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110TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 110–501

CONSUMER PRODUCT SAFETY MODERNIZATION ACT

DECEMBER 19, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 4040]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4040) to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

69–006

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Consumer Product Safety Modernization Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References.
Sec. 3. Authority to issue implementing regulations.

TITLE I—CHILDREN'S PRODUCT SAFETY

Sec. 101. Ban on children's products containing lead; lead paint rule.
Sec. 102. Mandatory third-party testing for certain children's products.
Sec. 103. Tracking labels for children's products.
Sec. 104. Standards and consumer registration of durable nursery products.
Sec. 105. Labeling requirement for certain internet and catalogue advertising of toys and games.
Sec. 106. Study of preventable injuries and deaths in minority children related to consumer products.
Sec. 107. Review of generally-applicable standards for toys.

TITLE II—CONSUMER PRODUCT SAFETY COMMISSION REFORM

Sec. 201. Reauthorization of the Commission.
Sec. 202. Structure and quorum.
Sec. 203. Submission of copy of certain documents to Congress.
Sec. 204. Expedited rulemaking.
Sec. 205. Public disclosure of information.
Sec. 206. Publicly available information on incidents involving injury or death.
Sec. 207. Prohibition on stockpiling under other Commission-enforced statutes.
Sec. 208. Notification of noncompliance with any Commission-enforced statute.
Sec. 209. Enhanced recall authority and corrective action plans.
Sec. 210. Website notice, notice to third party internet sellers, and radio and television notice.
Sec. 211. Inspection of certified proprietary laboratories.
Sec. 212. Identification of manufacturer, importers, retailers, and distributors.
Sec. 213. Export of recalled and non-conforming products.
Sec. 214. Prohibition on sale of recalled products.
Sec. 215. Increased civil penalty.
Sec. 216. Criminal penalties to include asset forfeiture.
Sec. 217. Enforcement by State attorneys general.
Sec. 218. Effect of rules on preemption.
Sec. 219. Sharing of information with Federal, State, local, and foreign government agencies.
Sec. 220. Inspector General authority and accessibility.
Sec. 221. Repeal.
Sec. 222. Industry-sponsored travel ban.
Sec. 223. Annual reporting requirement.
Sec. 224. Study on the effectiveness of authority relating to imported products.

SEC. 2. REFERENCES.

(a) COMMISSION.—As used in this Act, the term "Commission" means the Consumer Product Safety Commission.

(b) CONSUMER PRODUCT SAFETY ACT.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed as an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(c) RULE.—In this Act and the amendments made by this Act, a reference to any rule under any Act enforced by the Commission shall be considered a reference to any rule, standard, ban, or order under any such Act.

SEC. 3. AUTHORITY TO ISSUE IMPLEMENTING REGULATIONS.

The Commission may issue regulations, as necessary, to implement this Act and the amendments made by this Act.

TITLE I—CHILDREN'S PRODUCT SAFETY

SEC. 101. BAN ON CHILDREN'S PRODUCTS CONTAINING LEAD; LEAD PAINT RULE.

(a) CHILDREN'S PRODUCTS CONTAINING LEAD.—

(1) BANNED HAZARDOUS SUBSTANCE.—Effective 180 days after the date of enactment of this Act, any children's product containing more than the amounts of lead set forth in paragraph (2) shall be a banned hazardous substance within the meaning of section 2(q)(1) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)(1)).

(2) STANDARD FOR AMOUNT OF LEAD.—The amounts of lead referred to in paragraph (1) shall be—

(A) 600 parts per million total lead content by weight for any part of the product;

(B) 300 parts per million total lead content by weight for any part of the product, effective 2 years after the date of enactment of this Act; and

(C) 100 parts per million total lead content by weight for any part of the product, effective 4 years after the date of enactment of this Act, unless the Commission determines, after notice and a hearing, that a standard of 100

parts per million is not feasible, in which case the Commission shall require the lowest amount of lead that the Commission determines is feasible to achieve.

(3) COMMISSION REVISION TO MORE PROTECTIVE STANDARD.—

(A) MORE PROTECTIVE STANDARD.—The Commission may, by rule, revise the standard set forth in paragraph (2)(C) for any class of children's products to any level and form that the Commission determines is—

(i) more protective of human health; and

(ii) feasible to achieve.

(B) PERIODIC REVIEW.—The Commission shall, based on the best available scientific and technical information, periodically review and revise the standard set forth in this section to require the lowest amount of lead that the Commission determines is feasible to achieve.

(4) COMMISSION AUTHORITY TO EXCLUDE CERTAIN MATERIALS.—The Commission may, by rule, exclude certain products and materials from the prohibition in paragraph (1) if the Commission determines that the lead content in such products and materials will not result in the absorption of lead in the human body or does not have any adverse impact on public health or safety.

(5) DEFINITION OF CHILDREN'S PRODUCT.—

(A) IN GENERAL.—As used in this subsection, the term "children's product" means a consumer product as defined in section 3(1) of the Consumer Product Safety Act (15 U.S.C. 2052(1)) designed or intended primarily for children 12 years of age or younger.

(B) FACTORS TO BE CONSIDERED.—In determining whether a product is primarily intended for a child 12 years of age or younger, the following factors shall be considered:

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

(ii) Whether the product is represented in its packaging, display or advertising as appropriate for use by children 12 years of age or younger.

(iii) Whether the product is commonly recognized by consumers as being intended for use by child 12 years of age or younger.

(iv) The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor thereto.

(6) EXCEPTION FOR INACCESSIBLE COMPONENT PARTS.—The standards established under paragraph (2) shall not apply to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible under this paragraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. The Commission may require that certain electronic devices be equipped with a child-resistant cover or casing that prevents exposure of and accessibility to the parts of the product containing lead if the Commission determines that it is not feasible for such products to otherwise meet such standards.

(b) PAINT STANDARD.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commission shall modify section 1303.1 of title 16, Code of Federal Regulations, to—

(A) reduce the standard applicable to lead paint by substituting "0.009 percent" for "0.06 percent" in subsection (a) of that section;

(B) apply the standard to all children's products as defined in subsection (a)(5); and

(C) reduce the standard for paint and other surface coating on children's products and furniture to 0.009 milligrams per centimeter squared.

(2) MORE PROTECTIVE STANDARD.—Not later than 3 years after the date of enactment of this Act, the Commission shall, by rule, revise the standard established under paragraph (1)(C) to a more protective standard if the Commission determines such a standard to be feasible.

(c) AUTHORITY TO EXTEND IMPLEMENTATION PERIODS.—The Commission may extend, by rule, the effective dates in subsections (a) and (b) by an additional period not to exceed 180 days if the Commission determines that—

(1) there is no impact on public health or safety from extending the implementation period; and

(2)(A) the complete implementation of the new standards by manufacturers subject to such standards is not feasible within 180 days;

(B) the cost of such implementation, particularly on small and medium sized enterprises, is excessive; or

(C) the Commission requires additional time to implement such standards and determine the required testing methodologies and appropriate exceptions in order to enforce such standards.

SEC. 102. MANDATORY THIRD-PARTY TESTING FOR CERTAIN CHILDREN'S PRODUCTS.

(a) MANDATORY AND THIRD-PARTY TESTING.—Section 14(a) (15 U.S.C. 2063(a)) is amended—

(1) in paragraph (1)—

(A) by striking "Every manufacturer" and inserting "Except as provided in paragraph (2), every manufacturer"; and

(B) by striking "standard under this Act" and inserting "rule under this Act or similar rule under any other Act enforced by the Commission";

(2) by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) the following:

"(2) Effective 1 year after the date of enactment of the Consumer Product Safety Modernization Act, every manufacturer of a children's product (and the private labeler of such children's product if such product bears a private label) which is subject to a consumer product safety rule under this Act or a similar rule or standard under any other Act enforced by the Commission, shall—

"(A) have the product tested by a independent third party qualified to perform such tests or a proprietary laboratory certified by the Commission under subsection (e) ; and

"(B) issue a certificate which shall—

"(i) certify that such product conforms to such standards or rules; and

"(ii) specify the applicable consumer product safety standards or other similar rules."; and

(3) in paragraph (3) (as so redesignated)—

(A) by striking "required by paragraph (1) of this subsection" and inserting "required by paragraph (1) or (2) (as the case may be)"; and

(B) by striking "requirement under paragraph (1)" and inserting "requirement under paragraph (1) or (2) (as the case may be)".

(b) DEFINITION OF CHILDREN'S PRODUCTS AND INDEPENDENT THIRD PARTY.—Section 14 (15 U.S.C. 2063) is amended by adding at the end the following:

"(d) DEFINITIONS.—In this section, the following definitions apply:

"(1) The term 'children's product' means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a product is primarily intended for a child 12 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) Whether the product is represented in its packaging, display or advertising as appropriate for use by children 12 years of age or younger.

"(C) Whether the product is commonly recognized by consumers as being intended for use by child 12 years of age or younger.

"(D) The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor thereto.

"(2) The term 'independent third party', means an independent testing entity that is not owned, managed, controlled, or directed by such manufacturer or private labeler, and that is accredited in accordance with an accreditation process established or recognized by the Commission. In the case of certification of art material or art material products required under this section or under regulations issued under the Federal Hazardous Substances Act, such term includes a certifying organization, as such term is defined in appendix A to section 1500.14(b)(8) of title 16, Code of Federal Regulations.".

(c) CERTIFICATION OF PROPRIETARY LABORATORIES.—Section 14 (15 U.S.C. 2063) is further amended by adding at the end the following:

"(e) CERTIFICATION OF PROPRIETARY LABORATORIES FOR MANDATORY TESTING.—

"(1) CERTIFICATION.—Upon request, the Commission, or an independent standard-setting organization to which the Commission has delegated such authority, may certify a laboratory that is owned, managed, controlled, or directed by the manufacturer or private labeler for purposes of testing required under this section if the Commission determines that—

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

"(B) the laboratory has established 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

"(C) the laboratory has established procedures for confidential reporting of allegations of undue influence to the Commission.

"(2) DECERTIFICATION.—The Commission, or an independent standard-setting organization to which the Commission has delegated such authority, may decertify any laboratory certified under paragraph (1) if the Commission finds, after notice and investigation, that a manufacturer or private labeler has exerted undue influence on the laboratory.".

(d) CONFORMING AMENDMENTS.—Section 14(b) (15 U.S.C. 2063(b)) is amended—

(1) by striking "standards under this Act" and inserting "rules under this Act or similar rules under any other Act enforced by the Commission"; and

(2) by striking ", at the option of the person required to certify the product," and inserting "be required by the Commission to".

SEC. 103. TRACKING LABELS FOR CHILDREN'S PRODUCTS.

Section 14(a) (15 U.S.C. 2063(a)) is further amended by adding at the end the following:

"(4) Effective 1 year after the date of enactment of the Consumer Product Safety Modernization Act, the manufacturer of a children's product shall, to the extent feasible, place distinguishing marks on the product and its packaging that will enable the manufacturer and the ultimate purchaser to ascertain the location and date of production of the product, and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks.".

SEC. 104. STANDARDS AND CONSUMER REGISTRATION OF DURABLE NURSERY PRODUCTS.

(a) SHORT TITLE.—This section may be cited as the "Danny Keysar Child Product Safety Notification Act".

(b) SAFETY STANDARDS.—

(1) IN GENERAL.—The Commission shall—

(A) in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler product; and

(B) in accordance with section 553 of title 5, United States Code, promulgate consumer product safety rules that—

(i) are substantially the same as such voluntary standards; or

(ii) are more stringent than such voluntary standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products.

(2) TIMETABLE FOR RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Commission shall commence the rulemaking required under paragraph (1) and shall promulgate rules for no fewer than 2 categories of durable nursery products every 6 months thereafter, beginning with the product categories that the Commission determines to be of highest priority, until the Commission has promulgated standards for all such product categories. Thereafter, the Commission shall periodically review and revise the rules set forth under this subsection to ensure that such rules provide the highest level of safety for such products that is feasible.

(c) CONSUMER REGISTRATION REQUIREMENT.—

(1) RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Commission shall, pursuant to its authority under section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)), promulgate a final consumer product safety rule to require manufacturers of durable infant or toddler products—

(A) to provide consumers with a postage-paid consumer registration form with each such product;

(B) to maintain a record of the names, addresses, email addresses, and other contact information of consumers who register their ownership of such products with the manufacturer in order to improve the effectiveness of manufacturer campaigns to recall such products; and

(C) to permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product.

(2) REQUIREMENTS FOR REGISTRATION FORM.—The registration form required to be provided to consumers under subsection (a) shall—

(A) include spaces for a consumer to provide their name, address, telephone number, and email address;

(B) include space sufficiently large to permit easy, legible recording of all desired information;

(C) be attached to the surface of each durable infant or toddler product so that, as a practical matter, the consumer must notice and handle the form after purchasing the product;

(D) include the manufacturer's name, model name and number for the product, and the date of manufacture;

(E) include a message explaining the purpose of the registration and designed to encourage consumers to complete the registration;

(F) include an option for consumers to register through the Internet; and

(G) include a statement that information provided by the consumer shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

In issuing regulations under this section, the Commission may prescribe the exact text and format of the required registration form.

(3) RECORD KEEPING AND NOTIFICATION REQUIREMENTS.—The standard required under this section shall require each manufacturer of a durable infant or toddler product to maintain a record of registrants for each product manufactured that includes all of the information provided by each consumer registered, and to use such information to notify such consumers in the event of a voluntary or involuntary recall of or safety alert regarding such product. Each manufacturer shall maintain such a record for a period of not less than 6 years after the date of manufacture of the product. Consumer information collected by a manufacturer under this Act may not be used by the manufacturer, nor disseminated by such manufacturer to any other party, for any purpose other than notification to such consumer in the event of a product recall or safety alert.

(4) STUDY.—The Commission shall conduct a study at such time as it considers appropriate on the effectiveness of the consumer registration forms in facilitating product recalls and whether such registration forms should be required for other children's products. Not later than 4 years after the date of enactment of this Act, the Commission shall report its findings to Congress.

