety rule applies, *or to which a rule under any other law enforced by the Commission applies,* so as to prevent such manufacturer from circumventing the purpose of such **[**consumer product safety**]** rule. For purposes of this paragraph, the term "stockpiling" means manufacturing or importing a product between the date of promulgation of such **[**consumer product safety**]** rule and its effective date at a rate which is significantly greater (as determined under the rule under this paragraph) than the rate at which such product was produced or imported during a base period

(prescribed in the rule under this paragraph) ending before the date of promulgation of the [consumer product safety] rule.

(h) The Commission may by rule amend or revoke any consumer product safety rule. Such amendment or revocation shall specify the date on which it is to take effect which shall not exceed 180 days from the date the amendment or revocation is published unless the Commission finds for good cause shown that a later effective date is in the public interest and publishes its reasons for such finding. Where an amendment involves a material change in a consumer product safety rule, sections 7 and 8, and subsections (a) through (g) of this section shall apply. In order to revoke a consumer product safety rule, the Commission shall publish a proposal to revoke such rule in the Federal Register, and allow oral and written presentations in accordance with subsection (d)(2) of this section. It may revoke such rule only if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product. Section 11 shall apply to any amendment of a consumer product safety rule which involves a material change and to any revocation of a consumer product safety rule, in the same manner and to the same extent as such section applies to the Commission's action in promulgating such a rule.

(i) The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5, United States Code, requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

PRODUCT CERTIFICATION AND LABELING

[15 U.S.C. 2063]

SEC. 14. (a)(1) [Every manufacturer] *Except as provided in paragraph (2), every manufacturer* of a product which is subject to a consumer product safety standard under this Act and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable.

(2) Every manufacturer of a children's product (and the private labeler of such product if it bears a private label) which is subject to a consumer product safety standard under this Act, or a rule under this or any other Act enforced by the Commission declaring a consumer product a banned hazardous product, shall—

(A) have the product tested by a third party laboratory qualified to perform such tests or testing programs; and

(B) issue a certification which shall—

(i) certify that such product conforms to such consumer product safety standard or is not a banned hazardous product under such rule; and

(ii) specify the applicable consumer product safety standard or rule.

(3) [Such certificate shall] *A certificate required under this subsection shall* accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered.

(4) Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture.

[(2)] *(5)* In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufacturers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate [required by paragraph (1) of this subsection,] *required by paragraph (1) or (2) (as the case may be),* and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the [requirement under paragraph (1)] *requirement under paragraph (1) or (2) (as the case may be)* to issue a certificate with respect to such product.

(6) The manufacturer of a children's product or other consumer product (as may be required by the Commission in its discretion after a rulemaking proceeding) shall place distinguishing marks on the product and its packaging, to the extent practicable, that will enable the ultimate purchaser to ascertain the source, date, and cohort (including the batch, run number, or other identifying characteristic) of production of the product by reference to those marks.

(b)*(1)* The Commission may by rule prescribe reasonable testing programs for consumer products which are subject to consumer product safety standards under this Act and for which a certificate is required under subsection (a).

(2) [Any test or] *Except as provided in subsection (a)(2), any test or* testing program on the basis of which a certificate is issued under subsection (a) may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests or testing programs.

[(c) The] *(c)(1) The* Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the [rule)—] *rule):*

[(1)] *(A)* The date and place of manufacture of any consumer product.

[(2)] *(B)* A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

[(3)] *(C)* In the case of a consumer product subject to a consumer product safety rule, a certification that the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

(2) Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product. The Commission may, in appropriate cases, permit

information required under paragraphs (1) and (2) of this subsection to be coded.

(4) If an advertisement, label, or package contains a reference to a consumer product safety standard, a statement with respect to whether the product meets all requirements of that standard.

(d) APPLICATION TO OTHER CONSUMER PRODUCTS; CERTIFIER STANDARDS; AUDIT.—

(1) IN GENERAL.—The Commission—

(A) within 1 year after the date of enactment of the CPSC Reform Act of 2007 shall by rule—

(i) establish protocols and standards—

(I) for acceptance of certification or continuing guarantees of compliance by manufacturers under this section; and

(II) for verifying that products tested by third party laboratories comply with applicable standards under this Act and other Acts enforced by the Commission;

(ii) prescribe standards for accreditation of third party laboratories, either by the Commission or by 1 or more independent standard-setting organizations to which the Commission delegates authority, to engage in certifying compliance under subsection (a)(2) for children's products or products to which the Commission extends the certification requirements of that subsection;

(iii) establish requirements, or delegate authority to 1 or more independent standard-setting organizations, for third party laboratory testing, as the Commission determines to be necessary to ensure compliance with any applicable rule or order, of random samples of products certified under this section to determine whether they meet the requirements for certification;

(iv) establish requirements for periodic audits of third party laboratories by an independent standard-setting organization as a condition for accreditation of such laboratories under this section; and

(v) establish a program by which manufacturers may label products as compliant with the certification requirements of subsection (a)(2); and

(B) may by rule extend the certification requirements of subsection (a)(2) to other consumer products or to classes or categories of consumer products;

(2) INTERIM PROCEDURE.—Within 30 days after the date of enactment of the CPSC Reform Act of 2007, the Commission shall—

(A) consider existing laboratory testing certification procedures established by independent standard-setting organizations; and

(B) designate an existing procedure for manufacturers of children's products to follow until the Commission issues a final rule under paragraph (1)(A).

(e) DEFINITIONS.—In this section:

(1) CHILDREN'S PRODUCT.—The term "children's product" means a product (other than a medication, drug, or food) de-

signed or intended for use by, or care of, a child 7 years of age or younger that is introduced into the interstate stream of commerce. In determining whether a product is intended for use by a child 7 years of age or younger, the following factors shall be considered:

(A) A statement by a manufacturer about the intended use of such product, including a label on such product, if such statement is reasonable.

(B) The context and manner of the advertising, promotion, and marketing associated with the product.

(C) Whether the product is commonly recognized by consumers as being intended for use by a child 7 years of age or younger.

(D) The Age Determination Guideline issued by the Consumer Product Safety Commission in September 2002 and any subsequent version of such Guideline.

(2) THIRD PARTY LABORATORY.—

(A) IN GENERAL.—The term "third party laboratory" means a testing entity that—

(i) is designated by the Commission, or by an independent standard-setting organization to which the Commission delegates the authority to make such a designation, as a testing laboratory that is competent to test products for compliance with applicable safety standards under this Act and other Acts enforced by the Commission; and

(ii) except as provided in subparagraph (B), is a nongovernmental entity that is not owned, managed, controlled, or directed by the manufacturer or private labeler.

(B) EXCEPTION FOR PROPRIETARY LABORATORIES.—Upon request, the Commission may certify a laboratory that is owned, managed, controlled, or directed by the manufacturer or private labeler as a third party laboratory if the Commission—

(i) finds that certification of the laboratory would provide equal or greater consumer safety protection than the manufacturer's use of an independent third party laboratory;

(ii) establishes procedures to ensure that the laboratory is protected from undue influence, including pressure to modify or hide test results, by the manufacturer or private labeler; and

(iii) establishes procedures for confidential reporting of allegations of undue influence to the Commission.

(C) DECERTIFICATION.—The Commission, or an independent standard-setting organization to which the Commission has delegated such authority, may decertify a third party laboratory if it finds, after notice and investigation, that a manufacturer or private labeler has exerted undue influence on the laboratory.

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

[15 U.S.C. 2064]

SEC. 15. (a) For purposes of this section, the term "substantial product hazard" means—

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Every manufacturer of a [consumer product distributed in commerce,] *consumer product (or other product or substance over which the Commission has jurisdiction under this or any other Act) distributed in commerce,* and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9;

(2) fails to comply with any rule or standard promulgated by the Commission under this or any other Act;

[(2)] *(3)* contains a defect which could create a substantial product hazard described in subsection (a)(2); or

[(3)] *(4)* creates an unreasonable risk of serious injury or death,

shall immediately inform the Commission of such failure to comply, of such defect, or of such risk, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect, failure to comply, or such risk.

(c) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(1) To give public notice of the defect or failure to comply.

(2) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(3) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

(d)*(1)* If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f)) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take [whichever of the following actions the person

to whom the order is directed elects:] *any one or more of the following actions it determines to be in the public interest:*

[(1)] *(A)* To bring such product into conformity with the requirements of the applicable consumer product safety rule or to repair the defect in such product.

[(2)] *(B)* To replace such product with a like or equivalent product which complies with the applicable consumer product safety rule or which does not contain the defect.

[(3)] *(C)* To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or [more (A)] *more (i)* at the time of public notice under subsection (c), [or (B)] *or (ii)* at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

(2) An order under this subsection may also require the person to whom it applies to submit a plan, [satisfactory to the Commission,] *for approval by the Commission,* for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action [described in paragraph (3).] *described in paragraph (1)(C).* If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, the product with respect to which the order was issued.

(3)(A) If the Commission approves an action plan, it shall indicate its approval in writing.

(B) If the Commission finds that an approved action plan is not effective, or that the manufacturer, retailer, or distributor is not executing an approved action plan effectively, the Commission may by order amend, or require amendment of, the action plan.

(C) If the Commission determines, after notice and opportunity for comment, that a manufacturer, retailer, or distributor has failed to comply substantially with its obligations under its action plan, the Commission may revoke its approval of the action plan. The manufacturer, retailer, or distributor to which the action plan applies may not distribute the product to which the action plan relates in commerce after receipt of notice of a revocation of the action plan.

