

Public Law 95-631

95th Congress

An Act

Nov. 10, 1978
[S. 2796]

To amend the Consumer Product Safety Act to extend the authorization of appropriations, and for other purposes.

Consumer
Product Safety
Act, amendment.
Appropriation
authorization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 32(a) of the Consumer Product Safety Act (15 U.S.C. 2081(a)) is amended—

- (1) in paragraph (3), by striking out “and” at the end thereof;
- (2) in paragraph (4), by striking out the period at the end thereof and inserting in lieu thereof “; and”; and
- (3) by adding at the end thereof the following new paragraphs:
 - “(5) \$55,000,000 for the fiscal year ending September 30, 1979;
 - “(6) \$60,000,000 for the fiscal year ending September 30, 1980;
 - and
 - “(7) \$65,000,000 for the fiscal year ending September 30, 1981.”.

Commission
Chairman.

SEC. 2. (a) Section 4(a) of the Consumer Product Safety Act (15 U.S.C. 2053(a)) is amended by striking out “Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated shall act as Chairman until the expiration of his term of office as Commissioner.” and inserting in lieu thereof the following: “Senate. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time.”.

(b) Section 4(i) of the Consumer Product Safety Act (15 U.S.C. 2053(i)) is amended by striking out “before January 1, 1978,” in paragraph (1)(A) thereof and by striking out “before January 1, 1978” in paragraph (1)(B) thereof.

Consumer
product safety
standards,
development
proceedings.

SEC. 3. (a) Section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056(b)) is amended—

- (1) by inserting “(1)” after “(b)”;
- (2) by redesignating paragraph (1) through paragraph (4) as subparagraph (A) through subparagraph (D), respectively;
- (3) in subparagraph (C) as so redesignated in paragraph (2), by striking out “and” at the end thereof; and
- (4) by striking out subparagraph (D), as so redesignated in paragraph (2), and the two sentences following subparagraph (D), and inserting in lieu thereof the following:

“(D) include—

“(i) an invitation for any person (other than the Commission), within thirty days after the date of publication of the notice, to submit to the Commission an existing standard as the proposed consumer product safety standard; and

“(ii) (I) an invitation for any person (other than the Commission), within thirty days after the date of publication of the notice, to offer to develop the proposed consumer product safety standard; or

“(II) a statement that the Commission intends to develop the proposed consumer product safety standard; and

"(E) specify the period of time in which the offeror of an accepted offer and the Commission, or the Commission acting by itself, is to develop the proposed standard."

(b) Section 7(b) of the Consumer Product Safety Act, as amended in subsection (a) is further amended by adding at the end thereof the following new paragraph: 15 USC 2056.

"(2) After consultation with such interested parties as the Commission shall deem necessary, the Commission may develop a consumer product safety standard without making any invitation specified in paragraph (1) (D) (ii) (I) and may publish such standard as a proposed consumer product safety rule whenever the Commission determines, taking into account—

Standards,
consultation and
publication.

"(i) the nature of the risk of injury associated with such product;

"(ii) the expertise of the Commission with respect to such risk of injury,

"(iii) the expertise of the Commission in developing consumer product safety standards, and

"(iv) the resources available to the Commission and the priorities established by the Commission,

that to develop a consumer product safety standard which would adequately protect the public from such risk of injury, it is more expeditious for the Commission to develop the standard than to proceed under paragraph (1) (D) (ii) (I) for its development. The Commission shall give interested persons opportunity to submit written comments to the Commission during the thirty-day period following publication of such determination under paragraph (1)."

Comments.

SEC. 4. (a) (1) Section 7(d) (1) of the Consumer Product Safety Act (15 U.S.C. 2056(d) (1)) is amended by inserting "subsection (b) (2) and by" after "as provided by", by striking out "subsection (b) (4) (B)" and inserting in lieu thereof "subsection (b) (1) (D) (ii) (I)", and by striking out "subsection (b)" and inserting in lieu thereof "subsection (b) (1) (E)".

(2) the first sentence of section 7(d) (2) of the Consumer Product Safety Act (15 U.S.C. 2056(d) (2)) is amended—

(A) by inserting "or if any person participates with the Commission in the development of a consumer product safety standard under subsection (b) (2) (A) or subsection (e)," after "under this subsection";

(B) by inserting "or the person's cost with respect to such participation" after "safety standard"; and

(C) by inserting "or person" after "offeror".