(d) DEFINITION OF DURABLE INFANT OR TODDLER PRODUCT.—As used in this section, the term "durable infant or toddler product"—

(1) means a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years; and

(2) shall include—

(A) full-size cribs and nonfull-size cribs;

(B) toddler beds;

(C) high chairs, booster chairs, and hook-on chairs;

(D) bath seats;

(E) gates and other enclosures for confining a child;

(F) play yards;

(G) stationary activity centers;

(H) infant carriers;

(I) strollers;

(J) walkers;

(K) swings; and

(L) bassinets and cradles.

SEC. 105. LABELING REQUIREMENT FOR CERTAIN INTERNET AND CATALOGUE ADVERTISING OF TOYS AND GAMES.

Section 24 of the Federal Hazardous Substances Act (15 U.S.C. 1278) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(2) by inserting after subsection (b) the following:

"(c) INTERNET, CATALOGUE, AND OTHER ADVERTISING.—

"(1) REQUIREMENT.—Effective 180 days after the Consumer Product Safety Modernization Act, any advertisement of a retailer, manufacturer, importer, distributor, private labeler, or licensor that provides a direct means for the purchase or ordering of any toy, game, balloon, small ball, or marble that requires a cautionary statement under subsections (a) and (b), including 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. Such cautionary statement shall be displayed in the language that is primarily used in the advertisement, catalogue, or Internet website, and in a clear and conspicuous manner consistent with part 1500 of title 16, Code of Federal Regulations (or a successor regulation thereto).

"(2) ENFORCEMENT.—The requirement in paragraph (1) shall be treated as a consumer product safety rule promulgated under section 7 of the Consumer Product Safety Act (15 U.S.C. 2056) and the publication or distribution of any advertisement that is not in compliance with the requirements of paragraph (1) shall be treated as a prohibited act under section 19 of such Act (15 U.S.C. 2068).

"(3) RULEMAKING.—Not later than 180 days after the date of enactment of Consumer Product Safety Modernization Act, the Commission shall, by rule, modify the requirement under paragraph (1) with regard to catalogues or other printed materials concerning the size and placement of the cautionary statement required under such paragraph as appropriate relative to the size and placement of the advertisements in such printed materials. The Commission may, under such rule, provide a grace period for catalogues and printed materials printed prior to the effective date in paragraph (1) during which time distribution of such printed materials shall not be considered a violation of such paragraph.".

SEC. 106. STUDY OF PREVENTABLE INJURIES AND DEATHS IN MINORITY CHILDREN RELATED TO CONSUMER PRODUCTS.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Comptroller General shall 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. The Comptroller General shall consult with the Commission as necessary.

(b) REQUIREMENTS.—The study shall examine the racial disparities of the rates of preventable injuries and deaths related to suffocation, poisonings, and drownings associated with the use of cribs, mattresses and bedding materials, swimming pools and spas, and toys and other products intended for use by children.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall report the findings to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The report shall include—

(1) the Comptroller General's findings on the incidence of preventable risks of injuries and deaths among children of minority populations and recommendations for minimizing such risks;

(2) recommendations for public outreach, awareness, and prevention campaigns specifically aimed at racial minority populations; and

(3) recommendations for education initiatives that may reduce statistical disparities.

SEC. 107. REVIEW OF GENERALLY-APPLICABLE STANDARDS FOR TOYS.

(a) ASSESSMENT.—The Commission shall examine and assess the effectiveness of the safety standard for toys, ASTM-International standard F963–07, or its successor standard, to determine—

(1) the scope of such standards, including the number and type of toys to which such standards apply;

(2) the degree of adherence to such standards on the part of manufacturers; and

(3) the adequacy of such standards in protecting children from safety hazards.

(b) SPECIAL FOCUS ON MAGNETS.—In conducting the assessment required under subsection (a), the Commission shall first examine the effectiveness of the F963–07 standard as it relates to intestinal blockage and perforation hazards caused by ingestion of magnets. If the Commission determines based on the review that there is substantial noncompliance with such standard that creates an unreasonable risk of injury or hazard to children, the Commission shall expedite a rulemaking to consider the adoption, as a consumer product safety rule, of the voluntary safety standards contained within the ASTM F963–07, or its successor standard, that relate to intestinal blockage and perforation hazards caused by ingestion of magnets.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall report to Congress the findings of the study conducted pursuant to subsection (a). Such report shall include the Commission's opinion regarding—

(1) the feasibility of requiring manufacturer testing of all toys to such standards; and

(2) whether promulgating consumer product safety rules that are substantially similar or more stringent than the standards described in such subsection would be beneficial to public health and safety.

TITLE II—CONSUMER PRODUCT SAFETY COMMISSION REFORM

SEC. 201. REAUTHORIZATION OF THE COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsections (a) and (b) of section 32 (15 U.S.C. 2081) are amended to read as follows:

"(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) $90,000,000 for fiscal year 2010; and

"(3) $100,000,000 for fiscal year 2011.

"(b) In addition to the amounts specified in subsection (a), there are authorized to be appropriated $20,000,000 to the Commission for fiscal years 2009 through 2011, for the purpose of renovation, repair, reconstruction, re-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).".

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Commission shall transmit to Congress a report of its plans to allocate the funding authorized by subsection (a). Such report shall include—

(1) the number of full-time inspectors and other full-time equivalents the Commission intends to employ;

(2) the plan of the Commission for risk assessment and inspection of imported consumer products;

(3) an assessment of the feasibility of mandating bonds for serious hazards and repeat offenders and Commission inspection and certification of foreign third-party and proprietary testing facilities; and

(4) the efforts of the Commission to reach and educate retailers of second-hand products and informal sellers, such as thrift shops and yard sales, concerning consumer product safety standards and product recalls, especially those relating to durable nursery products, in order to prevent the resale of any products that have been recalled, including the development of educational materials for distribution not later than 1 year after the date of enactment of this Act.

SEC. 202. STRUCTURE AND QUORUM.

(a) EXTENSION OF TEMPORARY QUORUM.—Notwithstanding section 4(d) of the Consumer Product Safety Act (15 U.S.C. 2053(d)), 2 members of the Commission, if they are not affiliated with the same political party, shall constitute a quorum for the transaction of business for the period beginning on the date of enactment of this Act through—

(1) August 3, 2008, if the President nominates a person to fill a vacancy on the Commission prior to such date; or

(2) the earlier of—

(A) 3 months after the date on which the President nominates a person to fill a vacancy on the Commission after such date; or

(B) February 3, 2009.

(b) REPEAL OF LIMITATION.—The first proviso in the account under the heading "CONSUMER PRODUCT SAFETY COMMISSION, SALARIES AND EXPENSES" in title III of Public Law 102–389 (15 U.S.C. 2053 note) shall cease to be in effect after fiscal year 2010.

SEC. 203. SUBMISSION OF COPY OF CERTAIN DOCUMENTS TO CONGRESS.

(a) IN GENERAL.—Notwithstanding any rule, regulation, or order to the contrary, the Commission shall comply with the requirements of section 27(k) of the Consumer Product Safety Act (15 U.S.C. 2076) with respect to budget recommendations, legislative recommendations, testimony, and comments on legislation submitted by the Commission to the President or the Office of Management and Budget after the date of enactment of this Act.

(b) REINSTATEMENT OF REQUIREMENT.—Section 3003(d) of Public Law 104–66 (31 U.S.C. 1113 note) is amended—

(1) by striking "or" after the semicolon in paragraph (31);

(2) by redesignating paragraph (32) as (33); and

(3) by inserting after paragraph (31) the following:

"(32) section 27(k) of the Consumer Product Safety Act (15 U.S.C. 2076(k)); or".

SEC. 204. EXPEDITED RULEMAKING.

(a) RULEMAKING UNDER THE CONSUMER PRODUCT SAFETY ACT.—

(1) ADVANCE NOTICE OF PROPOSED RULEMAKING REQUIREMENT.—Section 9 (15 U.S.C. 2058) is amended—

(A) by striking "shall be commenced" in subsection (a) and inserting "may be commenced";

(B) by striking "in the notice" in subsection (b) and inserting "in a notice";

(C) by striking "unless, not less than 60 days after publication of the notice required in subsection (a), the" in subsection (c) and inserting "unless the";

(D) by inserting "or notice of proposed rulemaking" after "advance notice of proposed rulemaking" in subsection (c); and

(E) by striking "an advance notice of proposed rulemaking under subsection (a) relating to the product involved," in the third sentence of subsection (c) and inserting "the notice".

(2) CONFORMING AMENDMENT.—Section 5(a)(3) (15 U.S.C. 2054(a)(3)) is amended by striking "an advance notice of proposed rulemaking or".

(b) RULEMAKING UNDER FEDERAL HAZARDOUS SUBSTANCES ACT.—

(1) IN GENERAL.—Section 3(a)(1) of the Federal Hazardous Substances Act (15 U.S.C. 1262(a)(1)) is amended to read as follows:

"(1) 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 the Commission finds meets the requirements section 2(f)(1)(A).".

(2) PROCEDURE.—

(A) Section 2(q)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)(2)) is amended by striking "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" and inserting "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".

(B) Section 3(a)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1262(a)(2)) is amended to read as follows:

"(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 be governed by the provisions of subsections (f) through (i) of this section.".

(3) ADVANCE NOTICE OF PROPOSED RULEMAKING REQUIREMENT.—Section 3 of the Federal Hazardous Substances Act (15 U.S.C. 1262) is amended—

(A) by striking "shall be commenced" in subsection (f) and inserting "may be commenced";

(B) by striking "in the notice" in subsection (g)(1) and inserting "in a notice"; and

(C) by striking "unless, not less than 60 days after publication of the notice required in subsection (f), the" in subsection (h) and inserting "unless the".

(4) CONFORMING AMENDMENTS.—The Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) is amended—

(A) by striking subsection (d) of section 2 and inserting the following:

"(d) The term 'Commission' means the Consumer Product Safety Commission.";

(B) by striking "Secretary" each place it appears and inserting "Commission" except—

(i) in section 10(b) (15 U.S.C. 1269(b));

(ii) in section 14 (15 U.S.C. 1273); and

(iii) in section 21(a) (15 U.S.C. 1276(a));

(C) by striking "Department" each place it appears, except in section 14(b), and inserting "Commission";

(D) by striking "he" and "his" each place they appear in reference to the Secretary and inserting "it" and "its", respectively;

(E) by striking "Secretary of Health, Education, and Welfare" each place it appears in section 10(b) (15 U.S.C. 1269(b)) and inserting "Commission";

(F) by striking "Secretary of Health, Education, and Welfare" each place it appears in section 14 (15 U.S.C. 1273) and inserting "Commission";

(G) by striking "Department of Health, Education, and Welfare" in section 14(b) (15 U.S.C. 1273(b)) and inserting "Commission";

(H) by striking "Consumer Product Safety Commission" each place it appears and inserting "Commission"; and

(I) by striking "(hereinafter in this section referred to as the 'Commission')" in section 20(a)(1) (15 U.S.C. 1275(a)(1)).

(c) RULEMAKING UNDER THE FLAMMABLE FABRICS ACT.—

(1) IN GENERAL.—Section 4 of the Flammable Fabrics Act (15 U.S.C. 1193) is amended—

(A) by striking "shall be commenced" and inserting "may be commenced by a notice of proposed rulemaking or";

(B) in subsection (i), by striking "unless, not less than 60 days after publication of the notice required in subsection (g), the" and inserting "unless the".

(2) OTHER CONFORMING AMENDMENTS.—The Flammable Fabrics Act (15 U.S.C. 1193 et seq.) is further amended—

(A) by striking subsection (i) of section 2 and inserting the following:

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

(B) by striking "Secretary of Commerce" each place it appears and inserting "the Commission";

(C) by striking "Secretary" each place it appears, except in sections 9 and 14, and inserting "Commission";

(D) by striking "he" and "his" each place either term appears in reference to the secretary and insert "it" and "its", respectively;

(E) in section 4(e), by striking paragraph (5) and redesignating paragraph (6) as paragraph (5);

(F) in section 15, by striking "Consumer Product Safety Commission (hereinafter referred to as the 'Commission')" and inserting "Commission";

(G) by striking section 16(d) and inserting the following:

"(d) In this section, a reference to a flammability standard or other regulation for a fabric, related materials, 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

(H) in section 17, by striking "Consumer Product Safety Commission" and inserting "Commission".

SEC. 205. PUBLIC DISCLOSURE OF INFORMATION.

Section 6(b) (15 U.S.C. 2055(b)) is amended—

(1) in paragraph (1)—

(A) by striking "30 days" and inserting "15 days";

(B) by striking "finds that the public" and inserting "publishes a finding that the public"; and

(C) by striking "and publishes such a finding in the Federal Register";

(2) in paragraph (2)—

(A) by striking "10 days" and inserting "5 days";

(B) by striking "finds that the public" and inserting "publishes a finding that the public"; and

(C) by striking "and publishes such a finding in the Federal Register";

(3) in paragraph (4), by striking "section 19 (related to prohibited acts)" and inserting "any consumer product safety rule under or provision of this Act or similar rule under or provision of any other Act administered by the Commission"; and

(4) in paragraph (5)—

(A) in subparagraph (B), by striking "; or" and inserting a semicolon;

(B) in subparagraph (C), by striking the period and inserting "; or";

(C) by adding at the end the following:

"(D) the Commission publishes a finding that the public health and safety require public disclosure with a lesser period of notice than is required under paragraph (1).."; and

(D) in the matter following such subparagraph (as added by subparagraph (C)), by striking "section 19(a)" and inserting "any consumer product safety rule under this Act or similar rule under or provision of any other Act administered by the Commission".

SEC. 206. PUBLICLY AVAILABLE INFORMATION ON INCIDENTS INVOLVING INJURY OR DEATH.

(a) EVALUATION.—The Commission shall examine and assess the efficacy of the Injury Information Clearinghouse maintained by the Commission pursuant to section 5(a) of the Consumer Product Safety Act (15 U.S.C. 2054(a)). The Commission shall determine the volume and types of publicly available information on incidents involving consumer products that result in injury, illness, or death and the ease and manner in which consumers can access such information.