(e)(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (c) or (d) with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for

such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(f) An order under subsection (c) or (d) may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative). Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made.

(g)(1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 27(b)(7)), or the Attorney General may, in accordance with 12(d)(1), apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

(3) The amount in controversy requirement of section 1331 of title 28, United States Code, does not apply with respect to the jurisdiction of a district court of the United States to issue or extend a preliminary injunction under this subsection.

(h) Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

INSPECTION AND RECORDKEEPING

[15 U.S.C. 2065]

SEC. 16. (a) For purposes of implementing this Act, or rules or orders prescribed under this Act, officers or employees duly designated by the Commission, upon presenting appropriate creden-

tials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or (B) any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this Act, or to determine compliance with rules or orders prescribed under this Act. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this Act and rules under this Act.

(c) Upon request by an officer or employee duly designated by the Commission—

(1) every importer, retailer, or distributor of a consumer product (or other product or substance over which the Commission has jurisdiction under this or any other Act) shall identify the manufacturer of that product by name, address, or such other identifying information as the officer or employee may request; and

(2) every manufacturer shall identify by name, address, or such other identifying information as the officer or employee may request—

(A) each retailer or distributor to which it supplied a given consumer product (or other product or substance over which the Commission has jurisdiction under this or any other Act);

(B) each subcontractor involved in the production or fabrication or such product or substance; and

(C) each subcontractor from which it obtained a component thereof.

IMPORTED PRODUCTS

[15 U.S.C. 2066]

SEC. 17. (a) Any consumer product offered for importation into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) shall be refused admission into such customs territory if such product—

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by section 14, or is not labeled in accordance with regulations under section 14(c);

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 12;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 15(a)(2)); [or]

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection [(g).] *(g); or*

(6) is a children's product, as that term is defined in section 14(e), or a product for which the Commission, under section 14(d)(1), has required certification under section 14(a)(2)), that is not accompanied by a certificate from a third party as required by section 14(a)(2).

(b) The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 12 with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of title 5 of the United States Code with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a), such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

(c) If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a)) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

(d) All actions taken by an owner or consignee to modify such product under subsection (c) shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 22(b) if it is not so redelivered.

(e) Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not export the product within a reasonable time, the Department of the Treasury may destroy the product.

(f) All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section (the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury) and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(g) The Commission may, by rule, condition the importation of a consumer product on the manufacturer's compliance with the inspection and recordkeeping requirements of this Act and the Commission's rules with respect to such requirements.

(h)(1) The Commission shall establish and maintain a permanent product surveillance program, in cooperation with other appropriate Federal agencies, for the purpose of carrying out the Commission's responsibilities under this Act and the other Acts administered by the Commission and preventing the entry of unsafe consumer products into the commerce of the United States.

(2) The Commission may provide to the agencies with which it is cooperating under paragraph (1) such information, data, violator lists, test results, and other support, guidance, and documents as may be necessary or helpful for such agencies to cooperate with the Commission to carry out the product surveillance program under paragraph (1).

(3) The Commission shall periodically report to the Congress the results of the surveillance program under paragraph (1).

(i)(1) The Commission may—

(A) designate as a repeat offender, after notice and an opportunity for a hearing, any customs broker found by the Commission to have aided and abetted the importation of a consumer product in violation of subsection (a) on multiple occasions (disregarding de minimus violations thereof); and

(B) refer any such customs broker to United States Customs and Border Protection with a recommendation that its customs broker license be revoked in accordance with that agency's procedures.

(2) The United States Customs and Border Protection shall revoke the customs broker license of any customs broker referred to it under paragraph (1)(B).

EXPORTS

[15 U.S.C. 2067]

SEC. 18. (a) This Act shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless (A) such consumer product is in fact distributed in commerce for use in the United States, or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment

to any installation of the United States located outside the United States.

(b) Not less than thirty days before any person exports to a foreign country any product—

(1) which is not in conformity with an applicable consumer product safety standard in effect under this Act, or

(2) which is declared to be a banned hazardous substance by a rule promulgated under section 9,

such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis for such safety standard or rule. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such product, the country and port of destination of such product, and the quantity of such product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(c) Notwithstanding any other provision of law, the Commission may prohibit a person from exporting from the United States for purpose of sale any consumer product, or other product or substance that is regulated under this Act or any other Act enforced by the Commission, that the Commission determines, after notice to the manufacturer—

(1) is not in conformity with an applicable consumer product safety standard under this Act or with a similar rule under any such other Act and does not violate applicable safety standards established by the importing country;

(2) is subject to an order issued under section 12 or 15 of this Act or designated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.); or

(3) is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public and that would have been subject to mandatory corrective action under this Act or any other Act enforced by the Commission if voluntary corrective action had not been taken by the manufacturer, except that the Commission may permit such a product to be exported if it meets applicable safety standards established by the importing country.

PROHIBITED ACTS

[15 U.S.C. 2068]

SEC. 19. (a) It shall be unlawful for any person to—

[(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this Act;**]**

(1) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is regulated under this Act or any other Act enforced by the Commission, that is—

(A) not in conformity with an applicable consumer product safety standard under this Act, or any similar rule under any such other Act;

(B) subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, but only if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action; or

(C) subject to an order issued under section 12 or 15 of this Act, designated a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.);

(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this Act;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this Act or rule thereunder;

(4) fail to furnish information required by section 15(b);

(5) fail to comply with an order issued under section 15 (c) or (d) (relating to notification, and to repair, replacement, and refund, and to prohibited acts);

[(6) fail to furnish a certificate required by section 14 or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 14(c) (relating to labeling);**]**

(6) fail to furnish a certificate required by this Act or any other Act enforced by the Commission, or to issue a false certificate if such person in the exercise of due care has reason to know that the certificate is false or misleading in any material respect; or to fail to comply with any rule under section 14(c);

(7) fail to comply with any rule under section 9(g)(2) (relating to stockpiling); **[**or**]**

(8) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data); **[**and**]**

(9) fail to comply with any rule or requirement under section 35 (relating to labeling and testing of cellulose **[**insulation).**]** *insulation;*

(10) fail to file a statement with the Commission pursuant to section **[**18(b).**]** *18(b);*

(11) fail to furnish information required by section **[**37.**]** *37;*

(12) violate an order of the Commission under section 18(c);

(13) sell, offer for sale, distribute in commerce, or import into the United States any consumer product bearing a false certification mark of compliance with a safety standard established by a nationally recognized testing laboratory if such person

knew or should have known that the certification mark was false;

(14) misrepresent to any officer or employee of the Commission the scope of consumer products subject to an action required under section 12 or 15, or to make a material misrepresentation to such an officer or employee in the course of an investigation under this Act or any other Act enforced by the Commission; or

(15) exercise, or attempt to exercise, undue influence on a third party laboratory (as defined in section 14(e)(2)) with respect to the testing, or reporting of the results of testing, of any product for compliance with a standard under this Act or any other Act enforced by the Commission.

(b) Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 14(a) to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

CIVIL PENALTIES

[15 U.S.C. 2069]

SEC. 20. (a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed **[**$5,000**]** *$250,000* for each such violation. Subject to paragraph (2), a violation of section 19(a) (1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed **[**$1,250,000**]** *$100,000,000* for any related series of violations. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violations shall constitute a separate offense, except that the maximum civil penalty shall not exceed **[**$1,250,000**]** *$100,000,000* for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 19(a)—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than **[**December 1, 1994,**]** *December 1, 2011,* and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(b) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 19(a), the Commission shall consider the nature of the product defect, the severity of the risk of injury, the occurrence of absence of injury, the number of defective products distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(c) Any civil penalty under this section may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(d) As used in the first sentence of subsection (a)(1) of this section, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

CRIMINAL PENALTIES

[15 U.S.C. 2070]

SEC. 21. [(a) Any person who knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission shall be fined not more than $50,000 or be imprisoned not more than one year, or both.] *(a) Violation of section 19 of this Act is punishable by—*

(1) imprisonment for not more than—

(A) 1 year for a knowing violation of that section; or

(B) 5 years for a knowing and willful violation of that section; and

(2) a fine determined under section 3571 of title 18, United States Code.

(b) Any individual director, officer, or agent of a corporation who knowingly [and willfully] authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section [19, and who has knowledge of notice of noncompliance received by the corporation from the Commission,] *19* shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).

(c)(1) In addition to the penalties provided by subsection (a), the penalty for a criminal violation of this Act or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation.

(2) In this subsection, the term 'criminal violation' means a violation of this Act of any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.

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ENFORCEMENT BY STATE ATTORNEYS GENERAL

SEC. 26A. (a) Except as provided in subsection (f), a State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate State or district court of the United States to enforce the provisions of this Act or any other Act enforced by the Commission to obtain penalties and relief provided under such Acts whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a manufacturer, distributor, or retailer entity that violates this Act or a regulation under this Act.

(b) The State shall serve written notice to the Commission of any civil action under subsection (a) at least 60 days prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide notice immediately upon instituting such civil action.

(c) Upon receiving the notice required by subsection (b), the Commission may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

(d) Nothing in this section shall prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) In a civil action brought under subsection (a)—

(1) the venue shall be a judicial district in which—

(A) the manufacturer, distributor, or retailer operates; or

(B) the manufacturer, distributor, or retailer is authorized to do business;

(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

(3) a person who participated with a manufacturer, distributor, or retailer in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) If the Commission has instituted a civil action or an administrative action for violation of this Act or any other Act enforced by the Commission, no State attorney general, or other official or agency of a State, may bring an action under this section during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this Act alleged in the complaint.

