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Calendar No. 252

108TH CONGRESS, *1st Session* | SENATE | REPORT 108–128

THE CONSUMER PRODUCT SAFETY COMMISSION REAUTHORIZATION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1261

AUGUST 26, 2003.—Ordered to be printed

Filed, under authority of the order of the Senate of July 29 (legislative day, July 21), 2003

U.S. GOVERNMENT PRINTING OFFICE

19–010 WASHINGTON : 2003

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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

REPORT

[To accompany S. 1261]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1261) "A Bill To reauthorize the Consumer Product Safety Commission, and for other purposes", having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1261 would amend the Consumer Product Safety Act (CPSA) (15 U.S.C. 41 et seq.) and authorize appropriations for the Consumer Product Safety Commission (CPSC) for Fiscal Years 2004 through 2007. In addition, S. 1261 would increase the Commission's statutory civil penalties cap and enable the CPSC to provide recall notification to consumers regarding certain hazardous products in the event that the Commission determines that a manufacturer is unable to do so.

BACKGROUND AND NEEDS

The CPSC is an independent regulatory agency that was created in 1972 under the CPSA, which became effective in 1973. While the CPSC is authorized to have five commissioners under the CPSA, Congress has only appropriated funding for three commissioners

since 1987. All commissioners are appointed by the President for staggered seven-year terms with the consent and approval of the Senate. The chairman of the Commission is designated by the President. Currently, the Commission is comprised of two Republican commissioners, Chairman Hal Stratton and Commissioner Mary Sheila Gall, and one Democrat, Commissioner Thomas Moore.

The CPSC has jurisdiction over more than 15,000 consumer products (e.g., household products, sporting goods) and is charged under the CPSA with the duty to protect consumers "against unreasonable risks of injuries associated with consumer products." The Commission fulfills its statutory responsibilities by developing voluntary standards with industry, issuing mandatory standards, researching potential product hazards, banning products, obtaining recalls of products or ensuring their repair, and informing and educating consumers. The Commission administers four statutes: the CPSA, the Federal Hazardous Substances Act (FHSA),[1] the Poison Prevention Packaging Act,[2] and the Flammable Fabrics Act (FFA).[3]

The CPSC employs approximately 471 full-time employees. Most are located at the Commission's headquarters in Bethesda, MD. There are about 130 CPSC investigators, compliance officers, and consumer information specialists throughout the country. Six offices report directly to the Chairman, including: Congressional Affairs, Equal Employment and Minority Enterprise, General Counsel, Inspector General, Secretary, and Executive Director. The Executive Director directs and oversees Commission policy and administration, which are implemented by the offices that report to the Executive Director: Compliance, Hazard Identification and Reduction, Field Operations, Administration, Budget, Human Resources, Information and Public Affairs, Information Services, and Planning and Evaluation.

S. 1261 would authorize funding for the Commission to carry out its functions, powers, and duties in amounts not to exceed $60,000,000 for fiscal year 2004, $66,800,000 for fiscal year 2005, $70,000,000 for fiscal year 2006, and $73,600,000 for fiscal year 2007. The bill would allow the Commission to maintain its current staffing level of up to 471 throughout the authorization period.

S. 1261 also would authorize an increase in the Commission's current statutory cap on civil penalties from $1,250,000 to $20,000,000, and it would provide authority for the CPSC to notify consumers of defects of hazardous products in the event that the Commission determines that the manufacturer of such products is not able to perform its statutory obligation to provide recall notification.

LEGISLATIVE HISTORY

The CPSC was last reauthorized in the Consumer Product Safety Improvement Act of 1990 (1990 Act) (P.L. 101–608), which authorized funding for Fiscal Years 1991 ($42,000,000) and 1992 ($45,000,000). Since the expiration of that authorization, the

[1] 15 U.S.C. 1261 et seq.
[2] 15 U.S.C. 1471 et seq.
[3] 15 U.S.C. 1191 et seq.

CPSC's funding has increased by approximately five to six percent each year through appropriations acts.

In the 1990 Act, Congress amended the CPSA to: (1) require, among other things, that the President consider individuals with consumer product safety backgrounds when making appointments to the Commission; (2) allow a three-member Commission to constitute a quorum; (3) revise and add to the list of personnel to be appointed exclusively by the Chairman; and (4) direct the Commission to establish an agenda and priorities for its actions prior to each fiscal year.