(b) IMPROVEMENT PLAN.—As a result of the study conducted under subsection (a), the Commission shall transmit to Congress, not later than 180 days after the date of enactment of this Act, a detailed plan for maintaining and categorizing such information on a searchable Internet database to make the information more easily available and beneficial to consumers, with due regard for the protection of personal information. Such plan shall include the views of the Commission regarding whether additional information, such as consumer complaints, hospital or other medical reports, and warranty claims, should be included in the database. The plan submitted under this subsection shall include a detailed implementation schedule for the database, recommendations for any necessary legislation, and plans for a public awareness campaign to be conducted by the Commission to increase consumer awareness of the database.

SEC. 207. PROHIBITION ON STOCKPILING UNDER OTHER COMMISSION-ENFORCED STATUTES.

Section 9(g)(2) (15 U.S.C. 2058(g)(2)) is amended—

(1) by inserting "or to which a rule under any other law enforced by the Commission applies," after "applies,"; and

(2) by striking "consumer product safety" the second, third, and fourth places it appears.

SEC. 208. NOTIFICATION OF NONCOMPLIANCE WITH ANY COMMISSION-ENFORCED STATUTE.

Section 15(b) (15 U.S.C. 2064(b)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(2) by inserting after paragraph (1) the following:

"(2) fails to comply with any other rule affecting health and safety promulgated by the Commission under the Federal Hazardous Substances Act, the Flammable Fabrics Act, or the Poison Prevention Packaging Act;"; and

(3) by adding at the end the following sentence: "A report provided under this paragraph (2) may not be used as the basis for criminal prosecution under section 5 of the Federal Hazardous Substances Act (15 U.S.C. 1264), except for offenses which require a showing of intent to defraud or mislead.".

SEC. 209. ENHANCED RECALL AUTHORITY AND CORRECTIVE ACTION PLANS.

(a) ENHANCED RECALL AUTHORITY.—Section 15 (15 U.S.C. 2064) is amended—

(1) in subjection (c)—

(A) by striking "if the Commission" and inserting "(1) If the Commission";

(B) by inserting "or if the Commission, after notifying the manufacturer, determines a product to be an imminently hazardous consumer product and has filed an action under section 12," after "from such substantial product hazard,";

(C) by redesignating paragraphs (1) through (3) as subparagraphs (D) through (F), respectively;

(D) by inserting after "the following actions:" the following:

"(A) To cease distribution of the product.

"(B) To notify all persons that transport, store, distribute, or otherwise handle the product, or to which the product has been transported, sold, distributed, or otherwise handled, to cease immediately distribution of the product.

"(C) To notify appropriate State and local public health officials."; and

(E) by adding at the end the following:

"(2) If a district court determines, in an action filed under section 12, that the product that is the subject of such action is not an imminently hazardous consumer product, the Commission shall rescind any order issued under this subsection with respect to such product.".

(2) in subsection (f)—

(A) by striking "An order" and inserting "(1) Except as provided in paragraph (2), an order"; and

(B) by inserting at the end the following:

"(2) The requirement for a hearing in paragraph (1) shall not apply to an order issued under subsection (c) relating to an imminently hazardous consumer product with regard to which the Commission has filed an action under section 12.".

(b) CORRECTIVE ACTION PLANS.—Section 15(d) (15 U.S.C. 2064(d)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C);

(3) by striking "more (A)" in subparagraph (C), as redesignated, and inserting "more (i)";

(4) by striking "or (B)" in subparagraph (C), as redesignated, and inserting "or (ii)";

(5) by striking "An order under this subsection may" and inserting:

"(2) An order under this subsection shall";

(6) by striking ", satisfactory to the Commission," and inserting ", as promptly as practicable under the circumstances, as determined by the Commission, for approval by the Commission,"; and

(7) by adding at the end the following:

"(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 appropriate under the circumstances, 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. In determining whether an approved plan is effective or appropriate under the circumstances, the Commission shall consider whether a repair or replacement changes the intended functionality of the product.

"(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.".

(c) CONTENT OF NOTICE.—Section 15 is further amended by adding at the end the following:

"(i) Not later than 180 days after the date of enactment of this Act, the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required under an order under subsection (c) or (d) of this section or under section 12. Such guidelines shall include any information that the Commission determines would be helpful to consumers in—

"(1) identifying the specific product that is subject to such an order;

"(2) understanding the hazard that has been identified with such product (including information regarding incidents or injuries known to have occurred involving such product); and

"(3) understanding what remedy, if any, is available to a consumer who has purchased the product.".

SEC. 210. WEBSITE NOTICE, NOTICE TO THIRD PARTY INTERNET SELLERS, AND RADIO AND TELEVISION NOTICE.

Section 15(c)(1) (15 U.S.C. 2064(c)(1)) is amended by inserting ", including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which such manufacturer, retailer, or distributor has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice" after "comply".

SEC. 211. INSPECTION OF CERTIFIED PROPRIETARY LABORATORIES.

Section 16(a)(1) is amended by striking "or (B)" and inserting "(B) any proprietary laboratories certified under section 14(e), or (C)".

SEC. 212. IDENTIFICATION OF MANUFACTURER, IMPORTERS, RETAILERS, AND DISTRIBUTORS.

(a) IN GENERAL.—Section 16 (15 U.S.C. 2065) is further amended by adding at the end thereof the following:

"(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, to the extent that such information is in the possession of the importer, retailer, or distributor; 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 the manufacturer directly 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 the manufacturer obtained a component thereof.".

(b) COMPLIANCE REQUIRED FOR IMPORTATION.—Section 17 (15 U.S.C. 2066) is amended—

(1) in subsection (g), by striking "may" and inserting "shall"; and

(2) in subsection (h)(2), by striking "may" and inserting "shall, consistent with section 6,".

SEC. 213. EXPORT OF RECALLED AND NON-CONFORMING PRODUCTS.

(a) IN GENERAL.—Section 18 (15 U.S.C. 2067) is amended by adding at the end the following:

"(c) Notwithstanding any other provision of this section, the Commission may prohibit, by order, a person from exporting from the United States for purpose of sale any consumer product, or other product or substance that is regulated under any 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 rule under this Act or a similar rule under any such other Act;

"(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 a 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 a mandatory corrective action under this or another Act enforced by the Commission if voluntary action had not been taken by the manufacturer,

unless the importing country has notified the Commission that such country accepts the importation of such product, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as is appropriate with respect to the disposition of the product under the circumstances.".

(b) PROHIBITED ACT.—Section 19(a)(10) (15 U.S.C. 2068(a)(10)) is amended by striking the period at the end and inserting " or violate an order of the Commission issued under section 18(c); or".

(c) CONFORMING AMENDMENTS TO OTHER ACTS.—

(1) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 5(b)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(b)(3)) is amended by striking "substance presents an unreasonable risk of injury to persons residing in the United States" and inserting "substance is prohibited under section 18(c) of the Consumer Product Safety Act,".

(2) FLAMMABLE FABRICS ACT.—Section 15 of the Flammable Fabrics Act (15 U.S.C. 1202) is amended by adding at the end the following:

"(d) Notwithstanding any other provision of this section, the Consumer Product Safety Commission may prohibit, by order, 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 rule 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 a 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 a mandatory corrective action under this or another Act enforced by the Commission if voluntary action had not been taken by the manufacturer,

unless the importing country has notified the Commission that such country accepts the importation of such product, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as is appropriate with respect to the disposition of the product under the circumstances.".

SEC. 214. PROHIBITION ON SALE OF RECALLED PRODUCTS.

Section 19(a) (as amended by section 210) (15 U.S.C. 2068(a)) is further amended—

(1) by striking paragraph (1) and inserting the following:

"(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 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;

"(C) subject to an order issued under section 12 or 15 of this Act; or

"(D) designated a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.);";

(2) by striking "or" after the semicolon in paragraph (7);

(3) by striking "and" after the semicolon in paragraph (8); and

(4) by striking "insulation)." in paragraph (9) and inserting "insulation);".

SEC. 215. INCREASED CIVIL PENALTY.

(a) MAXIMUM CIVIL PENALTIES OF THE CONSUMER PRODUCT SAFETY COMMISSION.—

(1) INITIAL INCREASE IN MAXIMUM CIVIL PENALTIES.—

(A) TEMPORARY INCREASE.—Notwithstanding the dollar amounts specified for maximum civil penalties specified in section 20(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2069(a)(1)), section 5(c)(1) of the Federal Hazardous Substances Act, and section 5(e)(1) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(1)), the maximum civil penalties for any violation specified in such sections shall be $5,000,000, beginning on the date that is the earlier of the date on which final regulations are issued under section 3(b) or 360 days after the date of enactment of this Act.

(B) EFFECTIVE DATE.—Paragraph (1) shall cease to be in effect on the date on which the amendments made by subsection (b)(1) shall take effect.

(2) PERMANENT INCREASE IN MAXIMUM CIVIL PENALTIES.—

(A) AMENDMENTS.—

(i) CONSUMER PRODUCT SAFETY ACT.—Section 20(a)(1) (15 U.S.C. 2069(a)(1)) is amended by striking "$1,250,000" both places it appears and inserting "$10,000,000".

(ii) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 5(c)(1) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(1)) is amended by striking "$1,250,000" both places it appears and inserting "$10,000,000".

(iii) FLAMMABLE FABRICS ACT.—Section 5(e)(1) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(1)) is amended by striking "$1,250,000" and inserting "$10,000,000".

(B) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date that is 1 year after the earlier of—

(i) the date on which final regulations are issued pursuant to section 3(b); or

(ii) 360 days after the date of enactment of this Act.

(b) DETERMINATION OF PENALTIES BY THE CONSUMER PRODUCT SAFETY COMMISSION.—

(1) FACTORS TO BE CONSIDERED.—

(A) CONSUMER PRODUCT SAFETY ACT.—Section 20(b) (15 U.S.C. 2069(b)) is amended—

(i) by inserting "the nature, circumstances, extent, and gravity of the violation, including" after "shall consider";

(ii) by striking "products distributed, and" and inserting "products distributed,"; and

(iii) by inserting ", and such other factors as appropriate" before the period.

(B) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 5(c)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(3)) is amended—

(i) by inserting "the nature, circumstances, extent ,and gravity of the violation, including" after "shall consider";

(ii) by striking "substance distributed, and" and inserting "substance distributed,"; and

(iii) by inserting ", and such other factors as appropriate" before the period.

(C) FLAMMABLE FABRICS ACT.—Section 5(e)(2) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(2)) is amended—

(i) by striking "nature and number" and inserting "nature, circumstances, extent, and gravity";

(ii) by striking "absence of injury, and" and inserting "absence of injury,"; and

(iii) by inserting ", and such other factors as appropriate" before the period.

(2) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, and in accordance with the procedures of section 553 of title 5, United States Code, the Commission shall issue a final regulation providing its interpretation of the penalty factors described in section 20(b) of the Consumer Product Safety Act (15 U.S.C. 2069(b)), section 5(c)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(3)), and section 5(e)(2) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(2)), as amended by subsection (a).

SEC. 216. CRIMINAL PENALTIES TO INCLUDE ASSET FORFEITURE.

Section 21 (15 U.S.C. 2070) is amended by adding at the end thereof the following:

"(c)(1) In addition to the penalty 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 under this section, section 5(a) of the Federal hazardous Substances Act (15 U.S.C. 2064(a)), or section 7 of the Flammable Fabrics Act (15 U.S.C. 1196).".

SEC. 217. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

Section 24 (15 U.S.C. 2073) is amended—

(1) in the section heading, by striking "PRIVATE" and inserting "ADDITIONAL";

(2) by striking "Any interested person" and inserting "(a) Any interested person"; and

(3) by striking "No separate suit" and all that follows and inserting the following:

"(b)(1) The attorney general of a State, alleging a violation of section 19(a) that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 15, and to obtain appropriate injunctive relief.

"(2) Not less than thirty days prior to the commencement of such action, the attorney general shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. The Commission shall have the right—

"(A) to intervene in the action;

"(B) upon so intervening, to be heard on all matters arising therein;

"(C) and to file petitions for appeal.

"(c) No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this Act. In any action under this section the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees (determined in accordance with section 11(f)) and reasonable expert witnesses' fees.".

SEC. 218. EFFECT OF RULES ON PREEMPTION.

In issuing any rule or regulation in accordance with its statutory authority, the Commission shall not seek to expand or contract the scope, or limit, modify, interpret, or extend the application of sections 25 and 26 of the Consumer Products Safety Act (15 U.S.C. 2074 and 2075, respectively), section 18 of the Federal Hazardous Substances Act (15 U.S.C. 1261), section 7 of the Poison Prevention Packaging Act (15 U.S.C. 1476), or section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) with regard to the extent to which each such Act preempts, limits, or otherwise affects any other Federal, State, or local law, or limits or otherwise affects any cause of action under State or local law.

SEC. 219. SHARING OF INFORMATION WITH FEDERAL, STATE, LOCAL, AND FOREIGN GOVERNMENT AGENCIES.

Section 29 (15 U.S.C. 2078) is amended by adding at the end the following:

"(f)(1) The Commission may make information obtained by the Commission under this Act available (consistent with the requirements of section 6) 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) in the case of a foreign government agency, such 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 rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

"(2) The Commission may abrogate any agreement or memorandum of understanding entered into under paragraph (1) if the Commission determines that the agency with which such agreement or memorandum of understanding was entered into has failed to maintain in confidence any information provided under such agreement or memorandum of understanding, or has used any such information for purposes other than those set forth in such agreement or memorandum of understanding.

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

"(i) 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;

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

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

"(B) 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) 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).

"(g) Whenever the Commission is notified of any voluntary recall of any consumer product self-initiated by a manufacturer (or a retailer in the case of a retailer selling a product under its own label), or issues an order under section 15(c) or (d) with respect to any product, the Commission shall notify each State's health department or other agency designated by the State of the recall or order.".

SEC. 220. INSPECTOR GENERAL AUTHORITY AND ACCESSIBILITY.

(a) REPORT.—Not later than 60 days after the date of the enactment of this Act, the Inspector General of the Commission shall transmit a report to Congress on the activities of the Inspector General, any structural barriers which prevent the Inspector General from providing robust oversight of the activities of the Commission, and any additional authority or resources that would facilitate more effective oversight.