(g) If the attorney general of the State prevails in any civil action under subsection (a), it can recover reasonable costs and attorney fees from the manufacturer, distributor, or retailer.

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COOPERATION WITH STATES AND WITH OTHER FEDERAL AGENCIES

[15 U.S.C. 2078]

SEC. 29. (a) The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this Act. In implementing such program the Commission may—

(1) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this Act which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

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

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

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

(d) The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Bureau of Standards, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (includ-

ing fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

(e) The Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this Act by any officer, employee, or agent of the Commission only if (1) information which under section 6(a)(2) is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

(A) any copy of any such report, or

(B) any information contained in any such report, which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 6(b).

(f)(1) The Commission may make information obtained by the Commission under section 6 available to any Federal, State, local, or foreign government agency upon the prior certification of an appropriate official of any such agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement or consumer protection purposes, if—

(A) the agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) laws regulating the manufacture, importation, distribution, or sale of defective or unsafe consumer products, or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with respect to a foreign law enforcement agency, with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government; and

(C) the foreign government agency is not from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is re-

scinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

(2) Except as provided in paragraph (3) of this subsection, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law—

(A) any material obtained from a foreign government agency, if the foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(B) any material reflecting a consumer complaint obtained from any other foreign source, if the foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(C) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign government agencies.

(3) Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

(4) The Commission may terminate a memorandum of understanding or other agreement with another agency if it determines that the other agency has not handled information made available by the Commission under paragraph (1) or has failed to maintain confidentiality with respect to the information.

(5) In this subsection, the term "foreign government agency" means—

(A) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

(B) any multinational organization, to the extent that it is acting on behalf of an entity described in subparagraph (A).

AUTHORIZATION OF APPROPRIATIONS

[15 U.S.C. 2081]

SEC. 32. ⟦(a) There are authorized to be appropriated for the purposes of carrying out the provisions of this Act (other than the provisions of section 27(h) which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 30, not to exceed—

⟦(1) $42,000,000 for fiscal year 1991, and

⟦(2) $45,000,000 for fiscal year 1992.

For payment of accumulated and accrued leave under section 5551 of title 5, United States Code, severance pay under section 5595 under such title, and any other expense related to a reduction in force in the Commission, there are authorized to be appropriated such sums as may be necessary.

⟦(b)(1) There are authorized to be appropriated such sums as may be necessary for the planning and construction of research, development and testing facilities described in section 27(h); except that no appropriation shall be made for any such planning or con-

struction involving an expenditure in excess of $100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Energy and Commerce of the House of Representatives, and by the Committee on Commerce, Science, and Transportation of the Senate. For the purpose of securing consideration of such approval the Commission shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

[(A) a brief description of the facility to be planned or constructed;

[(B) the location of the facility, and an estimate of the maximum cost of the facility;

[(C) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and

[(D) a statement of justification of the need for such facility.

[(2) The estimated maximum cost of any facility approved under this subsection as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Commission, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this paragraph exceed 10 per centum of such estimated maximum cost.]

(a) There are authorized to be appropriated to the Commission for the purpose of carrying out the provisions of this Act and any other provision of law the Commission is authorized or directed to carry out—

(1) $80,000,000 for fiscal year 2009;
(2) $88,500,000 for fiscal year 2010;
(3) $96,800,000 for fiscal year 2011;
(4) $106,480,000 for fiscal year 2012;
(5) $117,128,000 for fiscal year 2013;
(6) $128,841,000 for fiscal year 2014; and
(7) $141,725,000 for fiscal year 2015.

(b) There are authorized to be appropriated to the Commission for the Office of Inspector General—

(1) $1,600,000 for fiscal year 2009;
(2) $1,770,000 for fiscal year 2010;
(3) $1,936,000 for fiscal year 2011;
(4) $2,129,600 for fiscal year 2012;
(5) $2,342,560 for fiscal year 2013;
(6) $2,576,820 for fiscal year 2014; and
(7) $2,834,500 for fiscal year 2015.

(c) There are authorized to be appropriated to the Commission for the purpose of renovation, repair, construction, equipping, and making other necessary capital improvements to the Commission's research, development, and testing facility (including bringing the facility into compliance with applicable environmental, safety, and accessibility standards), $40,000,000 for fiscal years 2009 and 2010.

(d) There are authorized to be appropriated to the Commission for research, in cooperation with the National Institute of Science and Technology, the Food and Drug Administration, and other relevant Federal agencies into safety issues related to the use of nanotechnology in consumer products, $1,000,000 for fiscal years 2009 and 2010.

[(c)] *(e)* No funds appropriated under subsection (a) may be used to pay any claim described in section 4(i) whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of title 28, United States Code, or under any other provision of law.

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BOND AUTHORITY

SEC. 39. (a) The Commission, in a rulemaking proceeding, may require the posting of a bond (or other security acceptable to the Commission) by—

(1) a person that has committed multiple significant violations of this Act or any rule or Act enforced by the Commission;

(2) the manufacturer or distributor of a category or class of consumer products; or

(3) the manufacturer or distributor of any consumer product or any product or substance regulated under any other Act enforced by the Commission.

(b) AMOUNT.—The bond or other security required by the Commission under subsection (a) shall be in an amount sufficient—

(1) to cover the costs of an effective recall of the product or substance; or

(2) in the case of an imported product or substance, to cover the costs of holding the product or substance at the port and the destruction of the product should such action be required by the Commission under this Act or any other Act enforced by the Commission.

WHISTLEBLOWER PROTECTION

SEC. 40. (a) No manufacturer, private labeler, distributor, or retailer, nor any Federal, State, or local government agency, may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under this Act or any other law enforced by the Commission (or by the attorney general of a State under section 21);

(2) testified or is about to testify in such a proceeding;

(3) assisted or participated or is about to assist or participate in such a proceeding; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of an applicable law or to be a substantial and specific danger to public health or safety.

(b)(1) If the Commission, or the attorney general of a State, proceeds with an action against a manufacturer, private labeler, distributor, or retailer for a violation of this Act or any other Act en-

forced by the Commission, on the basis of information provided by such an employee, the employee shall receive at least 15 percent but not more than 25 percent of any civil penalty assessed and collected by the Commission, or attorney general, for the violation, depending upon the extent to which the information provided by the employee substantially contributed to the enforcement action, as determined by the Commission.

(2) If the Commission's action is based primarily on disclosures of specific information (other than information provided by the employee) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, or from the news media, the Commission may award such sums as it considers appropriate to the employee, but in no case more than 10 percent of the civil penalty assessed and collected, taking into account the significance of the information and the role of the employee.

(3) In the case of an action brought by the attorney general of a State under section 21, the amount of any civil penalty to which such an employee may be entitled shall be determined by the Commission, subject to the limitations in paragraph (1) and (2), in consultation with the attorney general that brought the action.

(c)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 1 year after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 180 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action,

be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all appropriate relief to the employee available by law or equity, including injunctive relief, compensatory and consequential damages, reasonable attorneys and expert witness fees, court costs, and punitive damages up to $250,000.

(5)(A) Any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7)(A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(d) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(e) Subsection (a) shall not apply with respect to an employee of a manufacturer, private labeler, distributor, or retailer who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under this Act or any other law enforced by the Commission.

ALL-TERRAIN VEHICLE SAFETY STANDARD.

SEC. 41. (a) IN GENERAL.—

(1) MANDATORY STANDARD.—Notwithstanding any other provision of law, within 90 days after the date of enactment of the CPSC Reform Act of 2007 the Commission shall publish in the Federal Register as a mandatory consumer product safety

standard the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA–1–2007). The standard shall take effect 150 days after it is published.

(2) COMPLIANCE WITH STANDARD.—After the standard takes effect, it shall be unlawful for any manufacturer or distributor to import into or distribute in commerce in the United States any new assembled or unassembled all-terrain vehicle unless—

(A) the vehicle complies with each applicable provision of the standard;

(B) the vehicle is subject to an ATV action plan filed with the Commission before January 1, 2008, or subsequently filed with and approved by the Commission, and bears a label certifying such compliance and identifying the manufacturer, importer or private labeler and the ATV action plan to which it is subject; and

(C) the manufacturer or distributor is in compliance with all provisions of the applicable ATV action plan.

(3) VIOLATION.—The failure to comply with any requirement of paragraph (2) shall be deemed to be a failure to comply with a consumer product safety rule under this Act and subject to all of the penalties and remedies available under this Act.

(4) COMPLIANT MODELS WITH ADDITIONAL FEATURES.—Paragraph (2) shall not be construed to prohibit the distribution in interstate commerce of new all-terrain vehicles that comply with the requirements of that paragraph but also incorporate characteristics or components that are not covered by those requirements. Any such characteristics or components shall be subject to the requirements of section 15 of this Act.

(b) MODIFICATION OF ALL-TERRAIN VEHICLE SAFETY STANDARD.—

(1) ANSI REVISIONS.—If the American National Standard ANSI/SVIA–1–2007 is revised through the applicable consensus standards development process after the date on which the product safety standard for all-terrain vehicles is published in the Federal Register, the American National Standards Institute shall notify the Commission of the revision.