(3) Section 7(d) of the Consumer Product Safety Act (15 U.S.C. 2056(d)) is amended by adding at the end thereof the following new paragraph:

Regulations.

"(4) The Commission shall prescribe regulations governing the development of proposed consumer product safety rules by the Commission under subsection (b) (2) and subsection (e) (1). Such regulations shall include the requirements specified in subparagraphs (B), (C), and (D) of paragraph (3)."

(b) Section 7(e) of the Consumer Product Safety Act (15 U.S.C. 2056(e)) is amended to read as follows:

"(e) (1) If the Commission publishes a notice pursuant to subsection (b) (1) (D) (ii) (I) for the development of a consumer product safety standard and if the Commission does not, within 30 days after

the date of publication of such notice, accept an offer to develop such a standard, then the Commission may develop a proposed consumer safety rule with respect to such product and publish such proposed rule.

"(2) If the Commission accepts an offer to develop a proposed consumer product safety standard under subsection (b) (1) (D) (ii) (I), the Commission may not develop a proposed consumer product safety rule or publish such proposed rule unless—

"(A) the development period specified in subsection (b) (1) (E) for such standard ends;

"(B) no offeror whose offer was accepted is making satisfactory progress in the development of such proposed standard; or

"(C) the sole offer accepted under subsection (b) (1) (D) (ii) (I) is that of an offeror which is the manufacturer, distributor, or retailer of a consumer product proposed to be regulated by the consumer product safety standard."

(c) Section 7(f) of the Consumer Product Safety Act (15 U.S.C. 2056(f)) is amended to read as follows:

"(f) If the Commission publishes a notice pursuant to subsection (b) and the Commission does not publish a proposed consumer product safety standard within forty-five days after the expiration of the period specified in subsection (b) (1) (E), the Commission shall—

"(1) by notice published in the Federal Register, terminate the proceeding begun by such notice published pursuant to subsection (b); or

"(2) publish in the Federal Register the reasons for not publishing the proposed standard, and specify the time period within which either such standard will be published or the proceeding begun by such notice published pursuant to subsection (b) will be terminated without publication of such proposed standard.

The reasons referred to in paragraph (2) may include a statement that the Commission is considering other approaches (such as a voluntary consumer safety standard adopted by persons who would be subject to such proposed standard) to eliminate the unreasonable risk of injury that is the subject of such proceeding."

(d) Paragraphs (1) and (2) of section 9(a) of the Consumer Product Safety Act (15 U.S.C. 2058(a)) are each amended by striking out "section 7(c), (e) (1), or (f) or section 8" and inserting in lieu thereof "section 7 or 8".

SEC. 5. Section 7(c) of the Consumer Product Safety Act (15 U.S.C. 2056(c)) is amended to read as follows:

"(c) If the Commission determines—

"(1) that any standard submitted to it pursuant to an invitation made under subsection (b) (1) (D) (i), or

"(2) that any standard (other than one submitted under subsection (b) (1) (D) (i)) issued, adopted, or proposed by any Federal department or agency (other than the Commission) or by any other qualified agency, organization, or institution, if promulgated (in whole, in part, or in combination with any other standard described in paragraph (1) or (2) or any part of such a standard) as a consumer product safety rule, would eliminate or reduce an unreasonable risk of injury associated with a consumer product, 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. In the case of a standard

Publication in
Federal Register.

described in paragraph (2), 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 without making an invitation under subsection (b)(1)(D)(i)."

SEC. 6. (a) Section 18 of the Consumer Product Safety Act (15 U.S.C. 2067) is amended—

(1) by inserting "(a)" after "SEC. 18.", by inserting "(A)" after "unless", and by inserting before ", and (2)" the following: ", or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States."; and

(2) by adding at the end thereof the following new subsection:

"(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."

(b) Section 19(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)) is amended—

(1) in paragraph (8), by striking out "or";

(2) in paragraph (9), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (9) the following new paragraph:

"(10) fail to file a statement with the Commission pursuant to section 18(b)."

(c) Section 20(a) of the Consumer Product Safety Act (15 U.S.C. 2069(a)) is amended in paragraph (1) by striking out "(8), or (9)" and inserting in lieu thereof "(8), (9), or (10)".