(b) EMPLOYEE COMPLAINTS.—

(1) IN GENERAL.—The Inspector General of the Commission shall conduct a review of—

(A) complaints received by the Inspector General from employees of the Commission about violations of rules, regulations, or the provisions of any Act enforced by the Commission; and

(B) the process by which corrective action plans are negotiated with such employees by the Commission, including an assessment of the length of time for these negotiations and the effectiveness of the plans.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Inspector General shall transmit a report to the Commission and to Congress setting forth the Inspector General's findings, conclusions, actions taken in response to employee complaints, and recommendations.

(c) COMPLAINT PROCEDURE.—Not later than 30 days after the date of enactment of this Act the Commission shall establish and maintain on the homepage of the Commission's Internet website a mechanism by which individuals may anonymously report incidents of waste, fraud, or abuse with respect to the Commission.

SEC. 221. REPEAL.

Section 30 (15 U.S.C. 2079) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 222. INDUSTRY-SPONSORED TRAVEL BAN.

The Consumer Product Safety Act (15 U.S.C. 1251 et seq.) is amended by adding at the end the following new section:

"SEC. 38. PROHIBITION ON INDUSTRY-SPONSORED TRAVEL.

"(a) PROHIBITION.—Notwithstanding section 1353 of title 31, United States Code, no Commissioner or employee of the Commission shall accept travel, subsistence, and related expenses with respect to attendance by a Commissioner or employee at any meeting or similar function relating to official duties of a Commissioner or an employee, from a person—

"(1) seeking official action from, doing business with, or conducting activities regulated by, the Commission; or

"(2) whose interests may be substantially affected by the performance or nonperformance of the Commissioner's or employee's official duties.

"(b) AUTHORIZATION OF APPROPRIATIONS FOR OFFICIAL TRAVEL.—There are authorized to be appropriated, for each of fiscal years 2009 through 2011, $1,200,000 to the Commission for certain travel and lodging expenses necessary in furtherance of the official duties of Commissioners and employees.".

SEC. 223. ANNUAL REPORTING REQUIREMENT.

Section 27(j) (15 U.S.C. 2076(j)) is amended—

(1) in the matter preceding paragraph (1), by striking "The Commission" and inserting "Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note), the Commission"; and

(2) by redesignating paragraphs (5) through (11) as paragraphs (6) through (12), respectively and inserting after paragraph (4) the following:

"(5) the number and summary of recall orders issued under section 12 or 15 during such year and a summary of voluntary actions taken by manufacturers of which the Commission has notified the public, and an assessment of such orders and actions;".

SEC. 224. STUDY ON THE EFFECTIVENESS OF AUTHORITY RELATING TO IMPORTED PRODUCTS.

The Commission shall study the effectiveness of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)), specifically paragraphs (3) and (4) of such section, to determine a specific strategy to increase the effectiveness of the Commission's ability to stop unsafe products from entering the United States. The Commission shall submit a report to Congress not later than 9 months after enactment of this Act, which shall include recommendations regarding additional authority the Commission needs to implement such strategy, including any necessary legislation.

PURPOSE AND SUMMARY

H.R. 4040, the Consumer Product Safety Modernization Act, is comprehensive bipartisan legislation to strengthen and modernize the consumer product safety system in the United States. The legislation places special emphasis on improving the safety of products designed or intended for children.

Title I, "Children's Product Safety," contains provisions to ensure the greater safety of toys, nursery equipment, and other children's products that are sold in or imported into interstate commerce. It includes provisions that establish or toughen Federal standards to ban lead in children's products beyond minute amounts; require pretesting and certification of certain children's products, including nursery equipment; mandate identifying and cautionary labeling;

require a study by the Comptroller General of whether there is a disproportionate rate of death or injury from consumer products for minority children; and require an assessment of voluntary standards governing the safety of toys, with special attention to products or toys containing powerful magnets.

Title II, "Consumer Product Safety Commission Reform," reauthorizes the Consumer Product Safety Commission (CPSC), the Government agency charged with overseeing and regulating the safety of the Nation's consumer products. Most importantly, this title authorizes significantly increased resources for fiscal years 2009 to 2011, providing for approximately 10 percent real growth on top of increases intended to meet inflation and other increased costs. It also restores the agency to its full panel of five Commissioners at the end of fiscal year 2010. Other provisions enable the agency to inform the public immediately about unsafe products when health and safety so require, to provide better information to consumers about recalled products and the available remedies, and to exert more control to stop the importation of unsafe consumer products. The bill also mandates that the agency work with Congress to develop a comprehensive user-friendly database containing information on product-related deaths and serious injuries. In total, H.R. 4040 will provide new resources and tools to the CPSC to empower it to protect consumers more effectively in an increasingly more complex and global marketplace.

BACKGROUND AND NEED FOR LEGISLATION

At the beginning of the 110th Congress in January 2007, the Chairman of the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce announced that the Subcommittee would concentrate its attention on the consumer product safety system in the United States and the record of the CPSC to perform its mission to "protect the public against unreasonable risks associated with consumer products." A relatively new independent Federal agency, the CPSC was established by legislation in 1972 and began operations a year later. The agency's responsibilities cover all consumer products in interstate commerce in the United States, excluding food, drugs, cosmetics, tobacco, firearms, alcohol, automobiles and other on-road vehicles, boats, tires, pesticides, and medical devices. The CPSC and commentators have for years referred to the agency's responsibility as covering more than "15,000 different product categories," but given technological advances, the growth in demand for consumer products, and the increasing diversification and globalization of the market, that number probably is now significantly understated.

The record from the first consumer product safety hearing held by the Subcommittee on May 6, 2007, amply demonstrates that the CPSC for many years has lacked the necessary resources or authority to protect Americans adequately—much less robustly—from unsafe consumer products. Starting in the 1980s, the agency's resources have been steadily eroded. Staffing levels at the agency dropped from a high number of almost 1,000 employees in the early 1980s to fewer than 400 employees today. In addition, starting in 1986 and continuing to the present, an appropriations rider has limited CPSC funding to only three Commissioners, instead of the five Commissioners provided for under section 4(a) of the Con-

sumer Product Safety Act, thereby depriving the agency of diversity in its leadership and decision making and diminishing its stature relative to other independent agencies. Even worse, the limit to three Commissioners has caused the CPSC to lack the necessary quorum to issue decisions or promulgate rules when any one Commission seat is vacant and is not filled within six months through the normal Presidential nomination and Senate confirmation process. The CPSC has not been reauthorized since 1990, nor has Congress undertaken any other systematic review of its performance and operating statutes in that time period.

The Committee's attention to the safety of children's products accelerated after the numerous product recalls that occurred this past summer. From June to September of 2007, the CPSC recalled more than four million children's toys and items of jewelry due to excessive lead. Lead is a known neurotoxin that can enter a child's system in a number of ways—children touch and handle toys with lead paint and then put their hands in their mouths, or they mouth or chew on toys and small objects, and even swallow them. Public health and other officials for years have warned about the devastating effect of lead on children's brains. Because of the cumulative effect of lead on the developing nervous system, exposure over time can lead to attention problems, learning disabilities, mental retardation, antisocial and delinquent behavior, and lower intellectual ability, measured as loss in IQ points.

Two of the toy recalls that gained the most media attention were for Thomas the Tank Engine, a wooden train set modeled after the character in a popular children's TV show, and for several toys made by Mattel, Inc., the nation's largest toy manufacturer, including a "Sarge" car, Barbie doll accessories, and Dora the Explorer characters. The lead-paint-toy recalls in turn focused attention on more than 50 recalls over the past several years involving more than 170 million items of children's jewelry manufactured with excessive, even dangerous, levels of lead. In the worst case, a four-year-old child from Minnesota swallowed a charm given away as a premium with adult athletic shoes and died three days later from acute lead poisoning. The charm removed from his digestive system was found to contain 99 percent lead.

The overwhelming majority of children's products, both toys and jewelry, recalled for excessive lead in the past few years were imported from China. In 2006, 86 percent of all toys sold in the United States were made in China. Excessive lead in these products has raised questions about quality control practices and the integrity of the manufacturing process for consumer goods outsourced by U.S. companies. Questions also have been raised about how to comply with and enforce U.S. standards when goods are manufactured in a developing nation that does not have the same culture of compliance found in the United States. To get answers to these questions, Subcommittee Chairman Rush and Ranking Member Cliff Stearns wrote letters in August 2007 to 19 manufacturers or importers of recalled lead-tainted toys and jewelry. In September, they pursued their questions further in follow-up letters to four of these companies that had provided less than complete answers.

The failure of manufacturers to comply with safety standards on lead is an especially difficult problem for parents, because there is

no way to look at a toy and know that either the paint or the underlying metal content is limited to safe or lawful amounts of lead. Nor are signs of neurological damage to children from cumulative exposure to lead evident without medical testing.

Moreover, efforts by the CPSC to protect consumers against excessive levels of lead in the content of children's products are complicated by the fact that there is no current Federal standard quantifying the permissible amount of lead content in a product. To protect children from lead in jewelry and other products, the CPSC must proceed under section 2(q)(1) of the Federal Hazardous Substance Act, 15 U.S.C. 1261(q)(1), to determine that a product is a "banned hazardous substance" if the lead is "susceptible of access by a child to whom it is entrusted." Although CPSC staff in January 2005 published guidelines, "Interim Enforcement Policy for Children's Metal Jewelry Containing Lead," stating that it will seek corrective action for any children's jewelry that tests above 600 parts per million (ppm), or .06 percent of total weight, these guidelines do not have the force of law. In contrast, there is a clear Federal standard limiting the amount of lead in paint to 600 ppm. 16 C.F.R. § 1303.

Lead was not the only problem with toys during last summer's recalls. Roughly half the toys recalled were for design defects: problems originating with the U.S. manufacturer or importer and not the foreign (overwhelmingly Chinese) companies that assembled or actually "manufactured" the toy. Design defects in children's toys or other products leading to recalls were for loose and powerful magnets, or for burn, laceration, choking, or strangulation hazards.

To deal with the problem of unsafe toys and other products imported from China, the CPSC has been in direct contact with the Government of China over the past three years. In September 2007, the CPSC signed a Joint Statement with the Chinese Administration of Quality, Supervision, Inspection, and Quarantine (ASQIQ) to improve the quality and safety of four categories of consumer products, including toys. In particular, the Joint Statement provides that ASQIQ proposes "a comprehensive plan to eliminate the use of lead paint on Chinese manufactured toys exported to the United States."

Beyond these cooperative actions, the CPSC needs to take considerably more aggressive action if it is to protect American consumers and children from unsafe toys and other products in the marketplace, whether manufactured at home or abroad. Stakeholders agreed that the single most important thing Congress can do to improve consumer product safety is to provide the CPSC with the significantly greater level of resources that it needs to perform its mission. The CPSC must grow at a quick but workable pace that will allow it to hire and train staff with the necessary expertise to regulate product safety and enforce the law in a global marketplace with such an expansive array of products. In addition, the limitation to three Commissioners puts the agency in constant jeopardy of losing its quorum when just one Commissioner resigns and is not replaced within six months. Without a quorum, the CPSC cannot promulgate rules or bring mandatory recall actions.

Testimony also indicated that the CPSC needs enhanced authority and more streamlined processes. The agency needs to have clearer authority to warn the public about unsafe products quickly,

and when public safety from dangerous products hangs in the balance. The CPSC needs more power to negotiate and order appropriate remedies after unsafe or defective products have been recalled and then to notify the public effectively about the scope of a recall and the available remedies. The CPSC also needs better enforcement tools, including the power to impose higher penalties, so that the penalty for manufacturing or selling an unsafe product will act as a real deterrent to wrongdoing and not be simply dismissed as a cost of doing business. The agency must be able to promulgate regulations more quickly, and it must not be required to engage in three-part rulemaking in all instances, even when the proposed rule is merely technical in nature. Finally, consistent with obligations under various international trade agreements, the CPSC must have more authority to deal with unsafe consumer products manufactured and imported from abroad.

To address these important concerns, the Committee has crafted this comprehensive and carefully balanced legislation, and made reporting it unanimously to the House a high priority.

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on Tuesday, May 15, 2007, entitled "Protecting Our Children: Current Issues in Consumer Product Safety." The hearing examined the performance of the CPSC in safeguarding consumers, particularly children, from hazardous products. Testimony was received from the Honorable Nancy A. Nord, Acting CPSC Chairman; Mr. Alan Korn, Public Policy Director and General Counsel, Safe Kids Worldwide; Ms. Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America; Mr. Frederick Locker, General Counsel, Toy Industry Association; Ms. Marla Felcher, Adjunct Lecturer, Kennedy School of Government, Harvard University; Mr. James A. Thomas, President, ASTM International; and Ms. Nancy A. Cowles, Executive Director, Kids in Danger.

The Subcommittee also held a legislative hearing on Wednesday, June 6, 2007, entitled "Legislation to Improve Consumer Product Safety for Children: H.R. 2474, H.R. 1699, H.R. 814, and H.R. 1721." Testimony was received from Mr. Edmund Mierzwinski, Consumer Program Director, United States Public Interest Research Group, and Ms. Sally Greenberg, Senior Product Safety Counsel, Consumers Union.

On Wednesday September 19, 2007, and Thursday September 20, 2007 the Subcommittee held a hearing entitled "Protecting Children from Lead-Tainted Imports." Testimony was received on September 19th from the Honorable Nancy A. Nord, Acting CPSC Chairman; the Honorable Thomas H. Moore, CPSC Commissioner; and Robert A. Eckert, Chairman and CEO, Mattel Inc. Testimony was received on September 20th from Dr. Dana Best, M.D., M.P.H., F.A.A.P., American Academy of Pediatrics; Ms. Olivia D. Farrow, Esq., R.S., Assistant Commissioner, Division of Environmental Health, Baltimore City Health Department; Mr. Michael Green, Executive Director, Center for Environmental Health; Ms. Lori Wallach, Director, Global Trade Watch; Ms. Mary Teagarden, Professor of Global Strategy, Thunderbird School of Global Management; Mr. Carter Keithley, President, Toy Industry Association,

Inc.; Mr. Allen Thompson, Vice President, Global Supply Chain Policy, Retail Industry Leaders Association; Mr. Michael Gale, Fashion Jewelry Trade Association; Mr. Gary E. Knell, CEO and President, Sesame Workshop; and Ms. Kathie Morgan, Vice President, Technical, Committee Operations, ATSM International.