(2) COMMISSION ACTION.—Within 120 days after it receives notice of such a revision by the American National Standards Institute, the Commission shall issue a notice of proposed rulemaking in accordance with section 553 of title 5, United States Code, to amend the product safety standard for all-terrain vehicles to include any such revision that the Commission determines is reasonably related to the safe performance of all-terrain vehicles, and notify the Institute of any provision it has determined not to be so related. The Commission shall promulgate an amendment to the standard for all-terrain vehicles within 180 days after the date on which the notice of proposed rulemaking for the amendment is published in the Federal Register.

(3) UNREASONABLE RISK OF INJURY.—Notwithstanding any other provision of this Act, the Commission may, pursuant to sections 7 and 9 of this Act, amend the product safety standard for all-terrain vehicles to include any additional provision that the Commission determines is reasonably necessary to reduce

an unreasonable risk of injury associated with the performance of all-terrain vehicles.

(4) CERTAIN PROVISIONS NOT APPLICABLE.—Sections 7, 9, 11, and 30(d) of this Act shall not apply to promulgation of any amendment of the product safety standard under paragraph (2). Judicial review of any amendment of the standard under paragraph (2) shall be in accordance with chapter 7 of title 5, United States Code.

(c) REQUIREMENTS FOR 3-WHEELED ALL-TERRAIN VEHICLES.—Until a mandatory consumer product safety rule applicable to 3-wheeled all-terrain vehicles promulgated pursuant to this Act is in effect, new 3-wheeled all-terrain vehicles may not be imported into or distributed in commerce in the United States. Any violation of this subsection shall be considered to be a violation of section 19(a)(1) of this Act and may also be enforced under section 17 of this Act.

(d) FURTHER PROCEEDINGS.—

(1) DEADLINE.—The Commission shall issue a final rule in its proceeding entitled "Standards for All Terrain Vehicles and Ban of Three-wheeled All Terrain Vehicles".

(2) CATEGORIES OF YOUTH ATVS.—In the final rule, the Commission may provide for a multiple factor method of categorization that, at a minimum, takes into account—

(A) the weight of the vehicle;

(B) the maximum speed of the vehicle;

(C) the velocity at which a vehicle of a given weight is travelling at the maximum speed of the vehicle;

(D) the age of children for whose operation the vehicle is designed or who may reasonably be expected to operate the vehicle; and

(E) the average weight of children for whose operation the vehicle is designed or who may reasonably be expected to operate the vehicle.

(e) DEFINITIONS.—In this section:

(1) ALL-TERRAIN VEHICLE OR ATV.—The term "all-terrain vehicle" or "ATV" means—

(A) any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, having a seat designed to be straddled by the operator and handlebars for steering control; but

(B) does not include a prototype of a motorized, off-highway, all-terrain vehicle or other motorized, off-highway, all-terrain vehicle that is intended exclusively for research and development purposes unless the vehicle is offered for sale.

(2) ATV ACTION PLAN.—The term "ATV action plan" means a written plan or letter of undertaking that describes actions the manufacturer or distributor agrees to take to promote ATV safety, including rider training, dissemination of safety information, age recommendations, other policies governing marketing and sale of the vehicles, the monitoring of such sales, and other safety related measures, and that is substantially similar to the plans described under the heading The Undertakings of the Companies in the Commission Notice published in the Federal Register on September 9, 1998 (63 FR 48199–48204).

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1993

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CONSUMER PRODUCT SAFETY COMMISSION, SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed $500 for official reception and representation expenses, $48,400,000: [Provided, That funds shall not be available for the personnel compensation and benefits of more than three Commissioners of the Consumer Product Safety Commission for fiscal year 1993 and thereafter:] Provided further, That of the funds provided under this heading, $6,300,000 shall be for the relocation of the headquarters staff of the Commission and shall be available until expended.

FEDERAL REPORTS ELIMINATION AND SUNSET ACT OF 1995

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SEC. 3003 TERMINATION OF REPORTING REQUIREMENTS

[31 U.S.C. 1113 note]

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2) of this subsection and subsection (d), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any annual, semiannual, or other regular periodic report specified on the list described under subsection (c) shall cease to be effective, with respect to that requirement, May 15, 2000.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) the Inspector General Act of 1978 (5 U.S.C. App.); or

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576), including provisions enacted by the amendments made by that Act.

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) is the list prepared by the Clerk of the House of Representatives for the first session of the One Hundred Third Congress under clause 2 of rule III of the Rules of the House of Representatives (House Document No. 103–7).

(d) SPECIFIC REPORTS EXEMPTED.—Subsection (a)(1) shall not apply to any report required under—

(1) section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n);

(2) section 306 of that Act (22 U.S.C. 2226);
(3) section 489 of that Act (22 U.S.C. 2291h);
(4) section 502B of that Act (22 U.S.C. 2304);
(5) section 634 of that Act (22 U.S.C. 2394);
(6) section 406 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 2414a);
(7) section 25 of the Arms Export Control Act (22 U.S.C. 2765);
(8) section 28 of that Act (22 U.S.C. 2768);
(9) section 36 of that Act (22 U.S.C. 2776);
(10) section 6 of the Multinational Force and Observers Participation Resolution (22 U.S.C. 3425);
(11) section 104 of the FREEDOM Support Act (22 U.S.C. 5814);
(12) section 508 of that Act (22 U.S.C. 5858);
(13) section 4 of the War Powers Resolution (50 U.S.C. 1543);
(14) section 204 of the International Emergency Economic Powers Act (50 U.S.C. 1703);
(15) section 14 of the Export Administration Act of 1979 (50 U.S.C. App. 2413);
(16) section 207 of the International Economic Policy Act of 1972 (Public Law 92–412; 86 Stat. 648);
(17) section 4 of Public Law 93–121 (87 Stat. 448);
(18) section 108 of the National Security Act of 1947 (50 U.S.C. 404a);
(19) section 704 of the Support for East European Democracy (SEED) Act of 1989 (22 U.S.C. 5474);
(20) section 804 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101–246; 104 Stat. 72);
(21) section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f);
(22) section 2 of the Act of September 21, 1950 (Chapter 976; 64 Stat. 903);
(23) section 3301 of the Panama Canal Act of 1979 (22 U.S.C. 3871);
(24) section 2202 of the Export Enhancement Act of 1988 (15 U.S.C. 4711);
(25) section 1504 of Public Law 103–160 (10 U.S.C. 402 note);
(26) section 502 of the International Security and Development Coordination Act of 1985 (22 U.S.C. 2349aa-7);
(27) section 23 of the Act of August 1, 1956 (Chapter 841; 22 U.S.C. 2694(2));
(28) section 5(c)(5) of the Export Administration Act of 1979 (50 U.S.C. App. 2404(c)(5));
(29) section 14 of the Export Administration Act of 1979 (50 U.S.C. App. 2413);
(30) section 50 of Public Law 87–297 (22 U.S.C. 2590);
(31) section 240A of the Foreign Assistance Act of 1961 (22 U.S.C. 2200a); [or]
(32) section 27(k) of the Consumer Product Safety Act (15 U.S.C. 2076(k); or
[(32)] *(33)* section 604 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1469).

FLAMMABLE FABRICS ACT

SHORT TITLE

[15 U.S.C. 1191 note]

SECTION 1. This Act may be cited as the "Flammable Fabrics Act".

DEFINITIONS

[15 U.S.C. 1191]

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

(c) The term "territory" includes the insular possessions of the United States and also any territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals.

(e) The term "interior furnishing" means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation.

(f) The term "fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended for use or which may reasonably be expected to be used, in any product as defined in subsection (h).

(g) The term "related material" means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in subsection (h).

(h) The term "product" means any article of wearing apparel or interior furnishing.

[(i) The term "Commission" means the Federal Trade Commission.]

(i) The term "Commission" means the Consumer Product Safety Commission.

(j) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" approved September 26, 1914, as amended.

PROHIBITED TRANSACTIONS

[15 U.S.C. 1192]

SEC. 3. (a) The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to

be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 4 of this Act, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 4 of this Act, and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

REGULATION OF FLAMMABLE FABRICS

[15 U.S.C. 1193]

SEC. 4. (a) Whenever the [Secretary of Commerce] *Commission* finds on the basis of the investigations or research conducted pursuant to section 14 of this Act that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, [he] *it* shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

(b) Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms. Each such standard, regulation, or amendment thereto, shall become effective twelve months from the date on which such standard, regulation, or amendment is promulgated, unless the [Secretary of Commerce] *Commission* finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard or regulation or amendment thereto shall exempt fabrics, related materials, or products in inventory or with the trade as of the date on which the standard, regulation, or amendment thereto, becomes effective except that, if the [Secretary] *Commission* finds that any such fabric, related material, or product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, [he] *it* may under such conditions as the [Secretary] *Commission* may prescribe, withdraw, or limit the exemption for such fabric, related material, or product.

(c) The [Secretary of Commerce] *Commission* may obtain from any person by regulation or subpena issued pursuant thereto such information in the form of testimony, books, records, or other

writings as is pertinent to the findings or determinations which [he] *it* is required or authorized to make pursuant to this Act. All information reported to or otherwise obtained by the [Secretary] *Commission* or [his] *its* representative pursuant to this subsection which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the [Secretary] *Commission* or any officer or employee under [his] *its* control, from the duly authorized committees of the Congress.