SEC. 7. (a) Section 4 of the Federal Hazardous Substances Act (15 U.S.C. 1263) is amended by adding at the end the following new subsection:

"(i) The failure to notify the Consumer Product Safety Commission with respect to exports, pursuant to section 14(d)."

(b) Clause (3) of section 5(b) of the Federal Hazardous Substances Act (15 U.S.C. 1262(b)) is amended—

(1) by striking out "in respect of" and inserting in lieu thereof "with respect to"; and

Exports.

Statement filing
and notification
to country.

15 USC 2058.

Exemption,
petition.

Post, p. 3746.

15 USC 1264.

(2) by inserting before “, this clause” the following: “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”.

(c) Section 14 of the Federal Hazardous Substances Act (15 U.S.C. 1273) is amended—

(1) in the section heading by adding “AND EXPORTS” after “IMPORTS”; and

(2) by adding at the end thereof the following new subsection:

“(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’) 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.”.

SEC. 8. (a) Section 15 of the Flammable Fabrics Act (15 U.S.C. 1202) is amended—

(1) in subsection (a) by inserting before “; except that” the following “; unless the Consumer Product Safety Commission (hereinafter in this section referred to as 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”;

(2) in subsection (b) by inserting before “; except that” the following “; 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”; and

(3) by adding at the end the following new subsection:

“(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 of 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 Com-

Statement,
filing and
notification to
foreign country.

Exemption,
petition.

Statement,
filing and
notification to
foreign country.

mission 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."

Exemption,
petition.

(b) Section 7 of the Flammable Fabrics Act (15 U.S.C. 1196) is amended by inserting after "8(b) of this Act" the following: ", or who fails to comply with section 15(c) of this Act,".

Ante, p. 3746.

SEC. 9. Section 2(1) of the Federal Hazardous Substances Act (15 U.S.C. 1261(1)) is amended to read as follows:

Definitions,
regulations.

"(1) (1) The terms 'extremely flammable', 'flammable', and 'combustible' as applied to any substance, liquid, solid, or the content of a self-pressurized 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."

SEC. 10. The Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) is amended by adding at the end thereof the following new section:

"TOXICOLOGICAL ADVISORY BOARD

"SEC. 20. (a) (1) Within 180 days after the date of the enactment of this section, the Consumer Product Safety Commission (hereinafter in this section referred to as the 'Commission') shall establish, in accordance with subsection (b), a Toxicological Advisory Board (hereinafter in this section referred to as the 'Board') to advise the Commission on precautionary labeling for hazardous substances. The Board shall provide scientific and technical advice to the Commission concerning—

Establishment
and functions.
15 USC 1275.

"(A) proper labeling under sections 2(p) (1) and 3(b), with special attention to—

15 USC 1261,
1262.

"(i) the description of precautionary measures required under section 2(p) (1) (F);

"(ii) the statement describing the hazards associated with a hazardous substance as required under section 2(p) (1) (E); and

"(iii) instructions for first-aid treatment under section 2(p) (1) (G); and

15 USC 1262.	“(B) the exemption of certain substances from labeling requirements under this Act as permitted under section 3(c).
Review and recommendations.	“(2) In carrying out its duties under paragraph (1) (A), the Board shall review any labeling requirements or guidelines which have been established by the Commission under section 2(p) (1) or 3(b). Based upon its review the Board shall develop and submit to the Commission, within one year after the date that the Board is established, any recommendations for revisions in such labeling requirements or guidelines which the Board considers to be appropriate, including any general recommendations which may be of assistance to the Commission in carrying out its responsibilities under section 2(p) (1) or section 3(b). The Board shall periodically review the labeling requirements and guidelines established by the Commission under such sections to determine whether such requirements and guidelines reflect relevant changes in scientific knowledge and shall revise any general recommendations submitted to the Commission under this paragraph to reflect such changes.
15 USC 1261.	
Membership.	“(b) (1) The Board shall be composed of nine members appointed by the Commission. Each member of the Board shall be qualified by training and experience in one or more fields applicable to the duties of the Board, and at least three of the members of the Board shall be members of the American Board of Medical Toxicology. The Chairman of the Board shall be elected by the Board from among its members.
Chairman.	“(2) The members of the Board shall be appointed for terms of three years. Members of the Board may be reappointed.
Vacancies.	“(3) Any vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term.
Meetings.	“(4) The Board shall meet at such times and places as may be designated by the Commission in consultation with the Chairman, but not less than two times each year.
Compensation.	“(5) Members of the Board who are not officers or employees of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code. While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed under section 5703(b) of such title. Individuals serving as members on the Board shall not be considered officers or employees of the United States by reason of receiving payments under this paragraph.
Travel allowances.	“(c) The Board shall terminate on the date six years after the date it is established under this section.”
5 USC 5703.	SEC. 11. Section 27 of the Consumer Product Safety Act (15 U.S.C. 2076) is amended by adding at the end thereof the following new subsection:
Termination.	“(m) (1) For purposes of this subsection, the term ‘rule’ means—
“Rule.”	“(A) any rule prescribed by the Commission pursuant to section 9;
15 USC 2058.	