The 1990 Act also amended the CPSA, the FHSA, and the FFA to require the Commission to devise procedures to monitor compliance with certain voluntary safety standards, and to prohibit the termination of proceedings to promulgate a consumer product safety rule when a voluntary standard has been first approved by the Commission.

In addition, the 1990 Act amended the CPSA to obligate a manufacturer to provide notice to the Commission when: (1) the manufacturer becomes aware of its failure to comply with a voluntary standard; (2) the manufacturer becomes aware of its creation of an unreasonable risk of serious injury or death; or (3) the manufacturer becomes party to certain civil actions for death or grievous bodily injury. These were in addition to then-existing triggers for providing notice to the CPSC. The 1990 Act declared that the reporting of a civil action shall not constitute an admission of liability under any statute or common law and prohibited the Commission from disclosing information about a civil action, including under legal process, except if requested by specified congressional committees.

On June 17, 2003, the Consumer Affairs and Product Safety Subcommittee held a reauthorization hearing to examine possible changes to the CPSA, and to discuss key issues before the CPSC. Senator Fitzgerald presided. The hearing witnesses were: CPSC Chairman Hal Stratton and CPSC Commissioners Mary Sheila Gall and Thomas Moore; Dr. R. David Pittle, Senior Vice President, Technical Operations, Consumers Union; Ms. Rachel Weintraub, Assistant General Counsel, Consumer Federation of America; Mr. Alan Korn, Director of Public Policy, National SAFE Kids; Mr. Stephen Gold, Vice President, National Association of Manufacturers; and Mr. Gary Kline, Senior Vice President, Government Legal and Regulatory Affairs, Toy Industry Association. Senators McCain and Fitzgerald introduced S. 1261, the Consumer Product Safety Commission Reauthorization Act of 2003, on June 13, 2003.

On June 19, 2003, the Committee met in open executive session to consider an amendment in the nature of a substitute to S. 1261 offered by Senators McCain and Hollings. The substitute amendment contained the authorization provisions regarding both the civil penalty increase and CPSC recall notification when a manufacturer is unable to meet its recall responsibilities.

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the require-

ments of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

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

NUMBER OF PERSONS COVERED

The legislation would make no material change to the number of persons as already affected by the Commission's authority.

ECONOMIC IMPACT

The economic impact of this legislation would be minimal.

PRIVACY

The impact on the personal privacy of the persons covered by this legislation is expected to be minimal.

PAPERWORK

The impact on paperwork is expected to be minimal.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section would designate the legislation as the "Consumer Product Safety Commission Reauthorization Act of 2003."

Section 2. Authorization of Appropriations

This section would amend section 32(a) of the CPSA to authorize appropriations for the CPSC not to exceed $60,000,000 for fiscal year 2004, $66,800,000 for fiscal year 2005, $70,000,000 for fiscal year 2006, and $73,600,000 for fiscal year 2007.

Section 3. FTE Staffing Levels

This section would amend section 4(g) of the CPSA to authorize the Commission to hire and maintain a full-time equivalent staff of 471 persons throughout the reauthorization period.

Section 4. Executive Director and Officers

This section would amend section 4(g) of the CPSA to conform the Commission's employee position titles that currently exist but that have not been formally authorized. No staff title changes entail the re-designation of career staff as political staff, or vice versa.

Section 5. Substantial Product Hazard Recalls

This section would amend section 15 of the CPSA to authorize the Commission to conduct defective product recall notification otherwise required of a manufacturer, retailer, or distributor under the CPSA. Pursuant to this section, in the event that the Commission makes a preliminary hazard determination that there exists a Class A or B product hazard (as defined in the CPSC handbook),

and the Commission finds that the manufacturer, retailer, or distributor is financially unable to provide adequate notification to the consumers of the product as required by the CPSA and that such notification is the public interest, then the Commission may provide notification. This section would require that within 120 days of enactment, the Commission prescribe strict standards for determining when a manufacturer is financially unable to effect adequate notifications required by the CPSA.

CHANGES IN EXISTING LAW

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

CONSUMER PRODUCT SAFETY ACT

SEC. 4. CONSUMER PRODUCT SAFETY COMMISSION.

[15 U.S.C. 2053]

(a) ESTABLISHMENT; CHAIRMAN.—An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b) TERM; VACANCIES.—

(1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after the date of the enactment of this Act, the term of each to be designated by the President at the time of nomination; and (B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his predecessor was appointed.