(d) Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, United States Code, except that interested persons shall be given an opportunity for the oral presentation of data, views, or arguments in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(e)(1) Any person who will be adversely affected by any such standard or regulation or amendment thereto when it is effective may at any time prior to the sixtieth day after such standard or regulation or amendment thereto is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the [Secretary] *Commission* or other officer designated by [him] *it* for that purpose. The [Secretary] *Commission* thereupon shall file in the court the record of the proceedings on which the [Secretary] *Commission* based the standard or regulation, as provided in section 2112 of title 28 of the United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the [Secretary] *Commission*, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the [Secretary] *Commission*, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The [Secretary] *Commission* may modify [his] *its* findings or make new findings, by reason of the additional evidence so taken, and [he] *it* shall file such modified or new findings, and [his] *its* recommendations, if any, for the modification or setting aside of [his] *its* original standard or regulation or amendment thereto, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the standard or regulation in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief as provided in such chapter. The standard or regulation shall not be affirmed unless the findings required by the first sentence of subsection (b) are supported by substantial evidence on the record taken as a whole. For purposes of this paragraph, the term "record" means the stand-

ard or regulation, any notice published with respect to the promulgation of such standard or regulation, the transcript required by subsection (d) of any oral presentation, any written submission of interested parties, and any other information which the Commission considers relevant to such standard or regulation.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such standard or regulation of the [Secretary] *Commission* shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

[(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.]

[(6)] *(5)* The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(f) A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the [Secretary] *Commission* to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this Act, irrespective of whether proceedings with respect to the standard or regulation or amendment thereto have previously been initiated or become final under subsection (e).

(g) A proceeding for the promulgation of a regulation under this section for a fabric, related material, or product [shall be commenced] *may be commenced by a notice of proposed rulemaking or* by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the fabric, related material, or product and the nature of the risk of injury associated with the fabric, related material, or product;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation.

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall

specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(h)(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (g)(5) if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a regulation, would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (g)(1), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation under this section.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (g)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(i) No regulation may be proposed by the Commission under this section [unless, not less than 60 days after publication of the notice required in subsection (g), the] *unless the* Commission publishes in the Federal Register the text of the proposed rule, including any

alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (g)(5) was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (g)(6) and assisted by the Commission as required by section 5(a)(3) of the Consumer Product Safety Act would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (g)(1); and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(j)(1) The Commission shall not promulgate a regulation under this section unless it has prepared a final regulatory analysis of the regulation containing the following information:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the regulation.

(2) The Commission shall not promulgate a regulation under this section unless it finds (and includes such finding in the regulation)—

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—

(i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the benefits expected from the regulation bear a reasonable relationship to its costs; and

(C) that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated.

(3)(A) Any regulatory analysis prepared under subsection (i) or paragraph (1) shall not be subject to independent judicial review, except that when an action for judicial review of a regulation is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(k) The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5, United States Code, requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

ADMINISTRATION AND ENFORCEMENT

[15 U.S.C. 1194]

SEC. 5. (a) Except as otherwise specifically provided herein, sections 3, 5, 6, and 8(b) of this Act shall be enforced by the Commission under rules, regulations and procedures provided for in the Federal Trade Commission Act. In the case of an attorney general of a State alleging a violation of a standard or regulation under section 4 that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce the requirement of such standard or regulation. The procedural requirements of section 24 of the Consumer Product Safety Act shall apply to any such action.

(b) The Commission is authorized and directed to prevent any person from violating the provisions of section 3 of this Act in the same manner, by the same means and with the same jurisdiction, powers and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act; and any such person violating any provision of section 3 of this Act shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this Act.

(c) The Commission is authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to fabrics, related materials, and products, as may be necessary and proper for administration and enforcement of this Act. The violation of such rules and regulations shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act.

(d) The Commission is authorized to—

(1) cause inspections, analyses, tests, and examinations to be made of any product, fabric or related material which it has reason to believe falls within the prohibitions of this Act; and

(2) cooperate on matters related to the purposes of this Act with any department or agency of the Government; with any State or territory or with the District of Columbia or the Commonwealth of Puerto Rico; or with any department, agency, or political subdivision thereof; or with any person.

(e)(1) Any person who knowingly violates a regulation or standard under section 4 shall be subject to a civil penalty not to exceed [$5,000] *$250,000* for each such violation, except that the maximum civil penalty shall not exceed [$1,250,000] *$100,000,000* for any related series of violations.

(2) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of a regulation or standard under section 4, the Commission shall consider the nature and number of the violations, the severity of the risk of injury, the occurrence or absence of injury, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(3) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the nature and number of the violations, the appropriateness of such penalty to the size of the business of the persons charged, the severity of the risk of injury, and the occurrence or absence of injury. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(4) As used in paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(5)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than [December 1, 1994,] *December 1, 2011,* and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years.

Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

* * * * * * *

PENALTIES

[15 U.S.C. 1196]

[SEC. 7. Any person who willfully violates section 3 or 8(b) of this Act, or who fails to comply with section 15(c) of this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided,* That nothing herein shall limit other provisions of this Act.**]**

SEC. 7. Violation of section 3 or 8(b) of this Act, or failure to comply with section 15(c) of this Act, is punishable by—

(1) imprisonment for not more than—

(A) 1 year for a knowing violation of that section; or

(B) 5 years for a knowing and willful violation of that section; and

(2) a fine determined under section 3571 of title 18, United States Code.

* * * * * * *

INVESTIGATIONS

[15 U.S.C. 1201]

SEC. 14. (a) The Secretary of Health, Education, and Welfare in cooperation with the **[**Secretary of Commerce**]** *Commission* shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials.

(b) In cooperation with appropriate public and private agencies, the **[**Secretary of Commerce**]** *Commission* is authorized to—

(1) conduct research into the flammability of products, fabrics, and materials;

(2) conduct feasibility studies on reduction of flammability of products, fabrics, and materials;

(3) develop flammability test methods and testing devices; and

(4) offer appropriate training in the use of flammability test methods and testing devices.5

EXPORTS

[15 U.S.C. 1202]

SEC. 15. (a) This Act shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; unless the ⟦Consumer Product Safety Commission (hereinafter in this section referred to as the "Commission")⟧ *Commission* determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this Act shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(b) This Act shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States, unless the Commission determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this Act shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(c) Not less than thirty days before any person exports to a foreign country any fabric, related material, or product that fails to conform to an applicable flammability standard or regulation in effect under this Act, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis for such flammability standard or regulation. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such fabric, related material, or product, the country and port of destination of such fabric, related material, or product, and the quantity of such fabric, related material, or product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed in no less than thirty days before the date of the exportation, ex-

cept that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(d) Notwithstanding any other provision of law, the Consumer Product Safety Commission may prohibit a person from exporting from the United States for purpose of sale any fabric, related material, or product that the Commission determines, after notice to the manufacturer—

(1) is not in conformity with an applicable consumer product safety standard under the Consumer Product Safety Act or with a rule under this Act;

(2) is subject to an order issued under section 12 or 15 of the Consumer Product Safety Act or designated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.); or

(3) is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public and that would have been subject to mandatory corrective action under this or another Act enforced by the Commission if voluntary corrective action had not been taken by the manufacturer.

PREEMPTION

[15 U.S.C. 1203]

SEC. 16. (a) Except as provided in subsections (b) and (c), whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this Act and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this Act.

(c)(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this Act, if—

(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this Act, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this Act for such fabric, related material, or product.

(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

[(d) For purposes of this section—

[(1) a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this Act includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90–189); and

[(2) the term "Commission" means the Consumer Product Safety Commission.]

(d) In this section, a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this Act includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90–189).

POISON PREVENTION PACKAGING ACT OF 1970

* * * * * * *

[SPECIAL PACKAGING STANDARDS]

[15 U.S.C. 1472]

SEC. 3. (a) The Secretary, may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if he finds that—

(1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and

(2) the special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(b) In establishing a standard under this section, the Secretary shall consider—

(1) the reasonableness of such standard;

(2) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(3) the manufacturing practices of industries affected by this Act; and

(4) the nature and use of the household substance.

(c) In carrying out this Act, the Secretary shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(d) Nothing in this Act shall authorize the Secretary to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 4(a)(2) of this Act, labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the Secretary may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(e) Nothing in this Act shall be construed to require the Secretary, in establishing a standard under this section, to prepare a comparison of the costs that would be incurred in complying with such standard with the benefits of such standard.

FEDERAL HAZARDOUS SUBSTANCES ACT

SHORT TITLE

[15 U.S.C. 1261 note]

SECTION 1. This Act may be cited as the "Federal Hazardous Substances Act".

DEFINITIONS

[15 U.S.C. 1261]

SEC. 2. For the purposes of this Act—

(a) The term "territory" means any territory or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico but excluding the Canal Zone.

(b) The term "interstate commerce" means (1) commerce between any State or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory not organized with a legislative body.

[(c) The term "Department" means the Department of Health, Education, and Welfare.]

[(d) The term "Secretary" means the Secretary of Health, Education, and Welfare.]

(c) The term "Commission" means the Consumer Product Safety Commission.

(e) The term "person" includes an individual, partnership, corporation, and association.

(f) The term "hazardous substance" means:

1. (A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the ⟦Secretary⟧ *Commission* by regulation finds, pursuant to the provisions of section 3(a), meet the requirements of subparagraph 1(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the ⟦Secretary⟧ *Commission* determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this Act in order to protect the public health.

(D) Any toy or other article intended for use by children which the ⟦Secretary⟧ *Commission* by regulation determines, in accordance with section 3(e) of this Act, presents an electrical, mechanical, or thermal hazard.

(E) Any solder which has a lead content in excess of 0.2 percent.

2. The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, nor to tobacco and tobacco products, but such term shall apply to any article which is not itself a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such an economic poison.