The Subcommittee held a legislative hearing on Tuesday, November 6, 2007 entitled "Comprehensive Children's Product Safety and Consumer Product Safety Commission Reform Legislation." Testimony was received from the Honorable Nancy A. Nord, Acting CPSC Chairman; the Honorable Thomas H. Moore, CPSC Commissioner; Ms. Kathrin Belliveau, Director of Public Safety and Regulatory Affairs, Hasbro, Inc.; Dr. Dana Best, M.D., M.P.H., F.A.A.P., American Academy of Pediatrics; Mr. Lane Hallenbeck, Vice President, Accreditation Services, American National Standards Institute (ANSI); Mr. Alan Korn, Public Policy Director and General Counsel, Safe Kids Worldwide; Mr. Joseph McGuire, President, Association of Home Appliance Manufacturers; and Ms. Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America.

COMMITTEE CONSIDERATION

On Thursday, November 15, 2007, the Subcommittee on Commerce, Trade and Consumer Protection met in open markup session and favorably forwarded H.R. 4040, amended, to the full Committee for consideration, by a voice vote. On Thursday, December 13, 2007, the full Committee met in open markup session and considered H.R. 4040. The Committee reconvened on Tuesday, December 18, 2007, to continue consideration of H.R. 4040. The Committee ordered H.R. 4040 favorably reported to the House, amended, by a recorded vote of 51–0.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Dingell to order H.R. 4040 favorably reported to the House, amended, was agreed to by a recorded vote of 51 yeas and 0 nays. The following are the recorded votes taken on the motion and amendments thereto, including the names of those Members voting for and against.

COMMITTEE ON ENERGY AND COMMERCE -- 110TH CONGRESS
ROLL CALL VOTE # 31

BILL: H.R. 4040, the "Consumer Product Safety Modernization Act".

MOTION: An amendment to the Dingell amendment in the nature of a substitute offered by Ms. Eshoo, #1A, to make the amounts of lead for children's products reduce to 40ppm effective 4 years after the date of enactment, unless the Consumer Product Safety Commission (CPSC) determines 40ppm is not technologically feasible, in which case the Commission will establish the lowest amount determined to be feasible.

DISPOSITION: NOT AGREED TO, by a roll call vote of 18 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Dingell		X		Mr. Barton		X	
Mr. Waxman				Mr. Hall			
Mr. Markey	X			Mr. Upton		X	
Mr. Boucher				Mr. Stearns		X	
Mr. Towns		X		Mr. Deal			
Mr. Pallone	X			Mr. Whitfield		X	
Mr. Gordon		X		Mrs. Cubin			
Mr. Rush		X		Mr. Shimkus		X	
Ms. Eshoo	X			Mrs. Wilson			
Mr. Stupak	X			Mr. Shadegg			
Mr. Engel		X		Mr. Pickering		X	
Mr. Wynn	X			Mr. Fossella		X	
Mr. Green		X		Mr. Buyer		X	
Ms. DeGette	X			Mr. Radanovich		X	
Ms. Capps	X			Mr. Pitts		X	
Mr. Doyle		X		Ms. Bono			
Ms. Harman				Mr. Walden		X	
Mr. Allen	X			Mr. Terry		X	
Ms. Schakowsky	X			Mr. Ferguson			
Ms. Solis	X			Mr. Rogers	X		
Mr. Gonzalez	X			Mrs. Myrick			
Mr. Inslee	X			Mr. Sullivan		X	
Ms. Baldwin	X			Mr. Murphy		X	
Mr. Ross		X		Mr. Burgess		X	
Ms. Hooley				Ms. Blackburn		X	
Mr. Weiner	X			*Vacancy*[1]			
Mr. Matheson	X						
Mr. Butterfield	X						
Mr. Melancon		X					
Mr. Barrow	X						
Mr. Hill		X					

12/13/2007

[1]Vacancy due to resignation of the Hon. J. Dennis Hastert (R-IL) from Congress effective November 27, 2007.

COMMITTEE ON ENERGY AND COMMERCE -- 110TH CONGRESS
ROLL CALL VOTE # 32

BILL: H.R. 4040, the "Consumer Product Safety Modernization Act".

MOTION: An amendment to the Dingell amendment in the nature of a substitute offered by Mr. Markey, #1E, to establish jurisdiction over fixed-site amusement rides under the Consumer Product Safety Act.

DISPOSITION: NOT AGREED TO, by a roll call vote of 10 yeas to 25 nays, with 1 voting present.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Dingell		X		Mr. Barton		X	
Mr. Waxman	X			Mr. Hall		X	
Mr. Markey	X			Mr. Upton		X	
Mr. Boucher				Mr. Stearns		X	
Mr. Towns				Mr. Deal		X	
Mr. Pallone	X			Mr. Whitfield		X	
Mr. Gordon		X		Mrs. Cubin			
Mr. Rush		X		Mr. Shimkus		X	
Ms. Eshoo	X			Mrs. Wilson			
Mr. Stupak		X		Mr. Shadegg		X	
Mr. Engel				Mr. Pickering			
Mr. Wynn	X			Mr. Fossella		X	
Mr. Green	X			Mr. Buyer		X	
Ms. DeGette				Mr. Radanovich		X	
Ms. Capps	X			Mr. Pitts		X	
Mr. Doyle				Ms. Bono			
Ms. Harman			X	Mr. Walden			
Mr. Allen				Mr. Terry		X	
Ms. Schakowsky	X			Mr. Ferguson		X	
Ms. Solis	X			Mr. Rogers			
Mr. Gonzalez				Mrs. Myrick			
Mr. Inslee	X			Mr. Sullivan			
Ms. Baldwin				Mr. Murphy		X	
Mr. Ross		X		Mr. Burgess		X	
Ms. Hooley				Ms. Blackburn		X	
Mr. Weiner				*Vacancy*[1]			
Mr. Matheson		X					
Mr. Butterfield							
Mr. Melancon							
Mr. Barrow		X					
Mr. Hill		X					

12/13/2007

[1]Vacancy due to resignation of the Hon. J. Dennis Hastert (R-IL) from Congress effective November 27, 2007.

COMMITTEE ON ENERGY AND COMMERCE -- 110TH CONGRESS
ROLL CALL VOTE # 33

BILL: H.R. 4040, the "Consumer Product Safety Modernization Act".

MOTION: An amendment to the Dingell amendment in the nature of a substitute offered by Mr. Markey, #1L, requiring the CPSC to create a publicly-searchable database regarding reports of incidents involving consumer products that result in serious injury, illness, or death, or pose a risk of such.

DISPOSITION: NOT AGREED TO, by a roll call vote of 14 yeas to 35 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Dingell		X		Mr. Barton		X	
Mr. Waxman				Mr. Hall		X	
Mr. Markey	X			Mr. Upton		X	
Mr. Boucher				Mr. Stearns		X	
Mr. Towns	X			Mr. Deal		X	
Mr. Pallone	X			Mr. Whitfield		X	
Mr. Gordon		X		Mrs. Cubin			
Mr. Rush		X		Mr. Shimkus		X	
Ms. Eshoo	X			Mrs. Wilson		X	
Mr. Stupak	X			Mr. Shadegg		X	
Mr. Engel		X		Mr. Pickering		X	
Mr. Wynn	X			Mr. Fossella		X	
Mr. Green	X			Mr. Blunt[1]			
Ms. DeGette	X			Mr. Buyer		X	
Ms. Capps	X			Mr. Radanovich			
Mr. Doyle		X		Mr. Pitts		X	
Ms. Harman	X			Ms. Bono Mack[2]		X	
Mr. Allen		X		Mr. Walden		X	
Ms. Schakowsky	X			Mr. Terry		X	
Ms. Solis	X			Mr. Ferguson			
Mr. Gonzalez		X		Mr. Rogers		X	
Mr. Inslee	X			Mrs. Myrick		X	
Ms. Baldwin	X			Mr. Sullivan		X	
Mr. Ross		X		Mr. Murphy		X	
Ms. Hooley				Mr. Burgess		X	
Mr. Weiner		X		Ms. Blackburn		X	
Mr. Matheson		X					
Mr. Butterfield							
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					

12/18/2007

[1]Mr. Blunt (R-MO)was elected to the Committee, pursuant to passage of H. Res. 885 on December 18, 2007, to rank after Mr. Fossella. Mr. Blunt fills the vacancy created due to resignation of the Hon. J. Dennis Hastert (R-IL) from Congress effective November 27, 2007.

[2]Ms. Bono (R-CA) name is changed to Ms. Bono Mack due to her marriage on December 15, 2007.

COMMITTEE ON ENERGY AND COMMERCE -- 110TH CONGRESS
ROLL CALL VOTE # 34

BILL: H.R. 4040, the "Consumer Product Safety Modernization Act".

MOTION: A motion by Mr. Dingell to order the bill reported, amended.

DISPOSITION: AGREED TO by a roll call vote of 51 yeas to 0 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Dingell	X			Mr. Barton	X		
Mr. Waxman				Mr. Hall	X		
Mr. Markey	X			Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Towns	X			Mr. Deal	X		
Mr. Pallone	X			Mr. Whitfield	X		
Mr. Gordon	X			Mrs. Cubin			
Mr. Rush	X			Mr. Shimkus	X		
Ms. Eshoo	X			Mrs. Wilson	X		
Mr. Stupak	X			Mr. Shadegg	X		
Mr. Engel	X			Mr. Pickering	X		
Mr. Wynn	X			Mr. Fossella	X		
Mr. Green	X			Mr. Blunt[1]			
Ms. DeGette	X			Mr. Buyer	X		
Ms. Capps	X			Mr. Radanovich	X		
Mr. Doyle	X			Mr. Pitts	X		
Ms. Harman	X			Ms. Bono Mack[2]	X		
Mr. Allen	X			Mr. Walden	X		
Ms. Schakowsky	X			Mr. Terry	X		
Ms. Solis	X			Mr. Ferguson			
Mr. Gonzalez	X			Mr. Rogers	X		
Mr. Inslee	X			Mrs. Myrick	X		
Ms. Baldwin	X			Mr. Sullivan	X		
Mr. Ross	X			Mr. Murphy	X		
Ms. Hooley				Mr. Burgess	X		
Mr. Weiner	X			Ms. Blackburn	X		
Mr. Matheson	X						
Mr. Butterfield	X						
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						

12/18/2007

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[2]Ms. Bono (R-CA) name is changed to Ms. Bono Mack due to her marriage on December 15, 2007.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee regarding H.R. 4040 are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purposes of H.R. 4040 are to improve the safety of products designed and sold for children and to reform and modernize consumer product safety regulation in the United States.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee will adopt as its own the estimate of budget authority and revenues regarding H.R. 4040 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee finds that H.R. 4040 would result in no new or increased entitlement authority or tax expenditures.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4040 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee will adopt as its own the cost estimate on H.R. 4040 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Regarding clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate on H.R. 4040 by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available when the Committee filed this report.

FEDERAL MANDATES STATEMENT

The Committee will adopt as its own the estimate of Federal mandates regarding H.R. 4040 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 4040.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with for-

eign nations, among the several States, and with the Indian Tribes, and in the provisions of Article I, section 8, clause 1, that relate to expending funds to provide for the general welfare of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of content

Section 1 states that the short title of this Act is the "Consumer Product Safety Modernization Act of 2007" and also includes the table of contents.

Section 2. References

Section 2 states that all references to the "Commission" mean the Consumer Product Safety Commission (CPSC) and that all references to "Act" mean the Consumer Product Safety Act.

Section 3. Authority to issue implementing regulations

Section 3 provides general authority to the CPSC to promulgate regulations that may be necessary to implement the legislation.

Title I—Children's Product Safety

Section 101. Ban on children's products containing lead; lead paint rule

Section 101 establishes a Federal ban on lead in children's products beyond specified minute amounts. It establishes clear Federal standards, phased in over four years, on the amounts of lead content and lead paint that are permitted in children's products. Once these lead standards are fully implemented, they will be the most health protective standards in the world, more protective than those currently established under any State or local law or in the European Union. Thereafter, the legislation requires that the CPSC, through rulemaking, review these standards to determine whether they may feasibly be reduced further to ensure they are as protective of human health as possible. Thus, the Committee intends that the statutory standards established under this legislation serve as a minimum level of protection, and this Act provides the CPSC with ongoing responsibility and authority to review advances in science and technology to determine if such standards may be revised and reduced further.

Section 101(a) addresses lead content in children's products. Paragraph (1) declares that, effective 180 days after enactment, any children's product containing more than the amount of lead set forth in paragraph (2) shall be a banned hazardous substance within the meaning of section 2(q)(1) of the Federal Hazardous Substances Act, 15 U.S.C. 1261(q)(1). Although section 2(q)(1) refers to hazardous substances "susceptible of access" to children, the legislation makes children's products with lead levels greater than the

standards set forth in paragraph (2) banned hazard substances regardless of accessibility.

Paragraph (2) reduces the small amounts of lead permitted in children's products in stages. Lead standards are expressed as total lead content by weight, not as the amount of soluble lead. Within 180 days after enactment, the permitted amount is 600 parts per million (ppm) total lead content by weight for any part of a product. Two years later, the permitted amount is reduced to 300 ppm, and 4 years later, the amount is reduced to 100 ppm. The CPSC may, however, after a hearing make a determination as to whether the 100 ppm standard is feasible to achieve. If the CPSC determines that 100 ppm is not feasible, it must set the standard at the lowest level between 300 ppm and 100 ppm that is feasible to achieve.

When assessing whether a standard is "feasible," the Committee intends that CPSC focus on the scientific advances and the technical ability of manufacturers to achieve that standard. The CPSC also should focus on its own ability to detect violations of the standard and to enforce it. Increased cost of manufacturing is not a sufficient consideration to render a standard infeasible. The Committee assumes that the cost to produce children's products to meet these reduced lead standards will increase but believes that the greater cost is necessary to protect the health of children, which is the primary focus of this section and this title.