(2) Any Commissioner appointed to fill a vacancy occuring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

(c) RESTRICTIONS ON COMMISSIONER'S OUTSIDE ACTIVITIES.—Not more than three of the Commissioners shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

(d) QUORUM; SEAL; VICE CHAIRMAN.—No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but three members of the Commission shall constitute a quorum for the transaction of business, except that if there are only three members serving on the Commission because of vacancies in the Commission, two members of the Commission shall constitute a quorum for the transaction of business, and if there are only two members serving on the Commission because of vacancies in the Commission, two members shall constitute a quorum for the six month period beginning on the date of the vacancy which caused the number of Commission members to decline to two. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

(e) OFFICES.—The Commission shall maintain a principal office and such field offices as it deems necessary and may meet and exercise any of its powers at any other place.

(f) FUNCTIONS OF CHAIRMAN; REQUEST FOR APPROPRIATIONS.—

(1) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman), (B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission, and (C) the use and expenditure of funds.

(2) In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.

[(g) EXECUTIVE DIRECTOR; OFFICERS AND EMPLOYEES.—(1)(A) The Chairman, subject to the approval of the Commission, shall appoint as officers of the Commission an Executive Director, a General Counsel, an Associate Executive Director for Engineering Sciences, an Associate Executive Director for Epidemiology, an As-

sociate Executive Director for Compliance and Administrative Litigation, an Associate Executive Director for Health Sciences, an Associate Executive Director for Economic Analysis, an Associate Executive Director for Administration, an Associate Executive Director for Field Operations, a Director for Office of Program, Management, and Budget, and a Director for Office of Information and Public Affairs. Any other individual appointed to a position designated as an Associate Executive Director shall be appointed by the Chairman, subject to the approval of the Commission. The Chairman may only appoint an attorney to the position of Associate Executive Director of Compliance and Administrative Litigation except the position of acting Associate Executive Director of Compliance and Administrative Litigation.]

(g) EXECUTIVE DIRECTOR; OFFICERS AND EMPLOYEES.—(1)(A)The Chairman, subject to the approval of the Commission, shall appoint as officers of the Commission an Executive Director, a General Counsel, an Associate Executive Director for Engineering Sciences, an Associate Executive Director for Laboratory Sciences, an Associate Executive Director for Epidemiology, an Associate Executive Director for Health Sciences, an Assistant Executive Director for Compliance, an Associate Executive Director for Economic Analysis, an Associate Executive Director for Administration, an Associate Executive Director for Field Operations, an Assistant Executive Director for Office of hazard Identification and Reduction, an Assistant Executive Director for Information Services, and a Director for Office of Information and Public Affairs. Any other individual appointed to a position designated as an Assistant or Associate Executive Director shall be appointed by the Chairman, subject to the approval of the Commission. The Chairman may only appoint an attorney to the position of Assistant Executive Director for Compliance, but this restriction does not apply to the position of Acting Assistant Executive Director for Compliance.

(B)(i) No individual may be appointed to such a position on an acting basis for a period longer than 90 days unless such appointment is approved by the Commission.

(ii) The Chairman, with the approval of the Commission, may remove any individual serving in a position appointed under subparagraph (A).

(C) Subparagraph (A) shall not be construed to prohibit appropriate reorganizations or changes in classification.

(2) The Chairman, subject to subsection (f)(2), may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions.

(3) In addition to the number of positions authorized by section 5108(a) of title 5, United States Code, the Chairman, subject to the approval of the Commission, and subject to the standards and procedures prescribed by chapter 51 of title 5, United States Code, may place a total of twelve positions in grades GS–16, GS–17, and GS–18.

(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(5) The Commission is authorized to hire and maintain a full time equivalent staff of 471 persons in each of fiscal years 2004 through 2007.

(h) [Omitted]

(i) CIVIL ACTION AGAINST THE UNITED STATES.—Subsections (a) and (h) of section 2680 of title 28, United States Code, do not prohibit the bringing of a civil action on a claim against the United States which—

(1) is based upon—

(A) misrepresentation or deceit on the part of the Commission or any employee thereof, or

(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof, which exercise, performance, or failure was grossly negligent; and

(2) is not made with respect to any agency action (as defined in section 551(13) of title 5, United States Code. In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable.