3. The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(g) The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(h)(1) The term "highly toxic" means any substance which falls within any of the following categories: (a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided

such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or (c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the [Secretary] *Commission* finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(i) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(j) The term "irritant" means any substance not corrosive within the meaning of subparagraph (i) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(k) The term "strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the [Secretary] *Commission*. Before designating any substance as a strong sensitizer, the [Secretary] *Commission*, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(l)(1) The terms "extremely flammable", "flammable", and "combustible" as applied to any substance, liquid, solid, or the content of a self-publicized container shall be defined by regulations issued by the Commission.

(2) The test methods found by the Commission to be generally applicable for defining the flammability or combustibility characteristics of any such substance shall also be specified in such regulations.

(3) In establishing definitions and test methods related to flammability and combustibility, the Commission shall consider the existing definitions and test methods of other Federal agencies involved in the regulation of flammable and combustible substances in storage, transportation and use; and to the extent possible, shall establish compatible definitions and test methods.

(4) Until such time as the Commission issues a regulation under paragraph (1) defining the term "combustible" as applied to liquids, such term shall apply to any liquid which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue Open Cup Tester.

(m) The term "radioactive substance" means a substance which emits ionizing radiation.

(n) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this Act that any word, statement, or other information appearing on the label

shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written or otherwise.

(o) The term "immediate container" does not include package liners.

(p) The term "misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970 or if such substance, except as otherwise provided by or pursuant to section 3, fails to bear a label—

(1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the [Secretary] *Commission* by regulation permits or requires the use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic, (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible," "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the [Secretary] *Commission* pursuant to section 3; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (h); (I) instructions for handling and storage of packages which require special care in handling or storage; and (J) the statement (i) "Keep out of the reach of children" or its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

The term "misbranded hazardous substance" also includes a household substance as defined in section 2(2)(D) of the Poison Prevention Packaging Act of 1970 if it is a substance described in paragraph 1 of section 2(f) of this Act and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.

(q)(1) The term "banned hazardous substance" means (A) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the [Secretary] *Commission* by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this Act for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: *Provided,* That the [Secretary] *Commission*, by regulation, (i) shall exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved, or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, and (ii) shall exempt from clause (A), and provide for the labeling of, common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers) to the extent that [he] *it* determines that such articles can be adequately labeled to protect the purchasers and users thereof.

(2) [Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of sections 701 (e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act: *Provided,* That if] *Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of subsections (f) through (i) of section 3 of this Act, except that if* the [Secretary] *Commission* finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, [he] *it* may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be deemed to be a "banned hazardous substance" pending the completion of proceedings relating to the issuance of such regulations.

(r) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(s) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness (1) from fracture, fragmentation, or disassembly of the article, (2) from propulsion of the article (or any part or accessory thereof), (3) from points or other protrusions, surfaces, edges, openings, or closures, (4) from moving parts, (5)

from lack or insufficiency of controls to reduce or stop motion, (6) as a result of self-adhering characteristics of the article, (7) because the article (or any part or accessory thereof) may be aspirated or ingested, (8) because of instability, or (9) because of any other aspect of the article's design or manufacture.

(t) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

REGULATIONS DECLARING HAZARDOUS SUBSTANCES AND ESTABLISHING VARIATIONS AND EXEMPTIONS

[15 U.S.C. 1262]

SEC. 3. [(a) 1. Whenever in the judgment of the Secretary such action will promote the objectives of this Act by avoiding or resolving uncertainty as to its application, the Secretary may by regulation declare to be a hazardous substance, for the purposes of this Act, any substance or mixture of substances which he finds meets the requirements of subparagraph (1)(A) of section 2(f).

[2. Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall in all respects be governed by the provisions of sections 701(e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act, except that—

[(A) the Secretary's order after public hearing (acting upon objections filed to an order made prior to hearing) shall be subject to the requirements of section 409(f)(2) of the Federal Food, Drug, and Cosmetic Act; and

[(B) the scope of judicial review of such order shall be in accordance with the fourth sentence of paragraph (2), and with the provisions of paragraph (3), of section 409(g) of the Federal Food, Drug, and Cosmetic Act.]

(a) RULEMAKING.—

(1) IN GENERAL.—Whenever in the judgment of the Commission such action will promote the objectives of this Act by avoiding or resolving uncertainty as to its application, the Commission may by regulation declare to be a hazardous substance, for the purposes of this Act, any substance or mixture of substances, which it finds meets the requirements of section 2(f)(1)(A).

(2) PROCEDURE.—Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall be governed by the provisions of subsections (f) through (i) of this section.

(b) If the [Secretary] *Commission* finds that the requirements of section 2(p)(1) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, [he] *it* may by regulation establish such reasonable variations or additional label requirements as [he] *it* finds necessary for the protection of the public health and safety; and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails

to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

(c) If the [Secretary] *Commission* finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this Act is impracticable or is not necessary for the adequate protection of the public health and safety, the [Secretary] *Commission* shall promulgate regulations exempting such substance from these requirements to the extent [he] *it* determines to be consistent with adequate protection of the public health and safety.

(d) The [Secretary] *Commission* may exempt from the requirements established by or pursuant to this Act any hazardous substance or container of a hazardous substance with respect to which [he] *it* finds that adequate requirements satisfying the purposes of this Act have been established by or pursuant to any other Act of Congress.

(e)(1) A determination by the [Secretary] *Commission* that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by regulation in accordance with the procedures prescribed by section 553 (other than clause (B) of the last sentence of subsection (b) of such section) of title 5 of the United States Code unless the [Secretary] *Commission* elects the procedures prescribed by subsection (e) of section 701 of the Federal Food, Drug, and Cosmetic Act, in which event such subsection and subsections (f) and (g) of such section 701 shall apply to the making of such determination. If the [Secretary] *Commission* makes such election, [he] *it* shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(2) If, before or during a proceeding pursuant to paragraph (1) of this subsection, the [Secretary] *Commission* finds that, because of an electrical, mechanical, or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and [he] *it*, by order published in the Federal Register, gives notice of such finding, such toy or other article shall be deemed to be a banned hazardous substance for purposes of this Act until the proceeding has been completed. If not yet initiated when such order is published, such a proceeding shall be initiated as promptly as possible.

(3)(A) In the case of any toy or other article intended for use by children which is determined by the [Secretary] *Commission*, in accordance with section 553 of title 5 of the United State Code, to present an electrical, mechanical, or thermal hazard, any person who will be adversely affected by such a determination may, at any time prior to the 60th day after the regulation making such determination is issued by the [Secretary] *Commission*, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the [Secretary] *Commission* or other officer designated by him for that purpose. The [Secretary] *Commission* shall file in the court the record of the proceedings on which the [Secretary] *Commission* based [his]

its determination, as provided in section 2112 of title 28 of the United States Code.

(B) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the [Secretary] *Commission*, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the [Secretary] *Commission* in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The [Secretary] *Commission* may modify [his] *its* findings as to the facts, or make new findings, by reason of the additional evidence so taken, and [he] *it* shall file such modified or new findings, and [his] *its* recommendation, if any, for the modification or setting aside of [his] *its* original determination, with the return of such additional evidence.

(C) Upon the filing of the petition under this paragraph, the court shall have jurisdiction to review the determination of the [Secretary] *Commission* in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of the second sentence of section 706 of title 5 of the United States Code. If the court ordered additional evidence to be taken under subparagraph (B) of this paragraph, the court shall also review the [Secretary's] *Commission's* determination to determine if, on the basis of the entire record before the court pursuant to subparagraphs (A) and (B) of this paragraph, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to any determination reviewed under this paragraph, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of such title.

(D) The judgment of the court affirming or setting aside, in whole or in part, any such determination of the [Secretary] *Commission* shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

(f) A proceeding for the promulgation of a regulation under section 2(q)(1) classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section [shall be commenced] *may be commenced* by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the article or substance and the nature of the risk of injury associated with the article or substance;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than

60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation under section 2(q)(1) or subsection (e) of this section; and

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(g)(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (f)(5) if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a regulation under section 2(q)(1) or subsection (e) of this section, as the case may be, would eliminate or adequately reduce the risk of injury identified **[**in the notice**]** *in a notice* provided under subsection (f)(1), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation under such section or subsection.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (f)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation under section 2(q)(1) or subsection (e) of this section, respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such com-

ments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (2) of this subsection;

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(h) No regulation under section 2(q)(1) classifying an article or substance as a banned hazardous substance and no regulation under subsection (e) of this section may be proposed by the Commission [unless, not less than 60 days after publication of the notice required in subsection (f), the] *unless the* Commission publishes in the Federal Register the text of the proposed rule, including any alternatives which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (f)(5) was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (f)(6) and assisted by the Commission as required by section 5(a)(3) of the Consumer Product Safety Act would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (f)(1); and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(i)(1) The Commission shall not promulgate a regulation under section 2(q)(1) classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section unless it has prepared a final regulatory analysis of the regulation containing the following information:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and

a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the regulation.

(2) The Commission shall not promulgate a regulation under section 2(q)(1) classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section unless it finds (and includes such finding in the regulation)—

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—

(i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the benefits expected from the regulation bear a reasonable relationship to its costs; and

(C) that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated.

(3)(A) Any regulatory analysis prepared under subsection (h) or paragraph (1) shall not be subject to independent judicial review, except that when an action for judicial review of a regulation is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(j) The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5, United States Code, requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

PROHIBITED ACTS

[15 U.S.C. 1263]

SEC. 4. The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being a misbranded hazardous substance or banned hazardous substance.