Paragraph (3) expressly requires the CPSC to review the 100 ppm standard as it applies to any class of children's products to determine if it is feasible to set it at a lower level that is more protective of human health. The CPSC may at any time require that any class of children's products be manufactured with even lower levels of lead—including 0 ppm—and establish an appropriate standard. The Committee expects the CPSC to consider the different materials and products made for children, as well the way children interact with these materials and products, and to work with industry and the public to reduce the amount of lead in various children's products to the greatest extent possible.

Paragraph (3) further mandates that the CPSC conduct periodic reviews of scientific and technical information on an ongoing basis to determine if it is feasible to reduce whatever lead standard applies at the time. The Committee intends that the CPSC conduct such reviews every several years.

Paragraph (4) authorizes the CPSC, in very narrow circumstances, to exclude, by rule, certain materials and products from the total lead weight limits. The lead content in these materials must be in a form that will not result in absorption of any lead whatsoever into the human body or have any adverse effect on public health or safety. The Committee understands that one such material may be lead crystal because of its molecular structure, but the CPSC must make that determination by rule. The CPSC also would have to determine if other materials meet this strict standard, including for example, certain gemstones. Paragraph (4) does not, however, authorize the CPSC to exclude children's metal jewelry items that exceed total lead weight standards but have been electroplated. The Committee believes that electroplating is capable of being breached through normal use and abuse, which would allow lead to leach out and be absorbed by the human

body if ingested. Accordingly, items of children's jewelry must meet the lead standards set forth in paragraph (2) or otherwise are banned hazardous substances.

Paragraph (5) defines "children's products" as used in this Act. It includes all consumer products as defined in section 3(a)(1) of the Consumer Product Safety Act designed or intended primarily for children 12 years of age or younger. By "primarily intended", the Committee wishes to exclude common household products that may be used by children but are not intended primarily for children and would not reasonably be considered children's products. Examples would include door knobs, metal bed posts on full-size beds, and metal clothes hangers. Paragraph (5) lists specific factors to be considered when determining whether a product is primarily intended for the age group, including the manufacturer's statement of intended use, marketing and packaging of the product, and which products consumers would commonly recognize as intended for children in that age group. Manufacturers also are directed to consult the Age Determination Guidelines issued by CPSC staff in 2002.

Paragraph (6) sets forth an exception to the lead standards in paragraph (2) for inaccessible component parts that are contained in sealed coverings and casings, and thus will not be exposed or accessible to children through normal use and abuse. The CPSC may determine which such component parts may be excepted from the lead limits. This exception is intended primarily for sealed electronic devices. It is not intended to apply to items of children's jewelry that have been electroplated, as electroplating is not the sealed covering or casing that this paragraph contemplates. As stated, it is the Committee's view that electroplating can be breached by normal use and abuse. The Committee expects the Commission to develop a rigorous standard that will ensure that any product granted an exception has no meaningful ability to expose a child to lead in such a way that could raise blood lead level.

Finally, nothing in section 101 or this legislation is intended to interfere with the ability of any State to require warnings about a risk of illness or injury associated with lead in a children's product. The Committee recognizes that some States currently impose such warning requirements and does not intend to preempt those requirements in any way.

Subsection (b) applies to lead paint on children's products. Not later than 180 days after enactment, the CPSC must modify the existing regulations on lead paint at 16 C.F.R. 1303.1, reducing the standard from "0.06 percent" to "0.009 percent" of total lead content by weight. Stated in equivalent terms to the lead content standard in section 101(a)(2), this translates to a reduction from 600 ppm to 90 ppm.

Paragraph (1)(C) directs the CPSC also to set the lead paint standard at .0009 milligrams per centimeter squared, an alternative measurement expressed as the amount of lead mass in a given surface area. This alternative measurement permits testing of paint on children's products with x-ray fluorescence spectroscopy (XRF) technology, which is both quick and portable. XRF technology can be used outside laboratories onsite at ports or in stores to test the level of lead in paint. XRF technology can greatly aid

the CPSC's efforts to inspect and enforce the paint levels on a vast array of toys and other children's products.

Paragraph (2) directs that the CPSC must review the standard in paragraph (1)(C) not later than three years after enactment to determine whether it is feasible to revise it to make it more protective. The Committee is aware that XRF technology is advancing and wants to ensure that it can and will be used to detect even lower levels of lead as soon as it is feasible to do so.

Subsection (c) gives the CPSC authority to extend, by rule, the implementation period for the new lead standards in both subsections (a) and (b) for an additional 180 days. To grant an extension, the CPSC must determine that there would be no impact on public health and safety, and also that implementation within 180 days would not be feasible, would be excessively costly, or that the agency would require additional time to implement standards and acquire the technology necessary to test and to enforce the new standards.

This provision provides a mechanism for the CPSC, by rule, to grant limited exceptions for items that may, due to extenuating circumstances, be unable to reach the lead standard by the stated deadline. The Commission must determine that there will be no affect on health or safety from extending the implantation period. The Committee does not intend for CPSC to be able to establish blanket extensions for broad categories of products or for all products made by a manufacturer. This section is intended only to provide a modest time extension for manufacturers encountering unexpected challenges by the technical or technological issues for complying with the lead standard. The Committee expects that manufacturers will apply for waivers on a product-by-product or class-by-class basis, and that CPSC will evaluate each application individually to ensure that any extension will have no health or safety impact.

Section 102. Mandatory third-party testing for certain children's products

Section 102 amends section 14 of the Consumer Product Safety Act to establish requirements for third-party testing and certification of certain children's products.

Subsection (a) establishes a new subsection under section 14 to require that within a year of enactment, every manufacturer of a children's product subject to a rule or a safety standard under any of the acts enforced by the CPSC must have the product tested and certify that it conforms to the rule or standard. The testing requirement applies only to mandatory standards or rules. It does not apply to voluntary standards. Testing must be performed by either qualified independent third-party laboratories or certain proprietary laboratories that have been certified by the CPSC.

Subsection (b) defines "children's product" and "independent third party" as used in this section. The meaning of "children's product" is identical to the meaning in section 101 for determining the application of that section's lead limits. The term "independent third party" means a testing entity that is not owned, managed, directed, or controlled by the manufacturer of the product. Further, the independent testing facility must be accredited through a process established or recognized by the CPSC. The definition recog-

nizes the certifying organization that currently certifies art material products, as required under the Federal Hazardous Substances Act.

Subsection (c) amends section 14 to set forth the process and standards for certifying proprietary laboratories to permit them to perform the mandatory testing and certification required under this section. The CPSC, or an organization to which the CPSC has delegated such authority, may certify such a laboratory to test and certify children's products under certain conditions. One condition is that certification of the proprietary laboratory must provide equal or greater consumer safety protection. It is critical that the laboratory also must have established procedures to protect the integrity of test results and for confidential reporting of any undue influence, which might jeopardize the integrity of test results. The CPSC, or an organization to which the CPSC has delegated such authority, may decertify a proprietary laboratory if it finds, after an investigation, that a manufacturer or private labeler has exerted any undue influence on the laboratory or test results. The Committee intends that the CPSC and any designated organization should be vigilant in its oversight of proprietary laboratories and ensure that the laboratories and all personnel strictly adhere to the highest ethical standards. When the CPSC finds violations, the Committee expects the CPSC to investigate and decertify the proprietary laboratory.

Subsection (d) makes technical changes to ensure that all rules and standards enforced by the CPSC under any of the acts the agency enforces are covered by the testing requirement.

Section 103. Tracking labels for children's products

Section 103 amends section 14(a) of the Consumer Product Safety Act to require manufacturers to place distinguishing marks, to the extent feasible, on both children's products and their packaging that specify the location and date of production of such products. In several instances of children's product recalls during the summer of 2007, the Committee determined that certain manufacturers could not quickly ascertain the locations at which recalled products were manufactured. The Committee intends that section 103 will impose more stringent standards of responsibility upon manufacturers concerning their production processes and thereby aid in determining the origin of the product and the cause of the recall.

In determining the feasibility of placing distinguishing marks on products—as opposed to their packaging—the Committee expects that manufacturers will give primary consideration to the product's size. For example, the Committee would require a tracking label on the container for children's building blocks, but not on the building blocks themselves. Similarly, for a board game, the manufacturer should put labels on the box and the board, but usually not on all the small pieces or cards that are part of the game. In contrast, the Committee expects that a manufacturer would place a tracking label on both the packaging for a crib and the crib itself.

Section 104. Standards and consumer registration of durable nursery products

Section 104 establishes safety standards and registration requirements for 12 defined "durable infant or toddler products,"

such as cribs, high chairs, and strollers—products that parents buy specifically to protect and care for infants and toddlers.

Subsection (a) states that this section of the Act may be cited as the "Danny Keysar Child Product Safety Notification Act" to commemorate a 16-month-old child who died after becoming entrapped in a portable crib that had been recalled several years earlier for a safety hazard.

Subsection (b) requires the CPSC to assess the effectiveness of existing voluntary safety standards that cover these products, which are defined and specified in subsection (d), and then to promulgate mandatory product safety standards for these products that are substantially the same or more stringent than the voluntary standards. In making this assessment, the CPSC is directed to consult with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers.

Paragraph (2) sets forth the timetable for conducting the rulemaking. The CPSC must begin the rulemaking within one year of the date of enactment. Thereafter, it must complete the rulemaking and promulgate a mandatory safety standard for at least 2 of the 12 products every 6 months. The Committee leaves to the CPSC's discretion the priority for promulgating the 12 mandatory standards. Once these rulemakings are completed, the CPSC must review them periodically to ensure that they provide the highest levels of safety feasible for these products.

Subsection (c) requires that within one year of enactment, the CPSC must promulgate a consumer product safety rule pursuant to section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)) on recordkeeping requirements to enhance the effectiveness of recalls. The rule promulgated by the CPSC must require manufacturers of durable infant or toddler products to:

- Provide a postage-paid registration form with each product;
- Maintain a record of the names, addresses, e-mail addresses, and other contact information for the consumers who register their ownership of the products; and
- Place permanently on each product the manufacturer name and contact information, model name and number, and the date of manufacture.

Subparagraph (2) provides that the card must include the manufacturer's name, the model name and number of the product, and space for the consumer to provide name, mailing address, telephone number, and e-mail address. The space provided for recording this information must be sufficiently large to permit easy, legible writing. The card also must provide an option for consumers to register through the Internet. The cards must be attached to the product in an obvious place and include a statement of the purpose (e.g., to aid in recalls) to encourage consumers to complete the registration process. Finally, the cards must include a statement that the information that the consumer provides will not be used for any other purpose except to facilitate a recall or safety alert involving the specific product.

Subparagraph (3) requires manufacturers to maintain, for a period of six years after the date of manufacture of a product, a record of all information provided by registrants of that product, and to use the information to notify registrants in the event of a

voluntary or mandatory recall or a safety alert. Maintaining an ongoing business relationship with consumers through marketing and other uses of information has shown to be an effective way to keep up-to-date contact information. Manufacturers may not, however, use the information provided on registration cards—or disseminate it to any other party—for any other purpose than to alert consumers to recalls and product alerts.

Subparagraph (4) requires the CPSC, no later than four years after the date of enactment of this legislation, to conduct a study on the effectiveness of the registration cards and whether such registration forms should be required for other children's products to report its findings to Congress.

Paragraph (d) sets forth the definition of "durable infant or toddler product". This term means a durable product intended for use by, or reasonably expected to be used by, children under the age of five years. The definition specifically applies to 12 enumerated products:

- full-size or non-full-size cribs
- toddler beds
- high chairs, booster chairs, or hook-on chairs
- bath seats
- gates and other enclosures for confining a child
- play yards
- stationary activity centers
- infant carriers
- strollers
- walkers
- swings
- bassinets and cradles

Section 105. Labeling requirement for certain Internet and catalogue advertising of toys and games

Section 105 amends section 24 of the Federal Hazardous Substances Act to require manufacturers of specified children's products to include clear and conspicuous warnings about such products on or adjacent to advertisements in catalogues and on Internet sites that provide for a direct means for their sale. Further, the publication or distribution or any advertisement not in compliance with this requirement is a prohibited act under section 19 of the Consumer Product Safety Act.

Within 180 days of enactment, the CPSC must, by rule, modify the size and placement requirements for cautionary statements in printed catalogues. When promulgating this rule, the Committee expects that the CPSC will take into account the relative sizes of the warnings and advertisements, respectively, and consider the possibility of permitting a general warning to be printed at the top of a catalogue's page, (as opposed to specific warnings adjacent to individual product advertisements). For example, if a catalogue page contains only advertisements for hazardous children's products (within the meaning of section 24 of the Federal Hazardous Substances Act), the CPSC may allow a single warning at the top of that page.

Finally, under the rulemaking described above, the CPSC may also grant a grace period from the labeling requirement for catalogues printed prior to the effective date of this legislation. The

Committee would consider an exemption period of one year prior to enactment the maximum reasonable limit for this period.

Section 106. Study of preventable injuries and deaths in minority children related to consumer products

Section 106 directs the Comptroller General to complete a study to assess disparities of preventable injuries and deaths among minority children related to consumer products intended for children's use. The Committee expects that the Comptroller General will make use of whatever data has been collected already by the CPSC on this matter. Moreover, section 106 directs that this study begin within 90 days of enactment and submitted to this Committee and the Senate Committee on Commerce, Science, and Transportation not later than one year after enactment. The Committee expects that this report will include recommendations for public outreach, awareness, and prevention campaigns directed specifically at minority populations, as well as make recommendations for education initiatives that may reduce disparities in injury rates.

Section 107. Review of generally-applicable standards for toys

Children's toys must be as safe as possible. Section 107(a) directs the CPSC to examine the effectiveness of the current voluntary standard—ASTM-International standard F963–07—that governs a wide range of hazards, including strangulation, burns, and choking, that could be presented by toys. The CPSC must determine the scope, adherence to, and adequacy of the voluntary standard in protecting children from safety standards.