(j) AGENDA AND PRIORITIES; ESTABLISHMENT AND COMMENTS.—At least 30 days before the beginning of each fiscal year, the Commission shall establish an agenda for Commission action under the Acts under its jurisdiction and, to the extent feasible, shall establish priorities for such actions. Before establishing such agenda and priorities, the Commission shall conduct a public hearing on the agenda and priorities and shall provide reasonable opportunity for the submission of comments.

SEC. 15. SUBSTANTIAL PRODUCT HAZARDS.

[15 U.S.C. 2064]

(a) "SUBSTANTIAL PRODUCT HAZARD" DEFINED.—For purposes of this section, the term "substantial product hazard" means—

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

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

(b) NONCOMPLIANCE WITH APPLICABLE CONSUMER PRODUCT SAFETY RULES; PRODUCT DEFECTS; NOTICE TO COMMISSION BY MANUFACTURER, DISTRIBUTOR, OR RETAILER.—Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

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

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

(3) creates unreasonable risk of serious injury or death, shall immediately inform the Commission of such failure to comply, of such defect, or of such risk, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect, failure to comply, or such risk.

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

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

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

(3) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold. Any such order shall specify the form and content of any notice required to be given under such order.

(d) REPAIR; REPLACEMENT; REFUNDS; ACTION PLAN.—If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f)) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take whichever of the following actions the person to whom the order is directed elects:

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

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

(3) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (A) at the time of public notice under subsection (c), or (B) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs). An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this sub-

section. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, the product with respect to which the order was issued.

(e) REIMBURSEMENT.—

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

(2) An order issued under subsection (c) or (d) with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

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

(g) PRELIMINARY INJUNCTION.—

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

(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the prelimi-

nary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

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

(h) COST-BENEFIT ANALYSIS OF NOTIFICATION OR OTHER ACTION NOT REQUIRED.—Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

(i) COMMISSION-FINANCED RECALLS.—

(1) IN GENERAL.—The Commission may take the actions otherwise required of a manufacturer, retailer, or distributor under subsection (c)(1), (2), and (3) with respect to a product if the Commission—

(A) staff makes a preliminary hazard determination that a product presents a substantial product hazard classified as a Class A or B product hazard (as defined in the Commission's Recall Handbook) or the Commission makes a substantial product hazard determination classified as a Class A or B product hazard (as defined in the Commission's Recall Handbook) with respect to such a product; and

(B) finds that—

(i) notification of the hazard is in the public interest; and

(ii) the manufacturer, retailer, or distributor is financially unable to provide adequate notification.

(2) IMPLEMENTING REGULATIONS.—Not more than 120 days after the date of enactment of the Consumer Product Safety Commission Reauthorization Act of 2003, the Commission shall prescribe regulations to implement paragraph (1). In promulgating such regulations, the Commission shall establish strict standards for ensuring that Commission funding is expended only on the product recall notifications of manufacturers, retailers, or distributors that are financially unable to effect adequate notifications required by this section.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission for each fiscal year $2,000,000 to carry out this subsection.

SEC. 20. CIVIL PENALTIES.

[15 U.S.C. 2069]

(a) AMOUNT OF PENALTY.—

(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed $5,000 for each such violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) shall constitute a separate offense with respect to each consumer prod-

uct involved, except that the maximum civil penalty shall not exceed [$1,250,000] *$20,000,000* for any related series of violations. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed [$1,250,000] *$20,000,000* for any related series of violations.

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

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

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

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

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

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

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

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

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

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

(D) For purposes of this subsection:

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

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

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

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

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

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

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

SEC. 32. AUTHORIZATION OF APPROPRIATIONS.

[15 U.S.C. 2081]

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

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

[(2) $45,000,000 for fiscal year 1992. For payment of accumulated and accrued leave under section 5551 of title 5, United States Code, severance pay under section 5595 under such title, and any other expense related to a reduction in force in the Commission, there are authorized to be appropriated such sums as may be necessary.]

(1) $60,000,000 for fiscal Year 2004;

(2) $66,800,000 for fiscal year 2005;

(3) $70,100,000 for fiscal year 2006; and

(4) $73,600,000 for fiscal year 2007.

(b)(1) There are authorized to be appropriated such sums as may be necessary for the planning and construction of research, development and testing facilities described in section 27(h); except that no appropriation shall be made for any such planning or construction involving an expenditure in excess of $100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Energy and Commerce of the House of Representatives, and by the Committee on Commerce, Science, and Transportation of the Senate. For the purpose of securing consideration of such approval the Commission

shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

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

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

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

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

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

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

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