(c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(d) The giving of a guarantee or undertaking referred to in section 5(b)(2) which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(e) The failure to permit entry or inspection as authorized by section 11(b) or to permit access to and copying of any record as authorized by section 12.

(f) The introduction or delivery for introduction into interstate commerce, or the receipt in interstate commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meaning as in the Federal Food, Drug, and Cosmetic Act.

(g) The manufacture of a misbranded hazardous substance or banned hazardous substance within the District of Columbia or within any territory not organized with a legislative body.

(h) The use by any person to his own advantage, or revealing other than to the [Secretary] *Commission* or officers or employees of the [Department,] *Commission,* or to the courts when relevant in any judicial proceeding under this Act, of any information acquired under authority of section 11 concerning any method of process which as a trade secret is entitled to protection.

(i) The failure to notify the [Consumer Product Safety] Commission with respect to exports, pursuant to section 14(d).

(j) The failure to comply with an order issued under section 15.

(k) The introduction or delivery for introduction into interstate commerce of any lead solder which has a lead content in excess of 0.2 percent which does not prominently display a warning label stating the lead content of the solder and warning that the use of such solder in the making of joints or fittings in any private or public potable water supply system is prohibited.

PENALTIES

[15 U.S.C. 1264]

SEC. 5. [(a) Any person who violates any of the provisions of section 4 shall be guilty of a misdemeanor and shall on conviction

thereof be subject to a fine of not more than $500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than one year, or a fine of not more than $3,000, or both such imprisonment and fine.**]**

(a) IN GENERAL.—Violation of section 4 of this Act is punishable by—

(1) imprisonment for not more than—

(A) 1 year for a knowing violation of that section; or

(B) 5 years for a knowing and willful violation of that section; and

(2) a fine determined under section 3571 of title 18, United States Code.

(b) No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated section 4(c), if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the **[**Secretary**]** *Commission*, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated section 4(a), if he establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this Act; or (3) for having violated subsection (a) or (c) of section 4 with respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce or if the **[**Consumer Product Safety**]** Commission determines that exportation of such **[**substance presents an unreasonable risk of injury to persons residing within the United States,**]** *substance is prohibited under section 18(c) of the Consumer Product Safety Act,* this clause shall not apply.

(c)(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed **[**$5,000**]** *$250,000* for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 4 shall constitute a separate offense with respect to each substance involved, except that the maximum civil penalty shall not exceed **[**$1,250,000**]** *$100,000,000* for any related series of violations. A violation of section 4(e) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed **[**$1,250,000**]** *$100,000,000* for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 4—

(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substances involved; and

(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged, the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(5) As used in the first sentence of paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(6)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than [December 1, 1994,] *December 1, 2011,* and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(d) In the case of an attorney general of a State alleging a violation that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce any requirement of this Act relating to misbranded or banned hazardous substances. The procedural requirements of section 24 of the Consumer Product Safety Act shall apply to any such action.

SEIZURES

[15 U.S.C. 1265]

SEC. 6. (a) Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 4(f), be introduced into interstate commerce, or which has been manufactured in violation of section 4(g), shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided,* That this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

(b) Such hazardous substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the United States or the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the applicant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the United States or the claimant may apply to the court of one such jurisdiction, and such court (after giving the other party, the claimant, or the United States attorney for such district, reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt no-

tification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Any hazardous substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such hazardous substance shall not be sold under such decree contrary to the provisions of this Act or the laws of the jurisdiction in which sold: *Provided,* That, after entry of the decree and upon payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such hazardous substance shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State or territory in which sold, the court may by order direct that such hazardous substance be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act under the supervision of an officer or employee duly designated by the [Secretary] *Commission*, and the expense of such supervision shall be paid by the person obtaining release of the hazardous substance under bond.

(d) When a decree of condemnation is entered against the hazardous substance, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the hazardous substance.

(e) In the case of removal for trial of any case as provided by subsection (b)—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

HEARING BEFORE REPORT OF CRIMINAL VIOLATION

[15 U.S.C. 1266]

SEC. 7. Before any violation of this Act is reported by the [Secretary] *Commission* to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

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REGULATIONS

[15 U.S.C. 1269]

SEC. 10. (a) The authority to promulgate regulations for the efficient enforcement of this Act, except as otherwise provided in this section, is hereby vested in the [Secretary] *Commission*.

(b) The Secretary of the Treasury and the [Secretary of Health, Education, and Welfare] *Commission* shall jointly prescribe regulations for the efficient enforcement of the provisions of section 14,

except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the [Secretary of Health, Education, and Welfare] *Commission* shall determine.

EXAMINATIONS AND INVESTIGATIONS

[15 U.S.C. 1270]

SEC. 11. (a) The [Secretary] *Commission* is authorized to conduct examinations, inspections, and investigations for the purposes of this Act through officers and employees of the [Department] *Commission* or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the [Secretary] *Commission* as an officer of the [Department] *Commission.*

(b) For purposes of enforcement of this Act, officers or employees duly designated by the [Secretary] *Commission*, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in interstate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(c) If the officer or employee obtains any sample, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

RECORDS OF INTERSTATE SHIPMENT

[15 U.S.C. 1271]

SEC. 12. For the purpose of enforcing the provisions of this Act, carriers engaged in interstate commerce, and persons receiving hazardous substances in interstate commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the [Secretary] *Commission*, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any such hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates: *Provided,* That evidence obtained under this section, or any evidence which is directly or indirectly

derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained: *Provided further,* That carriers shall not be subject to the other provisions of this Act by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

PUBLICITY

[15 U.S.C. 1272]

SEC. 13. (a) The [Secretary] *Commission* may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this Act, including the nature of the charge and the disposition thereof.

(b) The [Secretary] *Commission* may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the [Secretary] *Commission*, imminent danger to health. Nothing in this section shall be construed to prohibit the [Secretary] *Commission* from collecting, reporting, and illustrating the results of the investigations of the [Department] *Commission.*

IMPORTS AND EXPORTS

[15 U.S.C. 1273]

SEC. 14. (a) The Secretary of the Treasury shall deliver to the [Secretary of Health, Education, and Welfare,] *Commision,* upon [his] *its* request, samples of hazardous substances which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the [Secretary of Health, Education, and Welfare] *Commission* and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that such hazardous substance is a misbranded hazardous substance or banned hazardous substance or in violation of section 4(f), then such hazardous substance shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such hazardous substance refused admission unless such hazardous substance is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) Pending decision as to the admission of a hazardous substance being imported or offered for import, the Secretary of the Treasury may authorize delivery of such hazardous substance to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the [Secretary of Health, Education, and Welfare] *Commission* that the hazardous substance can, by relabeling or other action, be brought into compliance with this Act, final determination as to admission of such hazardous substance may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the [Secretary] *Commission* may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including

destruction or export of rejected hazardous substances or portions thereof, as may be specified in the [Secretary's] *Commission's* authorization). All such relabeling or other action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or employee of the [Department of Health, Education, and Welfare] *Commission* designated by the Secretary, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

(c) All expenses (including travel, per diem, or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any hazardous substance refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(d) Not less than thirty days before any person exports to a foreign country any misbranded hazardous substance or banned hazardous substance, such person shall file a statement with the [Consumer Product Safety Commission (hereinafter in this section referred to as the "Commission")] *Commission* notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis upon which such substance is considered misbranded or has been banned under this Act. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such substance, the country and port of destination of such substance, and the quantity of such substance that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

NOTICE AND REPAIR, REPLACEMENT, OR REFUND

[15 U.S.C. 1274]

SEC. 15. (a) If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that notification is required to adequately protect the public from such article or substance, the Commission may order the manufacturer or any distributor or dealer of the article or substance to take any one or more of the following actions:

(1) To give public notice that the article or substance is a banned hazardous substance.

(2) To mail such notice to each person who is a manufacturer, distributor, or dealer of such article or substance.

(3) To mail such notice to every person to whom the person giving the notice knows such article or substance was delivered or sold.

An order under this subsection shall specify the form and content of any notice required to be given under the order.

(b) If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that action under this subsection is in the public interest, the ⟦Consumer Product Safety⟧ Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

(1) If repairs to or changes in the article or substance may be made so that it will not be a banned hazardous substance, to make such repairs or changes.

(2) To replace such article or substance with a like or equivalent article or substance which is not a banned hazardous substance.

(3) To refund the purchase price of the article or substance (less a reasonable allowance for use, if the article or substance has been in the possession of the consumer for one year or more—

(A) at the time of public notice under subsection (a), or

(B) at the time the consumer receives actual notice that the article or substance is a banned hazardous substance, whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, with respect to the article or substance with respect to which the order was issued.

(c)(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that notification is required to protect adequately the public from such toy or article, the Commission may order the manufacturer or any

distributor or dealer of such toy or article to take any one or more of the following actions:

(A) To give public notice that such defective toy or article contains a defect which creates a substantial risk of injury to children.

(B) To mail such notice to each person who is a manufacturer, distributor, or dealer of such toy or article.

(C) To mail such notice to every person to whom the person giving notice knows such toy or article was delivered or sold.

An order under this paragraph shall specify the form and content of any notice required to be given under the order.

(2) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that action under this paragraph is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

(A) If repairs to or changes in the toy or article can be made so that it will not contain a defect which creates a substantial risk of injury to children, to make such repairs or changes.

(B) To replace such toy or article with a like or equivalent toy or article which does not contain a defect which creates a substantial risk of injury to children.