Subsection (b) provides for a special focus on that standard as it relates to magnets included in toys, and a determination of whether that standard is effective to prevent intestinal blockages and perforation hazards cause by ingestion of magnets that are parts of toys. The Committee notes that toys with powerful magnets have caused serious injuries to several children over the past few years and even caused the death of one child. Since these incidents, the industry has adopted a voluntary standard covering magnets in toys. If the CPSC determines that there is substantial noncompliance with the voluntary standard on magnets, it must expedite a rulemaking to consider the adoption of a mandatory standard covering the related hazards.

Finally, subsection (c) requires the CPSC within two years after enactment to report to Congress on the results of the agency's assessment of compliance with, and the effectiveness of, the voluntary standard covering all toy hazards, and the feasibility of requiring manufacturers to pre-test and certify toys to it or more stringent standards.

Title II—Consumer Product Safety Commission Reform

Section 201. Reauthorization of the Commission

Section 201 reauthorizes the CPSC for fiscal years 2009 through 2011. Subsection (a) amends section 32(a) of the Consumer Product Safety Act to authorize appropriations for the CPSC in the amounts of $80 million, $90 million, and $100 million for fiscal years 2009, 2010, and 2011, respectively. Similarly, it amends section 32(b) to authorize $20 million to the CPSC for fiscal years

2009 through 2011 for making necessary capital improvements to the CPSC's research, development, and testing facility.

These authorization levels are designed to allow the CPSC to grow quickly but prudently and hire new staff both to meet its new responsibilities under this legislation and generally to perform the mission of the agency. To attract talented and experienced personnel, the Committee encourages the CPSC, as appropriate, to take advantage of available Federal employment authorities under Title 5, such as recruitment and retention bonuses and relocation costs.

Subsection (b) requires the CPSC to submit a report to Congress within 180 days of enactment concerning its plans to allocate the funding authorized by section 201(a). The report must address specifically:

- the number of full-time inspectors and other "full time equivalents" that the CPSC intends to employ;
- the CPSC's plan for risk assessment and inspection of imported consumer products;
- an assessment of the feasibility of mandating bonds for serious hazards and repeat offenders, as well as CPSC inspection and certification of foreign third-party and proprietary testing facilities; and
- the efforts of the Commission to reach and educate secondhand retailers and informal sellers about consumer product safety standards and product recalls, especially those relating to durable nursery products, such as cribs and strollers.

The Committee intends to use this report as the basis for oversight hearings in the future, which, among other issues, will examine how best to improve the CPSC's regulatory authority over imported consumer products.

Section 202. Structure and quorum

Section 202(a) extends the CPSC's temporary quorum and permits two members of the Commission to constitute a quorum, provided they are not from the same political party. If the President nominates a Commissioner prior to August 3, 2008, the temporary quorum will continue through that date. If the President nominates a Commissioner after August 3, 2008, the temporary quorum would extend for an additional three months after the date of the nomination (giving the Senate time to act), or until February 3, 2009, whichever is earlier.

Subsection (b) repeals the first proviso in the account under the heading "Consumer Product Safety Commission, Salaries and Expenses" in title III of Public Law 102–389, effective after fiscal year 2010. This provision thereby repeals the three-Commissioner restriction under which the CPSC has been operating since the 1980s.

Section 203. Submission of copy of certain documents to Congress

Section 203 requires the CPSC to comply with requirements under section 27(k) of the Consumer Product Safety Act and provide to Congress all of its budget submissions. It also directs the agency to submit to this Committee budget recommendations, legislative recommendations, testimony, and comments on legislation

submitted by the Commission to the President or the Office of Management and Budget.

Subsection (b) amends section 3003(d) of Public Law 104–66 to reinstate the section 27(k) of the Consumer Product Safety Act, which had ceased to be effective in 1999 with respect to providing such materials to Congress.

Section 204. Expedited rulemaking

Section 204 grants the Commission the discretion to promulgate rules through a two-step process. Currently, the Commission must employ a three-step rulemaking process in all instances. This flexibility allows the Commission to expedite the promulgation of rules to enforce more efficiently the statutes under its jurisdiction. Subsection (a) covers the Consumer Product Safety Act, subsection (b) covers the Federal hazardous Substances Act, and subsection (c) covers the Flammable Fabrics Act.

The Committee expects that the CPSC will use its discretion to continue to employ three-part rulemaking and begin the process with an Advanced Notice of Proposed Rulemaking when it is dealing with complex or novel issues. The Committee expects, however, that the CPSC will make use of two-part rulemaking when dealing with technical or relatively straightforward matters.

Section 205. Public disclosure of information

Section 205 of the bill amends section 6(b) of the Consumer Product Safety Act, which governs how the Commission discloses information about consumer products to the public. The general purpose of Section 6(b) is to ensure the accuracy and fairness of this information through a consultation process with the affected company.

Section 205 amends section 6(b)(1) by shortening the time from 30 to 15 days by which a manufacturer or private labeler must respond to the Commission's notification that information about the company's product will be released to the public. This original 30–day notice and comment period was established in the early 1970s, well before the advent of modern telecommunications and electronic mail. The shortened timeframe ensures that the CPSC may disclose relevant information to the public more quickly. Moreover, section 205 further amends section 6(b)(1) to allow the Commission, in the case of a public health or safety hazard posed by a product, to simply publish its finding (presumably on the Commission's Web site) before disclosing the relevant information to the public. Currently, section 6(b)(1) requires the Commission to publish its finding in the Federal Register, which can needlessly delay the process for as long as five additional days.

When publicly disclosing information furnished to the Commission under section 15(b) of the CPSA, which requires manufacturers, distributors, and retailers to inform the Commission of defective products that violate safety rules or otherwise pose a serious risk to the public, the Commission is governed by the cumbersome requirements of section 6(b)(5). Section 205 amends section 6(b)(5) by adding a "public health and safety" exception that permits immediate disclosure of information to the public. This new provision greatly enhances the Commission's ability to protect the public by granting the agency authority to overcome statutory obstacles that have hampered past efforts to inform the public about hazardous

products. It is important to note that section 6(b)(3) of CPSA, which allows the affected company to seek an injunction against the release of information in Federal court, does not apply to section 6(b)(5) and the new health and safety exception.

The Committee expects the CPSC to use this new disclosure authority fully to protect the public from health and safety hazards. With regard to disclosure of information pursuant to formal requests under the Freedom of Information Act, the Committee expects the Commission to respond to these requests promptly, especially once it has hired sufficient staff with the additional funding authorized under this legislation. Section 6(b) of the CPSA should not pose insurmountable obstacles to timely disclosure of accurate information on commercial products to the public, and past delays are unacceptable. Section 205 reflects the Committee's concerns over these delays. The Committee expects the Commission to exercise this new disclosure authority and utilize these new resources in a manner that aggressively serves the well-being of consumers.

Section 206. Publicly available information on incidents involving death or injury

Section 206 gives the CPSC 180 days after the date of enactment to devise a detailed plan, complete with an implementation schedule and recommendations for any necessary legislation, for providing consumers with a user-friendly database containing information on incidents involving death and serious injury caused by consumer products. The database would build on the current Injury Information Clearinghouse maintained by the CPSC pursuant to section 5(a) and could include additional information, such as consumer complaints, hospital and medical reports, and warranty information. The database must take into account the protection of personal information. The plan also must include provision for a public awareness campaign to educate consumers about the database.

The intent of this Committee is to not only examine how to make the National Injury Information Clearinghouse database more useful and accessible to consumers, including the goal of providing information that specifies the manufacturer and model of product, but to consider how to expand existing data sources to improve consumer accessibility. The goal of the CPSC should be to devise a database that can rapidly provide consumers with 'early warning' information about specific products that could pose serious safety hazards. Similar databases or resources already exist at the National Highway Traffic Safety Administration, the Food and Drug Administration and the Department of Transportation, and the Committee suggests that the Commission examine these and other Agency efforts, if applicable, when designing its own database.

Section 207. Prohibition on stockpiling under other Commission-enforced statutes

Section 207 amends section 9(g) of the CPSA to make it clear that companies are prohibited from stockpiling products that do not conform to new safety standards prior to their effective dates under all rules or standards promulgated under any of the statutes enforced by the Commission. The Committee believes that companies found to be in violation of this section (and thus, section 19 of the

CPSA) should be penalized harshly, particularly given the possible extension of the 180-day compliance period for lead standards for certain products, as provided under section 101(c) of this legislation.

Section 208. Notification of noncompliance with any Commission-enforced statute

Section 208 amends section 15(b) of the CPSA to add a sentence that limits the use of a report filed under section 15(b)(2) as the basis for a criminal prosecution in certain, narrow circumstances. The report may not be used as the sole basis for criminal prosecution under section 5 of the Federal Hazardous Substances Act, except for offenses which require a showing of intent to defraud or mislead. This provision is intended to provide assurances that the report itself would not be used as the sole basis for criminal prosecution under the part of section 5 that provides for strict liability for criminal enforcement without regard to any requirement of knowledge, intent, or willfulness. That part of section 5(a) providing for strict criminal liability states that "any person who violates one 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." The Committee's intent is to promote the timely, accurate, and complete disclosure of information that is necessary to protect public health and safety.

Section 209. Enhanced recall authority and corrective action plan

Section 209 enhances the CPSC's authority in cases of mandatory recalls and also strengthens the agency's ability to tailor corrective action plans that meet consumer needs.

Subsection (a) amends section 15(c) of the Consumer Product Safety Act to increase the number of required actions that the Commission may order a manufacturer, retailer, or distributor to take in the event of a mandatory recall. Should the Commission determine that a product presents a substantial product hazard (after a public hearing) or concurrently declare a product an imminently hazardous consumer product, notify the manufacturer, and file an action under section 12 of the Consumer Product Safety Act, section 209(a) of H.R. 4040 permits the Commission to require one or more of the following actions of a manufacturer, retailer, or distributor in addition to those which already exist under section 15(c):

- cease distribution of the product;
- notify all persons that transport, store, distribute, or otherwise handle the product, or to which the product has been transported, sold, distributed, or otherwise handled, to cease immediately distribution of the product; and
- notify appropriate State and local public health officials.

Furthermore, subsection (a) specifies that the Commission must rescind such an order if a district court determines that the product subject to the order is not an imminently hazardous consumer product. Lastly, the rescission of such a Commission order is not subject to a hearing under 5 U.S.C. 554.

Subsection (b) amends Section 15(d) to require companies to submit a corrective action plan as promptly as practicable and subject

the plan to the approval of the Commission. The Commission must evaluate the plan's appropriateness under the circumstances and, in turn, may order the company to amend the plan to render it more appropriate and effective. For example, a repair to a crib that immobilizes the drop-side feature would not be an appropriate remedy because it changes the crib's functionality. The Committee believes that these new provisions will ensure that repairs or other remedies offered after a recall meet the needs of consumers and continue to provide the functionality that consumers expected when initially purchasing a product. If the product cannot be repaired to maintain its original functionality, then the only appropriate remedy might be to offer refunds to consumers. Subsection (a) authorizes the Commission to revoke the approval of a corrective action plan altogether if the Commission determines that a manufacturer, distributor, or retailer is not complying with the terms of the plan.

Subsection (c) further amends Section 15 by adding a new subsection (i) requiring the CPSC by rule to set guidelines on a uniform class of information in mandatory recall notices under subsection (c) or (d) or under section 12 of the CPSA. The guidelines should include information helpful to consumers in identifying the specific product, understanding the hazard, and understanding the available remedy. The Committee expects that similar information will be provided, as applicable and to the greatest extent possible, in the notices issued in voluntary recalls.

Section 210. Website notice, notice to third party internet sellers, and radio and television notice

Section 210 amends section 15(c)(1) of the Consumer Product Safety Act to authorize the CPSC to require a company to provide notices of recalled products on Web sites and, when appropriate, to issue public announcements of such recalls on radio and television. Moreover, the CPSC may require the company to make such announcements in languages other than English if the agency determines that such an accommodation is necessary, given the targeted population. The Committee recognizes that underserved communities often have large immigrant populations that may not have access to the Internet. Such communities often receive information primarily from radio and television. Consequently, if the CPSC determines that such vulnerable populations are particularly at risk from a recalled product, the agency may order announcements over the public airwaves or other relevant media platforms to promote awareness and safety.

Section 211. Inspection of certain proprietary laboratories

Section 211 amends section 16(a)(1) of the Consumer Product Safety Act to authorize the CPSC personnel to enter and inspect any proprietary laboratories certified under section 14(e) of the Consumer Product Safety Act. The Committee makes clear that the Commission has the same right to inspect proprietary laboratories that it has to inspect factories, warehouses, or other establishments in order to implement and enforce statutes under its jurisdiction.

Section 212. Identification of manufacturer, importers, retailers, and distributors

Section 212(a) amends section 16 of the Consumer Product Safety Act by adding subsection (c), which requires, upon the request of the Commission, every importer, retailer, or distributor of a consumer product or component thereof (over which the Commission has jurisdiction) to provide identifying information (including, but not limited to, the name and address) for the manufacturer of that product or component, to the extent that such information is available.

Subsection (a) further amends section 16 of the Consumer Product Safety Act to require, upon the request of the Commission, every manufacturer of the products and components listed above to supply identifying information (including, but not limited to, the name and address) for each retailer or distributor to which the manufacturer supplied the product or applicable component thereof, each subcontractor involved in the production of such products and their components, as well as each subcontractor from which the manufacturer obtained components for an applicable consumer product. It is the intent of the Committee that the Commission will have the authority to request the information in sections 212(a) and 212(b) in order that it may investigate more thoroughly the source or sources of consumer product recalls.

Subsection (b) amends section 17(g) of the Consumer Product Safety Act by requiring the Commission, by rule, to condition the importation of a consumer product on CPSC's recordkeeping and inspection requirements under the Act. Section 212(b) also amends section 17(h)(2) to require the Commission to share information, data, violator lists, test results, and other support guidance and documents with Federal agencies with which it cooperates under the auspices of the permanent product surveillance program mandated under section 17(h)(1). Section 212(b) further amends section 17(h)(2) of the Consumer Product Safety Act to condition the sharing of this information upon the confidentiality requirements described in section 6 of the Act.