"(B) any rule prescribed by the Commission pursuant to section 2(q)(1)(B) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)(1)(B));

"(C) any rule prescribed by the Commission under section 3 of the Poison Prevention Packaging Act (15 U.S.C. 1472); and

"(D) any rule prescribed by the Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).

"(2) Within 18 months after the effective date of this subsection, the Commission shall begin a study of all the rules which the Commission has issued and which are in effect on such effective date. At the end of such 18-month period, the Chairman of the Commission shall submit a report to the Congress which shall, to the extent practicable and appropriate (taking into account the resources and priorities of the Commission)—

Study.

Report to Congress.

"(A) recommend the deletion of particular rules and portions of rules, including reasons for such recommendations; and

"(B) recommend the initiation of appropriate rulemaking proceedings under this Act to make changes or modifications in particular rules or portions of rules.

"(3) In any case in which the Commission proposes to delete any rule or portion of a rule during the 18-month period specified in paragraph (2), the Commission shall notify each House of the Congress of such proposal at the time such proposal is published in the Federal Register.

Notification to House and Senate.

"(4)(A) To the extent practicable and appropriate (taking into account the resources and priorities of the Commission), the Chairman of the Commission shall include in the report submitted to the Congress under this subsection, for each rule which the Commission has issued and which is in effect on the effective date of this subsection—

"(i) an economic impact analysis which takes into account, for such rule, the cost impact on and benefits to consumers and affected businesses (with particular attention to small businesses);

"(ii) a paperwork impact analysis containing—

"(I) an estimate of the numbers of, and a description of the classes of, persons who are required to file reports, maintain records, and fulfill any of the information-gathering requirements under such rule;

"(II) an estimate of the nature and amount of the information required to be filed in such reports, the frequency of such reports, the nature and number of records required to be kept by such persons, and the amount of time such persons would require, and the costs which would be incurred, to keep such records and make such reports; and

"(III) a description of steps being taken by the Commission to ensure that there is no unnecessary duplication in recordkeeping and report filing resulting from such rule;

"(iii) a judicial impact analysis showing the effect of such rule on the workload of the Federal courts; and

"(iv) such other explanatory and supporting statements and materials as the Commission determines necessary and appropriate for congressional consideration of such report.

"(B)(i) Except as provided in clause (ii), no material submitted to the Congress by the Chairman of the Commission under this para-

Noncompliance,
statement.

graph shall be subject to any judicial review, including any judicial review to determine whether such material is sufficient to comply with the requirements of this paragraph. In the event the Chairman of the Commission finds that it is impractical or inappropriate to submit the information required under clauses (i) through (iii) of subparagraph (A), the Chairman of the Commission shall submit a statement as to why he cannot so comply.

“(ii) if any material submitted to the Congress by the Chairman of the Commission under this paragraph also is included in any rulemaking record of the Commission, any determination regarding whether such material is subject to judicial review in connection with any review of such rulemaking record shall not be affected by the submission of such material to the Congress under this paragraph.”.

Approved November 10, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1164 accompanying H.R. 12442 (Comm. on Interstate and Foreign Commerce).

SENATE REPORT No. 95-889 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Aug. 4, considered and passed Senate.

Oct. 15, considered and passed House, amended; Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 45:

Nov. 10, Presidential statement.