(C) To refund the purchase price of such toy or article (less a reasonable allowance for use, if such toy or article has been in the possession of the consumer for 1 year or more (i) at the time of public notice under paragraph (1)(A), or (ii) at the time the consumer receives actual notice that the toy or article contains a defect which creates a substantial risk of injury to children, whichever first occurs).

An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the person to whom refunds must be made if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, with respect to the toy or article respect to which the order was issued.

(d)(1) No charge shall be made to any person (other than a manufacturer, distributor, or dealer) who avails himself of any remedy provided under an order issued under subsection (b) or (c), and the person subject to the order shall reimburse each person (other than

a manufacturer, distributor, or dealer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (a), (b), or (c) with respect to a toy, article or substance may require any person who is a manufacturer, distributor, or dealer of the toy, article or substance to reimburse any other person who is a manufacturer, distributor, or dealer of such article or substance for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(e) An order under subsection (a), (b), or (c) may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative).

(f) For purposes of this section (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distributor of that article or substance.

(g) Nothing in this section shall be construed to require the Commission, in determining that an article or substance distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

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[15 U.S.C. 1261 note]

SEC. 17. This Act shall take effect upon the date of its enactment; but no penalty or condemnation shall be enforced for any violation of this Act which occurs—

(a) prior to the expiration of the sixth calendar month after the month in which this Act is enacted, or

(b) prior to the expiration of such additional period or periods, ending not more than eighteen months after the month of enactment of this Act, as the [Secretary] *Commission* may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period or periods: *Provided,* That the [Secretary] *Commission* may limit the application of such additional period or periods to violations related to specified provisions of this Act, or to specified kinds of hazardous substances or packages thereof.

EFFECT UPON FEDERAL AND STATE LAW

[15 U.S.C. 1261 note]

SEC. 18. (a) Nothing in this Act shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191–1200), or any regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder, or under

sections 204(a)(2) and 204(a)(3) of the Interstate Commerce Act, as amended (relating to the transportation of dangerous substances and explosives by surface carriers); or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 or regulations promulgated under section 601 of the Federal Aviation Act of 1958 (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act; or of the Public Health Service Act; or of the Federal Insecticide, Fungicide, and Rodenticide Act; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled "An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes", approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19.

(b)(1)(A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) designated to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2(q) a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

(3)(A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act for such substance (or its packaging).

(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(4) Paragraph (1)(B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with fireworks devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph.

[(5) As used in this subsection, the term "Commission" means the Consumer Product Safety Commission.**]**

REPEAL OF FEDERAL CAUSTIC POISON ACT

[15 U.S.C. 401 note]

SEC. 19. The Federal Caustic Poison Act (44 Stat. 1406) is repealed effective at the close of the sixth calendar month after the month of enactment of this Act, except that the Federal Caustic Poison Act shall remain in full force and effect with respect to any "dangerous caustic or corrosive substance" (as defined by that Act) which is an article subject to the Federal Food, Drug, and Cosmetic Act and which is, by virtue of paragraph 2 of section 2(f) of this Act, excluded from the term "hazardous substance" as defined in this Act: *Provided,* That, if the **[**Secretary**]** *Commission*, pursuant to section 17(b) of this Act, prescribes an additional period or periods during which violations of this Act shall not be enforceable and if such additional period or periods are applicable to violations of this Act involving one or more substances defined as "dangerous caustic or corrosive substances" by the Federal Caustic Poison Act, that Act shall, with respect to such substance or substances, remain in full force and effect during such additional period or periods: *Provided further,* That, with respect to violations, liabilities incurred or appeals taken prior to the close of said sixth month or, if applicable, prior to the expiration of the additional period or periods referred to in the preceding proviso, all provisions of the Federal Caustic Poison Act shall be deemed to remain in full force for

the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, and appeals.

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SEC. 24. REQUIREMENTS FOR LABELING CERTAIN TOYS AND GAMES.

[15 U.S.C. 1278]

(a) TOYS OR GAMES FOR CHILDREN WHO ARE AT LEAST 3.—

(1) REQUIREMENT.—The packaging of any toy or game intended for use by children who are at least 3 years old but not older than 6 years (or such other upper age limit as the Commission may determine, which may not be less than 5 years old), any descriptive material which accompanies such toy or game, and, in the case of bulk sales of such toy or game when unpackaged, any bin, container for retail display, or vending machine from which the unpackaged toy or game is dispensed shall bear or contain the cautionary statement described in paragraph (2) if the toy or game—

(A) is manufactured for sale, offered for sale, or distributed in commerce in the United States, and

(B) includes a small part, as defined by the Commission.

(2) LABEL.—The cautionary statement required by paragraph (1) for a toy or game shall be as follows:

[ILLUSTRATION OMITTED]

(b) BALLOONS, SMALL BALLS, AND MARBLES.—

(1) REQUIREMENT.—In the case of any latex balloon, any ball with a diameter of 1.75 inches or less intended for children 3 years of age or older, any marble intended for children 3 years of age or older, or any toy or game which contains such a balloon, ball, or marble, which is manufactured for sale, offered for sale, or distributed in commerce in the United States—

(A) the packaging of such balloon, ball, marble, toy, or game,

(B) any descriptive material which accompanies such balloon, ball, marble, toy, or game, and

(C) in the case of bulk sales of any such product when unpackaged, any bin, container for retail display, or vending machine from which such unpackaged balloon, ball, marble, toy, or game is dispensed,

shall bear or contain the cautionary statement described in paragraph (2).

(2) LABEL.—The cautionary statement required under paragraph (1) for a balloon, ball, marble, toy, or game shall be as follows:

(A) BALLOONS.—In the case of balloons, or toys or games that contain latex balloons, the following cautionary statement applies:

[ILLUSTRATION OMITTED]

(D) TOYS AND GAMES.—In the case of toys or games containing balls, the following cautionary statement applies:

[ILLUSTRATION OMITTED]

(c) INTERNET, CATALOGUE, AND OTHER ADVERTISING.—

(1) REQUIREMENT.—

(A) CAUTIONARY STATEMENT.—Any advertisement posted by a manufacturer, retailer, distributor, private labeler, or licensor for any toy, game, balloon, small ball, or marble that requires a cautionary statement under subsections (a) and (b), including any advertisement on Internet websites or in catalogues or other distributed materials, shall include the appropriate cautionary statement required under such subsections in its entirety displayed on or immediately adjacent to such advertisement.

(B) DISPLAY.—The cautionary statement described in subparagraph (A) shall be prominently displayed—

(i) in the primary language used in the advertisement, catalogue, or Internet website;

(ii) in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in such advertisement; and

(iii) in a manner consistent with part 1500 of title 16, Code of Federal Regulations.

(C) DEFINITIONS.—In this paragraph, the terms 'manufacturer, retailer, distributor, private labeler, and licensor'—

(i) mean any individual who, by such individual's occupation holds himself or herself out as having knowledge or skill peculiar to consumer products, including any person who is in the business of manufacturing, selling, distributing, labeling, licensing, or otherwise placing in the stream of commerce consumer products; but

(ii) do not include an individual whose selling activity is intermittent and does not constitute a trade or business.

(2) ENFORCEMENT.—The requirement under paragraph (1) shall be treated as a consumer product safety standard promulgated under section 7 of the Consumer Product Safety Act (15 U.S.C. 2056). The publication or distribution of any advertisement that is not in compliance with paragraph (1) shall be treated as a prohibited act under section 19 of such Act (15 U.S.C. 2068).

[(c)**]** *(d)* GENERAL LABELING REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any cautionary statement required under subsection (a) or (b) shall be—

(A) displayed in its entirety on the principal display panel of the product's package, and on any descriptive material which accompanies the product, and, in the case of bulk sales of such product when unpackaged, on the bin, container for retail display of the product, and any vending machine from which the unpackaged product is dispensed, and

(B) displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such package, descriptive materials, bin, container, and vending machine, and in a

manner consistent with part 1500 of title 16, Code of Federal Regulations (or successor regulations thereto).

(2) EXCEPTION FOR PRODUCTS MANUFACTURED OUTSIDE UNITED STATES.—In the case of a product manufactured outside the United States and directly shipped from the manufacturer to the consumer by United States mail or other delivery service, the accompanying material inside the package of the product may fail to bear the required statement if other accompanying material shipped with the product bears such statement.

(3) SPECIAL RULES FOR CERTAIN PACKAGES.—(A) A cautionary statement required by subsection (a) or (b) may, in lieu of display on the principal display panel of the product's package, be displayed on another panel of the package if—

(i) the package has a principal display panel of 15 square inches or less and the required statement is displayed in three or more languages; and

(ii) the statement specified in subparagraph (B) is displayed on the principal display panel and is accompanied by an arrow or other indicator pointing toward the place on the package where the statement required by subsection (a) or (b) appears.

(B)(i) In the case of a product to which subsection (a), subsection (b)(2)(B), subsection (b)(2)(C), or subsection (b)(2)(D) applies, the statement specified by this subparagraph is as follows:

[ILLUSTRATION OMITTED]

(ii) In the case of a product to which subsection (b)(2)(A) applies, the statement specified by this subparagraph is as follows:

[ILLUSTRATION OMITTED]

[(d)**]** *(e)* TREATMENT AS MISBRANDED HAZARDOUS SUBSTANCE.—A balloon, ball, marble, toy, or game, that is not in compliance with the requirements of this subsection shall be considered a misbranded hazardous substance under section 2(p).

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