The Committee expects that the Commission will use the authority under this section to monitor imports of consumer products and control more effectively their entry into U.S. commerce. The Committee intends to hold oversight hearings on the Commission's activities to ensure that unsafe consumer products are detected at ports of entry and denied entry into the United States. Lastly, the Committee expects that the Commission will terminate its agreement under section 17(h)(1) of the Consumer Product Safety Act upon discovery that a cooperating Federal agency violates the confidentiality requirements under section 6 of the Act.

Section 213. Export of recalled and non-conforming products

Section 213(a) amends section 18 of the Consumer Product Safety Act by adding subsection (c), which stipulates that a person may not export products that are not in conformity with U.S. consumer product safety rules, are subject to mandatory or voluntary recalls, are designated an imminent hazard to public health and safety, or are designated as a banned hazardous substance. A person may export such products in the event that the importing country notifies the Commission within 30 days that it will accept the products.

Thereafter, the Commission has the authority to take such action as is appropriate for the disposition of the product.

Subsection (b) amends section 19(a)(10) of the Consumer Product Safety Act to make a violation of section 18(c) of the Act a prohibited act. A knowing violation of this prohibition would subject a person to civil penalties.

Subsection (c) makes conforming amendments to section 5(b)(3) of the Federal Hazardous Substances Act and section 15 of the Flammable Fabrics Act in order to harmonize them with the export prohibition placed on certain products in section 213(a) of H.R. 4040.

The Committee intends that this section will curb export of consumer products that violate U.S. law and expects the Commission to exercise rigorous oversight in this area, particularly as relates to the enforcement of penalties for prohibited acts.

Section 214. Prohibition on sale of recalled products

Section 214 amends section 19(a) of the Consumer Product Safety Act to prohibit the sale, resale, manufacture, or importation of any consumer product that has been recalled, is a banned hazardous substance, or does not conform to safety standards. A knowing violation of this prohibition would subject a person to civil penalties.

Section 215. Increased civil penalty

Section 215 increases the cap on civil penalties. Subsection (a) increases the cap from $1.825 million to $10 million for violations of the Consumer Product Safety Act, the Flammable Fabrics Act, and the Federal Hazardous Substances Act. The increase is phased in over two years. Initially, the cap rises to $5 million as soon as CPSC issues interpretive guidance, or 360 days after enactment, whichever occurs first. The cap will then rise to $10 million 1 year after the first increase.

Subsection (b) gives the CPSC more flexibility in determining the appropriate level of civil penalties that it levies on manufacturers, distributors, and retailers that violate the three statutes. Section 215(b) expands the factors that the Commission must consider beyond the five specific factors to which the CPSC is currently limited. Furthermore, these factors are not exclusive. For example, while the CPSC currently is not permitted to consider whether a violator is a recidivist or a first-time offender, the amendments made by this section will permit that important consideration in assessing a penalty. Subsection (b) requires the Commission to issue regulations providing its interpretation of these new, restated penalty factors within one year of enactment.

Section 216. Criminal penalties to include asset forfeiture

Section 216 amends section 21 of the Consumer Product Safety Act to provide that criminal penalties for violations of any statute enforced by the Commission may include asset forfeitures.

Section 217. Enforcement by State attorneys general

State attorneys general serve an important and useful role as an enforcer of consumer product safety laws. Section 217 amends section 24 of the Consumer Product Safety Act to grant State attor-

neys general the same injunction authority under CPSA that they already have under the Federal Hazardous Substances Act and the Flammable Fabrics Act. A State attorney general may bring an action on behalf of the State's residents to enforce a consumer product safety rule or an order under section 15 of the CPSA. Section 217 requires the State attorney general to provide notice to the CPSC, the Attorney General of the United States, and the targeted defendant at least 30 days prior to the commencement of an action. Section 217, however, prohibits such State actions when a similar civil or criminal action has been commenced by the CPSC or U.S. Department of Justice. Section 217 provides that the courts may award the costs of the action, including reasonable attorney fees and expert witness fees.

Section 218. Effect of rules on preemption

Section 218 prevents the CPSC from expanding, contracting, or otherwise modifying the scope or nature of the preemption provisions under any of the statutes enforced by the agency. This prohibition applies to any part of a rule or regulation (including preambles) promulgated by the Commission. This section addresses concerns that the CPSC in recent years has attempted to circumvent Federal and State adjudication and imply the preemption of State common law rights of action. Specifically, in February of 2006, the CPSC issued a rule on mattress flammability under the Flammable Fabrics Act (FFA). In the rule's preamble, the CPSC declared that FFA's preemption provisions affecting State "standards and other regulations" also affected all State "legal requirements" including common law standards. Not only did this advisory opinion depart from the plainly stated language of the statute, but it departed from the CPSC's accepted standard practice of simply listing the preemption provisions of the governing statute and leaving the interpretation of those provisions to the courts. As such, this preamble should not be afforded any deference by State or Federal courts.

Tort actions based on negligence are predicated on procedures and standards developed over hundreds of years of American and English jurisprudence. The preemption provisions of the statutes under the jurisdiction of the CPSC are clear, and State common law actions and standards are not preempted. The Committee does not believe it is proper for the CPSC to issue advisory opinions (in regulatory preambles or otherwise) that attempt to alter the scope of those provisions. Instead, the Committee believes that such matters are best left with the courts.

Section 219. Sharing of information with Federal, State, local, and foreign government agencies

Section 219 amends section 29 of the Consumer Product Safety Act to add a new subsection (f), which allows the CPSC, consistent with requirements under section 6, to share information obtained under the Act with other Federal, State, local, and foreign agencies. The CPSC must have memoranda of understanding or written certifications with these other agencies to ensure that such information will be kept confidential. The CPSC may share this information with other agencies if:

- the agency has legal authority to maintain in confidence;

- the materials will be used in the investigations or enforcement proceedings concerning possible violations of laws that are substantially similar to those enforced by the CPSC; laws actually administered by the CPSC; other foreign criminal laws, with the approval of the Attorney General for a foreign law enforcement agency; and
- the foreign agency is not from a state that has been determined to have provided repeated support for acts of international terrorism, in accordance with section 6(j) of the Export Administration Act of 1979.

Significantly, section 29, as amended by Section 219, will allow the Commission to terminate agreements with other domestic and foreign agencies if those agencies have failed to keep shared information confidential or have used the information for purposes other than those set out in written agreements. It also provides that the CPSC will not be required under provisions of the Freedom of Information Act to disclose any material obtained from a foreign government agency if that agency has requested that the information be kept confidential or that the information reflects a consumer complaint submitted to a Commission reporting mechanism that is sponsored in part by foreign government agencies. The Commission, however, is not authorized to withhold information from Congress or prevent the Commission from complying with a U.S. court order in an action commenced by the United States or the Commission.

Finally, section 219 requires that, in the event of voluntary recalls or a Commission order pursuant to section 15(c) or (d) of the Consumer Product Safety Act, the Commission shall notify each State's health department or other agency designated by the State of the recall or order.

The Committee expects that the CPSC will work closely in the future with State and local agencies to disseminate information concerning product recalls and enforcement actions. The Committee believes that cooperation with State and local agencies is an effective means for meeting the Commission's mission to protect the public health and safety. Moreover, and in light of the large international market for consumer products, the Committee believes that the CPSC would benefit from further cooperation with foreign government agencies, particularly those from the European Union and the People's Republic of China. The Committee expects that the CPSC will revisit and renegotiate, where necessary, existing memoranda of understanding with foreign governments and negotiate new agreements with other governments as necessary.

Section 220. Inspector General authority and accessibility

Section 220(a) is aimed at strengthening and improving the resources available to the CPSC's Office of Inspector General to ensure effective oversight of the CPSC as the agency receives anticipated significant increases in funding, adds new staff, and takes on new responsibilities. To this end, the Committee intends to hold oversight hearings in the future concerning the CPSC's Office of the Inspector General—with the reports in section 220(a) and 220(b) as their basis—in order to determine the role and functionality of that office within the agency, as well as the additional authority or resources it may need to function more effec-

tively. The Committee believes that effective oversight of waste, fraud, and abuse is critical to an agency's ability to carry out its statutorily mandated duties.

Subsection (a) requires that the Commission's Office of the Inspector General, within 60 days of enactment, report to Congress concerning the office's activities, any structural barriers to its ability to complete its mission, and the additional authority or resources—if any—necessary to facilitate oversight.

Subsection (b) directs the Commission's Office of the Inspector General to submit a report to Congress within one year of enactment about its reviews of both the employee complaint process and the way in which corrective action plans are negotiated.

Finally, subsection (c) requires that the Commission's Office of the Inspector General establish within 30 days of enactment a link on the CPSC's Web site to facilitate the filing of anonymous complaints (from either inside or outside the agency) regarding any waste, fraud, or abuse involving CPSC activities.

Section 221. Repeal

Section 221 repeals section 30(d), which requires the CPSC to take action under the other statutes it enforces (the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act) unless it finds by rule that it is in the public interest to proceed under the CPSA instead. Because many of the new provisions require the CPSC to act under the CPSA, the repeal of this section will ensure that such activity will not be delayed by the necessity of a threshold rulemaking.

Section 222. Industry-sponsored travel ban

Section 222 amends the Consumer Product Safety Act by adding section 38, "Prohibition on Industry-Sponsored Travel." Section 222 bars Commissioners and staff from accepting so-called gift travel. Specifically, this section prohibits Commissioners and staff from accepting payment or reimbursement for travel, subsistence, and related expenses with respect to attendance at meetings or events relating to their official duties from persons seeking official action from, doing business with, or conducting activities regulated by the Commission or whose interests may be substantially affected by a Commissioner or employee's performance (or nonperformance) of official duties.

Section 222 also includes an authorization of $1.2 million for each of fiscal years 2009 through 2011 necessary for travel and lodging expenses necessary in furtherance of the official duties of Commissioners and employees.

Given recent press reports concerning industry-funded travel of CPSC officials in the past, the Committee finds it prudent to apply this ban on privately-funded travel upon the Commission. But to ensure that Commissioners and employees have sufficient funds to pay for travel pertaining to or required for their duties, this section provides for a specific travel authorization that should be sufficient to meet appropriate travel needs.

Section 223. Annual reporting requirement

Section 223 amends section 27(j) to require the CPSC to file an annual report on the number and summary of recall orders under

section 12 and 15 and a summary of the voluntary recall actions, including an assessment of these orders and actions. These reports are intended to help Congress, stakeholders, and the CPSC itself to assess the effectiveness of recall activities.

Section 224. Study on the effectiveness of authority relating to imported products

Section 224 directs the Commission to submit to Congress within nine months of enactment a study on the effectiveness of section 17(a) of the Consumer Product Safety Act. This study must include the Commission's recommendations about additional authority it may need (and appropriate legislation to authorize it) to stop unsafe consumer products from entering the United States. This study will serve as background for future Committee hearings on import safety.

SPECIAL ISSUES

This legislation contains no title relating to single-product issues. The Committee believes that consumers are best served by keeping this bill focused on the daunting task of reforming the CPSC. Nevertheless, the Committee shares the concern that certain single products require tighter regulations and standards. Many of these issues were raised by Members of the Committee in colloquys or discussions of amendments that were offered and withdrawn.

In that regard, the Committee is concerned that the current approach to all-terrain vehicle (ATV) safety is not working. In 2003, the CPSC issued the latest in a long line of studies documenting the dramatic increase in ATV injuries and deaths. The American Academy of Pediatricians advises that the situation continues to worsen, particularly as to children. Adding to this problem is the growing volume of imports, most of which do not comply with key elements of the applicable ANSI/SVIA voluntary standard. The record indicates that no Chinese manufacturer has provided the CPSC with a voluntary undertaking or action plan committing to provide standardized CPSC-approved safety information or free training with incentives, or to monitor retailers for compliance with ATV age-related sales restrictions. This situation begs for enforcement of a mandatory standard. The Committee therefore directs the CPSC to proceed expeditiously to issue a final rule in its proceeding entitled "Standards for All-Terrain Vehicles and Ban of Three-Wheeled All Terrain Vehicles." In developing the final rule, the CPSC shall give special attention to a categorization scheme that is most instructive to parents and guardians in making a safe purchase, and that addresses the ability of children of different ages to operate safely each category of ATV suitable for operation by children.

The Committee also directs the CPSC to conduct a public awareness campaign to educate consumers about the importance of residential smoke alarms and improved smoke detector technology, including the difference between ionization type and photoelectric type alarms. The campaign shall include recommendations for effective use and maintenance of smoke alarms.

The Committee also directs the CPSC to issue a final rule in its proceeding entitled "Safety Standard for Cigarette Lighters" for

which the Commission issued an advance notice of proposed rulemaking on April 11, 2005 (70 Fed. Reg. 18339).

The Committee believes that the CPSC, in the course of implementing the legislation's provisions related to lead, should take the necessary steps to examine whether the CPSC should issue a consumer product safety rule requiring any ceramic product, such as a plate, dish, bowl or other container, intended for use with food that contains any lead bear a warning label stating "THIS PRODUCT MAY CONTAIN LEAD."

The Committee also directs the CPSC to examine its current authority with respect to toys intended for use by household pets, especially those that could become children's play things. If the CPSC determines that it has the appropriate authority to regulate such products, the Committee directs the CPSC to undertake a rulemaking regarding the use of lead and lead paint in household pet toys.

The Committee also has been informed of tipping dangers presented by furniture, ovens and other large appliances, and television sets. In order to help stem these preventable accidents and injuries, the Committee directs the CPSC to look into these matters, and, where appropriate, to require stabilizing mechanisms such as braces, clear and conspicuous warning labels, and to make available on its Internet Web site recommendations on tipover prevention.

Lastly, the Committee requests that the CPSC conduct a study of injuries and deaths related to toy guns, and consider the adoption of a consumer product safety rule that provides for distinctive marking of toy guns to distinguish them from actual firearms.

The Committee intends for the CPSC to give priority to the effective implementation of Title I and II of H.R. 4040. Nonetheless, the Committee requests that these additional matters also be given consideration, and notes that it intends to check on their status at appropriate intervals to make sure that they are accomplished with reasonable diligence.

The Committee also notes that it was made aware late in the process of two other possible dangers regarding toxic toys, phthalates and asbestos. It intends to address these important issues in subsequent hearings and legislation.

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